say, £15 was spent on that work an allowance of a similar amount would be made?

The MINISTER FOR LANDS: The custom was to advance the full value on work done, provided that the security when the work was done was sufficient to cover the advance. If it were considered by the trustees that the cost of the work was £15, and the value was only £10, then the advance would be £10. The same treatment was meted out in the South-West as in the wheat belt.

Mr. JOHNSON: Paragraph (a) of the subclause referred to the purchase of stock for breeding purposes. The clause did not convey an altogether clear interpretation of what was meant, for it appeared from the wording that the stock could only be used for breeding purposes and not for the ordinary work of the farm. That was not intended, for both the Minister and the bank officials considered that the animals should be utilised on the farm. If the paragraph were altered to read "the purchase of breeding stock" the intention would be much more clear. That would indicate to the trustees exactly what was desired.

The MINISTER FOR LANDS: The amendment would not improve the clause. It was intended that the stock thus purchased should be used on the farm, and that procedure was followed.

Progress reported.

House adjourned at 11.18 p.m.

Legislative Council,

Wednesday, 10th November, 1909.

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

ASSENT TO BILLS.

Message from the Governor received and read notifying assent to the following Bills:—

1. Bills of Sale Act Amendment.
2. Licensed Surveyors.
3. Sea Carriage of Goods.

PAPERS PRESENTED.

By the Colonial Secretary: 1, Report of the Public Service Commissioner for period ended 30th June, 1909. 2, Report on Immigration for 1909. 3, Fremantle Harbour Trust Commissioners' Report for 1909. 4, Report of the Commissioner of Taxation for 1909. 5, Western Australian Government Railways: By-laws for the conduct of licensed private luggage porters. 6, Superintendent of Public Charities' report for 1909. 7, Mullewa Local Board of Health by-laws. 8, Municipality of Leederville by-laws.

BILL—OPIUM SMOKING PROHIBITION.

Report of Select Committee.

Hon. M. L. Moss brought up the report of the select committee appointed to inquire into the Opium Smoking Prohibition Bill.

Report received and read; ordered to be printed, and to be considered when in Committee on the Bill.

BILL—DISTRICT FIRE BRIGADES.

Report of Select Committee, Extension of Time.

Hon. A. G. JENKINS (Metropolitan): I move—

That the time for bringing up this report be extended to this day week.

Hon. J. W. KIRWAN: It would be well if this Committee could see its way clear to visiting the goldfields, where there was evidenced by some of the public bodies a very strong feeling of opposition to the Bill. Only a few minutes earlier the news had arrived of a very serious fire occurring on the Perseverance Mine between Kalgoorlie and Boulder, which, without doubt, would have the effect of directing additional attention to the measure. The particular local body controlling the area where the fire had occurred was one strong in opposition to the Bill.

The Colonial Secretary: The chairman of that body has given evidence before the Committee already.

Hon. J. W. KIRWAN: That was true, but there were other bodies besides the one referred to, and there were other members of that particular body who would be disposed to give evidence before the Committee. It was to be hoped that the Committee would go to the goldfields before making its report.

The PRESIDENT: Does the hon. member make a motion to that effect, or is he merely offering a suggestion?

Hon. J. W. KIRWAN: The remarks made were simply by way of suggestion.

Hon. A. G. JENKINS: Evidence had already been given before the Committee by the chairman of the roads board to which the hon. member had referred. Further than that, letters had been received from the town clerk of Kalgoorlie and others resident in the district, and these letters had been fully considered by the Committee.

Question put and passed.

BILL—MONEY LENDERS.

Introduced by the Hon. M. L. Moss, and read a first time.

BILL—COOLGARDIE RECREATION RESERVE REVESTMENT.

Read a third time and *passed*.

BILL—LAND ACT SPECIAL LEASE.

In Committee.

Resumed from the 28th October.

Clause 1—Power to grant lease of B Reserve No. 2020:

The CHAIRMAN: Progress was reported on Clause 1 on an amendment by Mr. Moss "That the following proviso be added to the clause: 'Provided, also, that nothing in this Act contained shall authorise the lessees named in the lease when executed to commit a nuisance in connection with the manufacture of the acids, superphosphates, and other agricultural fertilisers to be mentioned in the said lease.'"

The COLONIAL SECRETARY: When the Bill was before the Committee on the previous occasion there was opposition to the amendment on the ground that the lessees would be put in a worse position than if they leased the land from a private individual. Since then he had, at the request of several members, consulted with the Principal Medical Officer and President of the Central Board of Health as to whether the work proposed to be carried on by the company at the lease would be in any way objectionable or a nuisance. In the opinion of that officer the work would not be a nuisance. It was proposed to manufacture sulphuric acid on the lease in question, and the Principal Medical Officer said that in the centre of London, where there was a large population, and where there were good gardens in the vicinity, sulphuric acid was manufactured, but had no effect upon the vegetation. That showed it was not objectionable. He (the Colonial Secretary) had also stated that in the opinion of the Crown Law authorities there was nothing in the special lease which allowed the company to work outside the provisions of the health laws of the State. Some member suggested it would be more satisfactory if a written opinion

on the question were obtained from the Solicitor General. That opinion had been obtained and was as follows:—

"Except for the fact that the term of this lease exceeds 21 years, it would have been granted as a special lease under Section 152 of "The Land Act." 2. It was the only provision of that Section that no special lease should be granted for a term exceeding 21 years that rendered a Bill necessary. 3. A lessee of a special lease granted under the existing provisions of the Land Act would hold the lease subject to the provisions of any laws in force for the time being in relation to public health, and, as I have already advised you verbally, in my opinion the lessee under the lease granted pursuant to the Bill would likewise hold subject to the health laws. As already stated, the effect of the Bill, in my opinion, goes no further than to sanction the granting of the special lease for a longer term than authorised by the principal Act. However, there can be no objection to placing the matter beyond question by a proviso, and I attach a proposed amendment accordingly."

It would be seen, therefore, that there was nothing in the lease which gave any remarkable privileges, or other than those which would have been obtained from any private individual. The company would not be exempted from the public health laws. To make assurance doubly sure he intended subsequently to add a proviso as follows:—"Provided also that nothing in this Act or the said special lease contained shall exempt the lessees or their assigns from the operation of any law, statute or common, relating to public health." If Mr. Moss would consent to withdraw his amendment he would move that proviso as an amendment to the clause.

Hon. M. L. MOSS: The opinion of the Solicitor General did not touch the question he had raised, which was whether the agreement gave the company a statutory authority to do something which might be detrimental to owners of property in the vicinity. The point was whether, if proceedings were taken for an injunction to prevent the repetition by the company of an offence, which would be detrimental to the owners of property adjoining, they would be able to raise the point at law that they were authorised by statute to carry out this work of manufacturing fertilisers and sulphuric acid, and that, therefore, no proceedings lay against them. He did not pay much attention to the proviso to be moved, but he did pay attention to the statement made by the Colonial Secretary as to the opinion of the President of the Central Board of Health. The opinion of that officer was in effect, that no danger need be apprehended in the direction he (Mr. Moss) had indicated. If no nuisance were to arise in the carrying out of the operations of the company there would be no need for the proviso to be moved. He had now drawn the attention of the Government and of the House to the point, and there had been an expression of opinion from the President of the Central Board of Health. If an intolerable nuisance did arise Parliament would be able to step in and take away any rights which might be thought to exist; therefore, he would not feel distressed if members voted against his amendment. As, however, the manufactory was to be in the Province he represented he did not feel justified in withdrawing the amendment.

Hon. J. F. CULLEN: It was to be hoped that Mr. Moss, having achieved his purpose, would withdraw his amendment. Had the Colonial Secretary at an earlier stage in the Bill given the assurance he now did there would have been no cause for the delay that had arisen in the Committee stage. The assurance from the President of the Central Board of Health, and the proviso proposed to be inserted, amply covered all grounds for dissatisfaction.

Amendment put and negatived.

The COLONIAL SECRETARY moved an amendment—

That the following be added to the clause:—"Provided, also, that nothing in this Act, or in the said special lease contained, shall exempt the lessees or

their assigns from the operation of any law, statute or common, relating to public health."

Amendment passed; the clause as amended agreed to.

Schedule, Title—agreed to.

Bill reported with an amendment.

BILL — ADMINISTRATION ACT AMENDMENT.

Second Reading.

Debate resumed from 27th October.

Hon. M. L. MOSS (West): I must confess since I moved the adjournment of the debate I have not looked at this Bill. I shall take what the Colonial Secretary says for granted, that the duties in this schedule are not in excess of those in existence in other parts of Australia. It is a matter of great regret to me that the Government have found it necessary to increase the duties. I am convinced that it would have been better to have kept the probate and succession duties below those which are in force in other parts of Australia, which would have been productive of the investment of money in Western Australia, but to keep them up to the level of those in force in other parts of Australia will not induce people who have money to invest to bring it into Western Australia to invest. When you take an estate of £20,000 or upwards, and find that a duty of 10 per cent. is levied in respect of that estate, and half that duty is levied in the case of property devolving on the wife and children of the testator, and knowing as we do what a vast amount of property is heavily mortgaged in this country, and other property mortgaged to a lesser degree, the necessity of finding a large sum of money after the death of the owner creates a very great hardship indeed. I can only make a vigorous protest against the increase of these duties. It was mentioned in another place that the Premier in his policy speech at Bunbury stated that no attempt would be made to increase the taxation of the country; here is an instance of taxation, I should say in some instances being increased more than double what it is under the present Act.

The Colonial Secretary: In which instance is it double?

Mon. M. L. MOSS: I have not the other schedule before me.

The Colonial Secretary: I thought not, or you would not have made the statement.

Hon. M. L. MOSS: Take an estate of £20,000, the duty has gone up from 7 per cent. under the present law to 10 per cent. under this Bill.

The Colonial Secretary: That is not double.

Hon. M. L. MOSS: No; the duties are certainly not double, but a comparison of the schedule of the Act of 1903 with the schedule of this Bill shows very substantial increases.

The Colonial Secretary: There is a difference of 2½ per cent. in the case you have mentioned, with an estate of £20,000.

Hon. M. L. MOSS: The 10 per cent. mark is not reached under the present Act until we come to £50,000, and the 10 per cent. mark is reached under the present Bill at £20,000. It is a very bad piece of policy indeed. The total amount, I understand, to be derived from this taxation is between £6,000 and £7,000 a year. I think the duties are sufficiently high under the present Act. It would not do for this Chamber to think of rejecting a measure of taxation of this kind; it is only in cases of grave emergency that we are justified in interfering with Bills of this nature, but I wish to protest strongly against the increases. In some instances, where an estate has a vast amount of ready money, or assets, which are readily turned into money, no hardship would be inflicted, but there are large estates which are heavily encumbered — an estate represented by an equity of redemption in property—and these duties might put a family in very great difficulties indeed.

The Colonial Secretary: There is a 50 per cent. reduction in cases where the property is left to the family.

Hon. M. L. MOSS: I regret that the necessity has arisen to further penalise

people. The 50 per cent. is nothing new, it has always been given in cases where the property is left to the wife and children, but there is an increase of 2½ per cent., roughly. The 10 per cent. mark is reached at £20,000 in this Bill instead of at £50,000 under the present Act.

Hon. G. Randell: Not on the gross value.

Hon. M. L. MOSS: On the net value. Take the case of a property valued at £20,000. Suppose it were encumbered with a mortgage to the amount of £10,000; the estate has to pay on the £20,000 and has to find £2,000 cash for the duty, and if the property devolves on the wife and children it has to pay £1,000 in cash; that is a very heavy impost indeed. Why there should be any necessity to raise the duties by 2½ per cent. I do not know; it is a very bad advertisement for the State, and one which, I should think, would keep foreign capital out of Western Australia.

Hon. E. McLARTY (South-West): I regret very much the necessity has arisen—if there is any necessity at all—for this Bill, because this is a measure which, it appears to me, will bear very hard indeed on many estates. At the present time we are taxed every time we turn round, and it is becoming a great burden to the people to pay their rates and taxes. I think the present schedule is quite suffieient. It seems to me where a man has built up, perhaps, a reasonable estate and paid his rates and taxes all his lifetime, working for the State as well as for himself, it is unfair to ask the family which is left behind to pay a large sum of money. We know that there are estates worth £20,000, which comprise a lot of land bringing in very little income indeed; the properties are not let and they are more a burden than anything else. Of course, a value is placed on them, and after the death of the owner this enormous sum of money has to be provided. It is impoverishing a family that otherwise might be left in very good circumstances. I am opposed to this increase, and I am sorry that Mr. Moss says that he will not take any steps to defeat the Bill. We should have power to deal with these matters which are of great importance to the community, and if an amendment had been moved that the Bill be read a second time this day six months I should have given it my support.

Hon. J. W. KIRWAN (South): I do not take the same view of this Bill as the hon. Mr. Moss or the hon. Mr. McLarty. I join with them in regretting that the necessity exists in the State for additional taxation, but this is not the occasion to comment on the reasons why additional taxation is necessary or as to who is to blame. But that additional taxation is necessary there can be no doubt, and I personally know of no means of raising taxation that to my mind are so likely to inflict as little hardship as the death duties. Mr. Moss has referred to individual cases where a certain amount of hardship may be experienced. He has referred to the case of, say, a property valued at £20,000 that might be heavily mortgaged and it would be a hardship on those to whom that property was willed if they had to pay an amount of £2,000. As against that it must be remembered that nearly every prudent man, nearly every man in fact, nowadays has his life insured. A man who has property to the value of £20,000 has his life insured, and very often his life is insured with special regard to the probate duties that will have to be paid on his death. While cases such as that may be mentioned as referred to by Mr. Moss, no mention has been made of the number of cases where men have come into property, and their property has been in no way encumbered and it has been a windfall to them. What better subjects for taxation are there than those we come upon sometimes who inherit large sums of money unexpectedly; therefore, to my mind, when the Government were looking around for additional means of taxation, I do not know of any means where additional taxation might be imposed with less hardship to the community than in this particular instance. Additional taxation of this nature is

less likely to inflict hardship than any form of taxation, more especially as there is the provision referred to by Mr. Moss in the reduction of 50 per cent. where the property is willed to the wife and children. I shall be glad, if the matter goes to a division, to support the Government.

Question put and passed.

Bill read a second time.

In Committee.

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

BILL—MUNICIPAL CORPORATIONS ACT AMENDMENT.

In Committee.

Resumed from the 28th October.

The CHAIRMAN: Progress was reported on this Bill on a new clause moved by the Colonial Secretary to stand as Clause 22 (Appointment and powers of inspectors of municipal accounts).

The COLONIAL SECRETARY: Exception was taken to Subclause 2, which provided—

> "Such inspectors may disallow any expenditure or entry in the books which they may consider has been wrongly, irregularly or dishonestly incurred or made, or which has been incurred or made in contravention of the Act, or of the regulations. Any such sum so disallowed shall be a surcharge upon and may be recovered from or deducted from moneys due to the officers or servants of the council by whom the expenditure was incurred, or by whom the entry was made or ordered to be made."

In order to give the auditors power to surcharge any wrongful expenditure on the members of the council and not on the officers, he would alter the proposed subclause so that all the words after "regulations," would be struck out, and the following inserted in lieu:—"And every inspector shall have and may exercise and perform the powers and duties conferred and imposed upon auditors by Section 489 of the principal Act;" and also the proposed subclause 3 by striking out "such" before "inspector," and inserting "an" in lieu.

New clause, as altered, put and passed.

New clause—Power to make regulations as to accounts and audit:

On motion by the Colonial Secretary, a new clause (as on Notice Paper), inserted to stand as Clause 23.

New clause—Amendment of Section 179, Subsection 17A:

Hon. G. RANDELL moved that the following new clause be added:—

> *Section 179, Subsection 17a of the principal Act is amended by adding the following words:—"For the compulsory clearing of town lots of all grass, underwood, scrub, or other inflammable matter likely to be a source of danger to adjoining buildings or fences."*

There was now provision in the principal Act for controlling fires and extinguishing them, but the councils were not enabled to pass by-laws compelling people to keep their premises so as not to endanger the property of neighbours.

New clause passed.

Title—agreed to.

Bill reported with amendments.

BILL—SUPPLY, £384,000.

First Reading.

Received from the Legislative Assembly, and read a first time.

BILL — AGRICULTURAL MACHINERY SALE AND PURCHASE.

Second Reading.

Hon. J. M. DREW (Central) in moving the second reading said: This Bill has been prepared only after careful thought and mature consideration. The evil it seeks to remedy has been denounced from time to time on public platforms and in the public Press, but so far no attempt has been made to deal with it in the only way it can be effectively dealt with—by the process of legislative enactment. The object of the Bill is to regulate the sale of agricultural machinery under what is known as the hire-purchase system. With this system, in so

far as its broad principles are concerned, I have no complaint to make; indeed I am prepared to admit it has been responsible for enabling scores of selectors in the early stages of their agricultural careers to acquire on easy terms the machinery necessary for the successful pursuit of their vocation; at the same time it is a system some of whose features need to be brought into conformity with the dictates of equity if the success of an important industry is not to be affected. At present there are firms in Western Australia disposing of agricultural machinery under the hire-purchase system with covenants and conditions attached that are totally at variance with the principles of justice, so far as I can see. Many members of the House can no doubt call to mind the usual methods pursued. A commission agent is sent round the various districts by these firms armed with a bundle of agreement forms and a well-loaded fountain pen. It is manifestly to his interests to sell as much machinery as possible, for the more machinery he sells the more commission he gets. Of course if he has a persuasive tongue and, in addition, an elastic conscience, so much the better for his success. Cases could be cited of struggling farmers with less than 100 acres of agricultural land who have been coaxed and cajoled into signing one of these agreements which virtually amount to signing themselves into the Bankruptcy Court. I will read a copy of the form of agreement by one of the principal firms in Western Australia, which will give a very vivid idea of the position in which the poor man places himself who puts his pen to such a document. It says:—

> "This agreement is not to be binding on..... until received and ratified by them.
>
> ....., 190 .
>
> To.....
>
> Please consign to.....railway station siding, on or about the..... day of....., 19 , freight from.....to be paid by me, the undermentioned machine or implement, namely:—..... (hereinafter called the machine) upon and subject specifically to the conditions hereunder to which I agree:—
>
> 1. I agree to hire the said machine from you and to pay you at Perth as soon as delivered the sum of £..... pounds sterling in cash; and/or give you promissory notes as follows:—One pro. note for £.....due....., 190 ; one pro. note for £.....due .....190 ;.....As and for hire of the said machine until the.... day of.....190 .
>
> 2. The property, right, title, and interest, in the said machine to remain in you and the said....., and I agree to hold the same as hirer from you until the full amount of cash and/or promissory notes, hereby agreed to be paid, is paid, and during that period to take all reasonable care of the said machine upon the condition that upon payment of the said full amount of cash and/or promissory notes, on or before the.....day of .....190 , the said machine shall become my absolute property.
>
> 3. I will not part with the possession of the said machine, nor sell, pledge, remove, or otherwise deal with the same during the said period of hiring.
>
> 4. I will give satisfactory security for the due performance of this agreement whenever called upon by you so to do.
>
> 5. Should I make default in payment of the said sum or of the amount of the said promissory notes, or any of them, or any part thereof, or of the interest hereby reserved, or should you for any reason consider the payment of the hire or rent hereby agreed to be paid insecure, I hereby authorise you at my cost to seize and take possession of the said machine and sell or otherwise dispose of the same in such manner as you in your own discretion, think desirable, and apply the net proceeds of any such sale or disposal in or towards the satisfaction of the said sum of money or amount of promissory notes hereby agreed to be paid, and no such sale or disposal shall in any way affect my liability to you for the payment of the whole of

the said sum of money or the full amount of the said promissory notes.

6. In the event of your resuming possession of the said machine, as hereinafter provided, I hereby authorise you, your agents and servants, to enter any lands, buildings, or premises, and, if necessary, to break into such buildings or premises for such purpose without being liable for any damage thereof.

7. Upon any sale or other disposal mortgage, charge or encumbrance of my real and personal property, or upon any assignment thereof for the benefit of any one or more of my creditors the said promissory notes, or such of them as shall remain unpaid, shall forthwith be and become due and payable to you at Perth.

8. Should any of the said promissory notes and/or the said sum of money or any part thereof not be paid by me on or before the due date at the place of payment I agree to pay the amount of such promissory note and/or the said sum of money or so much thereof as shall remain unpaid, with interest, to you at Perth.

9. In the event of any default arising from this agreement or/and upon the said.....deciding to institute legal proceedings in a local court I hereby agree that the same may be instituted in the local court of Perth, and that I will not allege that the cause of action did not arise in Perth, or raise any question against the jurisdiction of the said local court of Perth to try the said matter.

10. I agree to accept delivery of the said machine at the Perth or Fremantle railway station, at your option.

Agent .....
Witness .....
Signed.....
Full name .....
Post Office ....."

Under this agreement the vendor will retain all right or interest in the machine, and he must give further security when called upon to do so. The vendor can call upon him to furnish further security, failing which he can immediately take possession. If the purchaser mortgages, or grants a bill of sale over his property, if he borrows from the Agricultural Bank, or gets a lien on his wool, all his promissory notes still unpaid, become due *ipso facto*, and if he cannot meet them he is thrust into the jaws of the court. That is not all. Though the machinery agent may have received the deposit and some instalments and although he may have seized and sold the machine, he can sue for what remains unpaid under the promissory notes. A more lopsided agreement than that could not be imagined. The purchaser is bound hand and foot, and body and soul. From my own knowledge many applications for loans made to the Agricultural Bank are made by persons who have purchased machinery, and who have no profitable use for that machinery. I know of one instance four or five years ago of an application to the Agricultural Bank for a loan of £170 for the payment of instalments on agricultural machinery. Mr. Paterson refused the application. The man who made the application came down and had a personal interview with Mr. Paterson. It appeared that the applicant possessed only 20 acres of cultivable land and the advice Mr. Paterson gave, was that the man should try and dispose of his machinery, meet his bills, and buy a pair of scissors with which to cut the crop. Thus it will be seen the matter affects a wider circle than the parties concerned. I know a case in our district, where a man with 60 acres of cultivable land purchased a harvester. The commission agent waited on him, made promises, and got him to sign an agreement; the man paid a small deposit, and then he could not meet the bills; he notified the company, asked them to take possession of the machine, but they refused. They sued him in the Supreme Court, and he had to fight the action, which involved him in heavy legal expenses, and now he is bordering on insolvency. Judgment was given against him on the contract.

Hon. M. L. Moss: What was he sued for?

Hon. J. M. DREW: He was sued because he could not pay the amount due

under the agreement, and the agents would not take back the machine. The bait used by the machinery agent is the small deposit and long terms; the selector can generally scrape together enough money with which to pay that deposit, and the struggle commences when he has to meet the instalments; the result may be he fails, and the machinery is taken possession of. It is sold for what it will fetch and then the farmer is sued in the local court or in the Supreme Court, and just at the time when he needs financial assistance to enable him to put his land under cultivation he has to face the law courts unless he can provide the money. Dozens of these cases never come to light at all, because failing to get money from the Agricultural Bank, as they do fail, they resort to the storekeeper, who has to take them on his shoulders and he has to demand a high rate of interest, or if it is not the storekeeper it is a private financial institution. It may be said that the purchaser signs the agreement with his eyes open and should be allowed to suffer the consequences; but we must remember that in nearly every respect the selector is not the equal of the machinery agent in astuteness of intellect, and the machinery gentleman is in the position that he has machines to sell, the farmer is led to believe that it is necessary for him to buy, with the result that the farmer signs the agreement without properly inspecting it, and trouble arises when he fails to meet the instalments as they fall due. He discovers then that all the promises made verbally by the agent that it would be all right have vanished into smoke. I have endeavoured to the best of my ability to make this Bill equitable to all parties. It gives the vendor of agricultural machinery all the rights I think that he can justly claim; in case of default the vendor will have the power to take possession of the machine, and he will have the power to retain the deposit and instalments paid, and he will have the power further to sue for damage done to the machine, reasonable wear and tear excepted. I do not think it is advisable that he should possess more powers than these. For the principle embodied in the Bill we have precedents. There is a precedent in the Truck Act, which refuses to recognise any contract between the employer and the employee which provides for the payment of wages in any shape other than money. Then we have a precedent in the Workers' Compensation Act, which prevents an employer contracting himself out of a liability. Then there is another precedent in the measure which was introduced into this Chamber this session, the Over-sea Carriage of Goods Bill, which makes certain clauses in a bill of lading, which is virtually a contract between the shipper and the shipowner, null and void under certain circumstances. In the interests of the selector, the merchant, private financial institutions, and in the interests of the Agricultural Bank, which is doing so much to build up the agricultural industry, I would commend this measure to the careful and, I hope, sympathetic consideration of this Chamber. I move—

That the Bill be now read a second time.

On motion by Hon. S. Stubbs, debate adjourned.

BILL—LEGAL PRACTITIONERS ACT AMENDMENT.

In Committee.

Resumed from 6th October.

The CHAIRMAN: Progress had been reported on a new clause moved by Mr. Drew, to stand as Clause 7, as follows:—"Any woman who has complied with the Act and rules in that behalf may be admitted as a legal practitioner."

New clause put and passed.

New clause:

Hon. R. W. PENNEFATHER moved—

That the following new clause be added to stand as Clause 8:—Section 14 of "The Legal Practitioners Act, 1893," is amended by adding thereto, after Subsection (e), the following:—"or (f) admitted or entitled to be admitted as a barrister and solicitor of the High Court of Australia."

The High Court of Australia had formulated rules for the admission of barristers to practise before that court, and the

regulations prescribed certainly had not lowered the standard of the educational test as applied in Western Australia. He had been asked by several persons interested in this matter to bring forward this clause with the view to having practitioners of the High Court admitted to practise before the courts of Western Australia. He did not know that this had been introduced in any other part of the Commonwealth up to the present. One point to which he would direct the attention of the Committee was, that the chief respect in which the rules and standard of examinations of the High Court differed from those of the State court, was that in respect to a State court a person was required to serve five years under articles. There was no such provision in the High Court rules. It had been said that this was a material defect, but in answer to that it might be urged that under our present rules barristers coming from England who had not served articles were admitted to practise here.

Hon. M. L. Moss: That is a blot on our system.

Hon. R. W. PENNEFATHER: It was not certain that there was any very great virtue in the serving of five years under articles. Certainly it would not be of very great value to an advocate, whatever its value might be in the solicitors' branch of the profession. However, he had performed his duty in bringing the matter before the Committee.

Hon. M. L. MOSS: It was to be hoped the Committee would not support the proposal. It represented a very great interference with the various qualifications set out in the Legal Practitioners Act of 1893. The Committee were scarcely qualified to go on adding to those qualifications. The qualifications contained in the Legal Practitioners Act were on the same lines as those to be found in every other Australian State. It had been laid down that one very necessary qualification was five years' service under articles. The great bulk of legal practitioners in Western Australia were expected to be capable of doing work in all branches of the profession, and of acting as solicitors as well as advocates. The High Court Judges had framed a set of rules providing for the admission of practitioners to the High Court. They had done that from the special point of view that presently there would be a class of persons growing up in Australia who would give themselves up to the doing of High Court work and nothing else. Every practitioner of a Supreme Court in Australia was, by virtue of that position, a practitioner of the High Court; but the High Court Judges were looking ahead to the time when there would be sufficient work to enable certain practitioners to practise in the High Court only.

Hon. J. W. Kirwan: Then it does not matter very much, because if a man be qualified to practise in the High Court he will not wish to practise in the Court of Western Australia.

Hon. M. L. MOSS: Under the rules framed by the High Court, instead of five years' service under articles there was to be a term of service for three years in a particular way, namely, in attending the sittings of the High Court when on circuit in a particular State. That was to say, so far as Western Australia was concerned the only service required would be to attend the High Court during its sittings in Perth, sittings which might extend over 12 or 14 days in the year. In addition to that, the candidate would have to pass a literary examination and an examination in law. Seeing that the bulk of the legal practitioners in the State had to do solicitors' work, five years' service under articles was of the utmost importance.

Hon. J. W. Kirwan: Then a man may be qualified to practise in the High Court but not in the State Court.

Hon. M. L. MOSS: The practitioners practising in the High Court would be advocates, and not legal practitioners in the sense in which it was understood in Western Australia. English barristers were admitted in Western Australia, it was true, but experience had shown that many of them came out here as green as grass, and had to go into some solicitor's office to get the necessary grounding to

equip them for the practise of their profession. To dispense with the five years' service under articles would be to take away the best part of a solicitor's qualification.

Hon. J. W. KIRWAN: It was a question of some difficulty for one who was not a lawyer, more especially when it was found that the two legal members of the Committee were at variance. Having followed closely the remarks of those hon. members he felt inclined to vote for the new clause. Notwithstanding the points made by Mr. Moss, it seemed that if a barrister or solicitor was considered fully qualified to practise before the highest tribunal in Australia, he would be sufficiently qualified to practise before the inferior State courts. Mr. Pennefather had said that the new clause did not yet apply in any other part of Australia; but this was no reason why Western Australia should not recognise the superiority of the High Court in a matter of this kind, and admit to its court those practitioners practising in the High Court. In the absence of any stronger arguments than those so far advanced, he felt compelled to support the new clause.

New clause put and negatived.

Title—agreed to.

Bill reported with amendments.

BILL—LANDLORD AND TENANT.

Second Reading.

Hon. M. L. MOSS (West) in moving the second reading said: It is a most extraordinary condition of affairs that the law with regard to landlord and tenant, which this Bill has been introduced to alter, should at this period of the history of Western Australia be in the condition in which we now find it. This Bill has become necessary in consequence of a discovery made during the course of certain litigation which started before the Chief Justice and finally found its way to the Full Court. The circumstances in connection with the action are these: A lease had been entered into between two parties and that lease contained a provision that the tenant should keep the place in repair. There was the usual provision for re-entry contained in the lease, which provided that in case of breach of covenant on the part of the lessee, the landlord had the right to re-enter and terminate the lease. It appears that some repairs which the Chief Justice found did not amount in value to more than £5, had not been effected, and the result was that a valuable lease worth £1,600 was lost by the tenant, for the landlord re-entered under his powers. It turned out that through the absence of legislation in Western Australia, an Act which had been in the statute books in the other Australian States, and in England, for many years, had never been passed here. The English Conveyancing Act of 1881 provides that this right of re-entry, contained in the lease, cannot, in respect of certain breaches of covenant, of which failure to repair is one, be exercised until some seven or fourteen days' notice is given by the landlord to the tenant, calling upon him to effect the repairs. In Western Australia the only provision in law enabling the Court to give relief to a tenant against a landlord's right of re-entry is where there has been a breach in the regular payment of rent, or a failure on the part of the tenant to effect an insurance. In such cases there is legislative power for the Court to give relief by ordering the tenant to pay certain interest for failure to pay rent on certain regular days. This Bill is taken from the provisions of the conveyancing law in New Zealand. The Parliamentary Draughtsman has spent some time with me comparing the legislation in England, Victoria, and New Zealand, and we thought the simplest form was contained in the New Zealand measure. Under Clause 3 of the Bill it is provided that the right of re-entry shall not be enforceable unless and until the lessor serves on, or sends by registered letter to the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy it. The clause goes on to provide that if he fails to do so in reasonable time, or to make compensation in money, the right of re-entry accrues. Where a lessor proceeds to enforce such a right of re-entry, or forfeiture, the

Court may grant relief, taking into consideration all the circumstances of the case, and may award costs, expenses, damages, or compensation to the landlord for failure on the part of the tenant to comply with the terms of the lease. Had there been a provision of that kind in force, this fearful miscarriage of justice to which I have alluded, where because a tenant omitted to effect £5 worth of repairs, he lost a lease worth £1,600, would never have occurred. Both the Chief Justice and the Full Court expressed regret that the law was in the condition it is, but they said they had no option but to administer the law as they found it. It is desirable in the interests of this community, where so many hundreds of properties are held under lease, that there should be powers similar to those in the other States of Australia and the old country with regard to this question. Subclause 7 of Clause 3 provides that it is not intended that this right of relief shall extend to a condition for forfeiture on the bankruptcy of the lessee or on the taking in execution of the lessee's interest, or in the case of a lease of any premises licensed under the Wines, Beer and Spirit Sale Act, 1880. That is to say that if a lease is declared forfeitable by the bankruptcy of the lessee, or taken in execution under judgment, it is not intended to interfere, nor is it intended to give relief in the case of breaches of covenants of a lease of premises licensed under the Wines, Beer and Spirit Sale Act, and for this reason: Where a tenant covenants in a lease that he will not make breaches of the law which may have the effect on the landlord of losing his license, it would be serious to give the tenant right of relief in such circumstances. This proviso will ensure that the tenant will take care to keep within the four corners of the Wines, Beer, and Spirit Sale Act, for he would know there was no relief for him if he committed a breach. Clause 4 of the Bill is improved. It is a common thing in these leases to insert a provision that the lessee shall not sub-let without the consent of the landlord. Although the lessee at times gets the very best persons as assignees, or sub-lessees, some landlords capriciously withhold their consent, and even at times demand a very heavy premium before granting the sub-lease. The clause sets out—

> "(1.) In all leases containing a covenant, condition, or agreement that the lessee shall not, without the license or consent of the lessor, assign, underlet, part with the possession, or dispose of the demised premises or any part thereof, such covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that such consent shall not be unreasonably withheld, and that no fine or sum of money in the nature of a fine shall be payable for or in respect of such license or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to such license or consent."

It will still be open for a provision to be inserted in the lease that the landlord may demand a portion of the income received from the new tenant, or impose a fine or premium as a condition for giving his consent. It is to be understood, however, that unless there is an expressed provision to the contrary, no sum of money can be demanded by the landlord as a condition for giving his consent. In effect these are the provisions of the Bill. I will be prepared to give any additional information when the Bill reaches the Committee stage. I have the English statutes containing the English law on the subject, annotated with English decisions, with me, so that if any member wants information as to the necessity for the law I am seeking to put on the statute book, I will be very pleased to give it to him in Committee. I beg to move—

That the Bill be now read a second time.

On motion by Hon. S. J. Haynes debate adjourned.

House adjourned at 6.10 p.m.