painters, because it was a painters' registration board, just as in the case of every other board of which I have knowledge the majority, and in some cases every single member, is a representative or a member of the trade or profession of those to be registered. But when the Bill finally passed through Parliament the position was that there was one painters' representative and one representative of the paint manufacturers, through the Chambe of Manufacturers.

Obviously it was the thought of the Government that the manufacturers of paint had an equal stake and interest in the operations of this board as did the master painters. But the position is that the entire moneys payable to the board are being found by the registered painters, and not one penny is being found by the paint manufacturers. It will be appreciated that the master painters are in a minority on the board—they have one member in a board of three—and yet, I repeat, those painters are called upon completely to finance the operations of the board.

I think all members will agree that such a proposition is grossly unfair, and so the Bill provides that every year the Chamber of Manufactures will pay to the board a fee equal to the total amount of fees received by the board for the registration of painters. The Chamber of Manufactures is given power to recover that sum of money from the paint manufacturers or, as it is called in the Bill, the Australian Paint Manufacturers Federation (W.A. Branch).

Here I would point out that any charges made by the board for certificates, or any penalties received are in a different category. What the Bill is doing is requiring the paint manufacturers, through the Chamber of Manufactures, to pay on a pound for pound basis to match the total of the fees paid by the registered painters in any one year. That can have one of two results: First, that the present fee of 7 guineas per annum levied on the registered painters can be reduced to a lesser figure because of the pound for pound arrangement with paint manufacturers; or, alternatively, the Painters' Registration Board will have additional moneys at its disposal to enable it to prosecute its duties with greater vigour and efficiency than would otherwise be the case.

I say that because the Minister intimated that, for the time being—and no doubt one of the considerations would be finance—a part-time inspector only is being employed. Master painters, however, feel it is necessary in order that the Act be complied with and for the purpose of protecting persons who require their properties painted, there should be an inspector appointed who is able to devote a greater amount of time to his duties, bearing in mind that from time to time, if and when prosecutions take place—no doubt this would occupy a fair amount of his time—a great deal of the inspector's time would be devoted to paper work, attendances in court, and so on.

Those are the three provisions in the Bill. I hope there will not be any pressure brought to bear with any success on the Minister and the Government with respect to the last-named provision. I am certain that if the Minister and those associated with him ponder on the proposition they will agree that if there are two parties who derive benefit from a piece of legislation, it is grossly unfair that one party only should be called upon to make contributions to enable the board to function. The answer is that as both parties have equal representation, the contributions should be made on an equal basis; that is to say, the annual registration fees that are paid by painters should be matched.

Debate adjourned, on motion by Mr. Wild (Minister for Labour).

House adjourned at 10.43 p.m.

Legislative Council

Thursday, the 26th September, 1963

CONTENTS

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 2.30 p.m., and read prayers.

KOONGAMIA-DARLINGTON RAILWAY

Reopening: Petition

THE HON. R. F. HUTCHISON (Suburban) [2.35 p.m.]: I wish to present a petition from residents of Darlington, Boya, Helena Valley, and Glen Forrest, and from members of Parliament, containing 359 signatures, and praying for the resumption of regular passenger rail services on that part of the Mundaring Branch railway lying between Koongamia and Darlington, and integration at Darlington of rail and existing bus services. I move—

That the petition be received and read.

Question put and passed.

The petition was tabled.

QUESTIONS ON NOTICE

FLUORIDATION OF WATER SUPPLIES

Effect on Birthrate

1. The Hon. F. J. S. WISE asked the Minister for Mines:

(1) Has the Minister seen a statement by a prominent anthropologist to the effect that "The declining birthrate in many native races of the world is attributable to the excessive quantities of certain minerals in the natural water supplies in the regions in which they live"?

(2) As it has been stated by the Minister for Health and the Minister for Works in this State that chemicals such as alum, caustic soda, sulphate of copper, chlorine, lime, and probably half a dozen other chemicals, if not considerably more, have been, from time to time, added to Western Australian water supplies, can the Minister give the House a complete assurance that, with the further addition of fluorides, there is no danger of a similar effect on the population of Western Australia?

The Hon. A. F. GRIFFITH replied:

(1) No; but if the honourable member is prepared to make the origin of the statement available to me, an assessment of its reliability will be provided.

The following statement from the University of Michigan is relevant—

> No evidence has been reported in the scientific literature that sterility is produced by drinking waters naturally fluoridated even at levels far exceeding 1 part per million. ("Classification & Appraisal of Objections to Fluoridation", 1960, Page 8).

Further, in answer to a question in another place on the 10th September, my colleague, the Minister for Health, listed no fewer than 24 countries (without dwindling birthrates) where fluoridation of water supplies has been in operation.

(2) It is the view of the best accredited health authorities in the world (including the Expert Committee of the World Health Organisation, the British Ministry of Health, the United States Public Health Service, and the National Health & Medical Research Council of Australia) that the adjustment of the fluoride content of drinking water to a level of 1 part per million is completely safe. I am prepared to accept this view and agree that there is no danger to the population of Western Australia.

2. *This question was postponed.*

ASIAN STUDENTS IN WESTERN AUSTRALIA

Number Enrolled

3. The Hon. R. H. C. STUBBS asked the Minister for Mines:

(1) How many Asian students are there enrolled at the—

(a) University;

(b) Technical College; and

(c) at any other place of education under Government authority or assistance?

(2) How many are—

(a) full time; or

(b) part time

students?

The Hon. A. F. GRIFFITH replied:

(1) and (2)—

(a) 277 including 7 part time.

(b) 607 including 10 part time.

(c) Teachers' Training College 7 all full time.

Kalgoorlie School of Mines 5 all full time.

Muresk Agricultural College 8 all full time.

PERTH AIRPORT

Control of Liquor Sales

4. The Hon. A. R. JONES asked the Minister for Mines:

Since the supply of liquor at the Perth Airport comes within the jurisdiction of the Federal airport

business concessions, and not the State licensing laws, who or what authority is responsible for—

(a) policing the premises to see that teenagers are not served with intoxicating liquor; and

(b) protecting the public from being exploited by excessive charges for liquor served?

The Hon. A. F. GRIFFITH replied:

(a) I am informed by the Department of Civil Aviation that primarily the responsibility belongs with the concessionnaire who holds the authority from the Minister for Civil Aviation to conduct the business referred to.

The lease agreement provides that the tenant shall permit members of the police forces of the State of Western Australia and the Commonwealth to enter the premises with a view to—

(1) examining the condition of the premises;

(2) examining the tenant's use and conduct of the premises;

(3) ascertaining whether the tenant is complying with the lease conditions and complying with the provisions of the Airports (Business Concession) Act, 1959, and the terms and conditions of the authority and all laws of the State of Western Australia and the Commonwealth relating to the premises, the business or its operation.

Section 149A of the Licensing Act is fully operative at the Perth Airport and I am informed that regular police inspections are made in common with other licensed premises in the metropolitan area.

(b) The charges are laid down in the concessionnaire's lease agreement with the Civil Aviation Department. It is provided the charges that shall be made by the concessionnaire will be the same as those charged in like premises in the City of Perth.

5. *This question was postponed.*

SUPREME COURT RULES

Disallowance of Amendments

Debate resumed, from the 25th September, on the following motion by The Hon. H. K. Watson:—

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

THE HON. E. M. HEENAN (North-East) [2.43 p.m.]: Mr. Watson's motion is for the disallowance of two rules of the Supreme Court which were published in the *Government Gazette* of the 7th February, 1963, and which relate in the main to the allowance of fees to extra counsel in certain circumstances.

The main point made by Mr. Watson which might tend to carry some weight with members was his contention that the gazettal of the rules in question tended to usurp the rightful role of Parliament. In this connection I understood him to argue that Parliament had, by the Legal Practitioners Act, conferred certain rights and privileges on legal practitioners and that the rules in question now tended to abrogate some of those rights and privileges.

If there were any substance in this contention it would, of course, be a matter for concern. However, I cannot agree with Mr. Watson's contention, because the rules in question deal with the matter of costs; and, as the Minister has already pointed out, this whole question of costs was delegated to the judges of the Supreme Court under the Supreme Court Act of 1935.

In my view it was a very wise delegation because Parliament would hardly be in a position to frame scales of costs and work out how they should be implemented in divergent cases and circumstances. This function is surely one for the judges who preside over the courts from day to day. Furthermore, all judges practised both as barristers and solicitors before their appointment to the bench and they should, in my view, be in a pre-eminent position to frame rules which are fair to members of the profession and, at the same time, to members of the public, whose interests in the matter of costs have to be safeguarded.

Mr. Watson based his argument in this respect somewhat on the premise that the establishment of a separate bar in Western Australia in recent years has altered the position in the profession. He went on to argue that the rules in question confer some benefit on the members of the bar and some disadvantage on those who are not members on the bar. Here again I cannot agree with him.

It might be of interest for me to mention that the establishment of a separate bar has not entailed any legal steps; it is purely a voluntary step. All legal practitioners in Western Australia are admitted as barristers and solicitors and can make up their own minds whether they practice in the dual capacity, or specialise in one field or the other.

With the growth of the State and the consequent increase in litigation, certain members of the legal profession have decided that the time is now opportune to

practise solely as barristers and to this end have set themselves up in chambers, as is a common practice in other States and in England. By taking this step they refrain from carrying out the ordinary work of solicitors, and specialise in the field of barristers. An analagous situation exists in the medical profession where certain members set up as specialists, and patients are directed to them by doctors practising in some other field.

As I see the position, there is justification in the case submitted by the Minister, and I do not propose to vote for the motion. It has been pointed out that the rules of the High Court of Australia contain similar principles to those included in these rules. It has also been pointed out that a similar rule operated in Western Australia from 1909 to 1953.

As regards young solicitors, and partners, I cannot agree that the rules under review create any hardship. If a senior partner goes into court with his junior partner, the junior partner almost invariably acts more in the role of a solicitor than of a barrister; and, as the Minister has pointed out, a special fee is allowed to him for acting in that capacity.

There is something to be said for the Minister's contention that the question of allowing a second counsel fee should be within the discretion of the judge. It would be unfair for a solicitor to take in a young inexperienced lawyer and expect that he should be entitled to a counsel fee. He is not precluded from going into court to gain experience, and neither is a partner, but the public is entitled to some consideration in this matter; and we are always being confronted with the problem of keeping down the costs of litigation.

I do not propose to deal with the technicalities of these rules. The Minister dealt with them in a complete manner, so it is unnecessary for me to repeat what he said. I am approaching this subject in an entirely independent manner, but my views have had support from a number of men who are more familiar with the operations of the court and practices than I am nowadays. At this time Parliament would be unwise to attempt to interfere with decisions which have been carefully made by the judges who, in my view, should be the people best suited to formulate the rules. I repeat that they, in the main, have had a life time's practice as both barristers and solicitors, and they are fully cognisant of the rights and privileges of their fellow members in the profession.

At the same time they have to safeguard the interests of the general public and be in a position to disallow the unnecessary incursion of extra expenses in certain cases. I want to make it absolutely clear that no qualified solicitor is prevented from going into court to conduct a case, and no young solicitor is prevented from going into court to assist his senior partner. Therefore I cannot see that the removal of these rules is warranted, or would even achieve much. The step taken by a number of men in Western Australia to establish a separate bar in this State is a wise one.

Some legal practitioners have special capacity to act in that role. There are others equally eminent whose names we never see in the newspapers. Sometimes, in other spheres they are referred to as the backroom boys. Some of the ablest men with the best legal brains in Western Australia are more or less unknown to the general public, because they specialise in various fields as solicitors. Those are my independent views expressed for the guidance and the benefit of members. I think the judges have in mind fairness to all concerned and that unnecessary costs should not be incurred without justification; and, for my part, I cannot support the motion to disallow the rules in question.

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

BILLS (4): THIRD READING

1. Companies Act Amendment Bill.

   Bill read a third time, on motion by The Hon. H. K. Watson, and transmitted to the Assembly.

2. Bunbury Harbour Board Act Amendment Bill.

3. Albany Harbour Board Act Amendment Bill.

   Bills read a third time, on motions by The Hon. L. A. Logan (Minister for Local Government), and passed.

4. Motor Vehicle Drivers Instructors Bill.

   Bill read a third time, on motion by The Hon. A. F. Griffith (Minister for Mines), and passed.

BILLS (2): REPORT

1. Bee Industry Compensation Act Amendment Bill.

2. Pig Industry Compensation Act Amendment Bill.

   Reports of Committee adopted.

SALE OF HUMAN BLOOD BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines) [3.1 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is to prohibit unauthorised trading in human blood. The Red Cross Society has for many years held a monopoly in the procurement and distribution of whole human blood. The Commonwealth Serum Laboratories in

Melbourne have similarly held a monopoly in the production and distribution of various products derived from human blood. This monopoly was introduced apparently by the Commonwealth Government in order to ensure an adequate and uninterrupted supply of safe material required by the medical profession to save life and to treat injury and disease.

The monopoly was protected under a Commonwealth patent law. The term of the patent has now expired and extension of the protection is apparently legally impracticable in its present form. State legislation is now necessary to effect its continuance. The Commonwealth Attorney-General brought the matter under notice of the State Attorneys-General a little time ago and the Commonwealth Department of Health circulated a draft Bill among the States with the recommendation that State health authorities should initiate uniform legislation. Such legislation has already been implemented in Victoria.

At this point I think it is appropriate to quote a letter which was addressed to The Hon. A. F. Watts, who was then the Attorney-General in this State, from the Commonwealth Attorney-General (Sir Garfield Barwick). That letter is dated the 12th October, 1961, and reads as follows:—

> In a note which I circulated at the recent meeting in Adelaide of the Standing Committee of Commonwealth and State Attorneys-General, I mentioned the problem arising from the expiry later this year, of Patent No. 129,251 entitled "Improvements in or relating to the fractionation of proteins and the product thereof." This patent is owned by the Commonwealth.
>
> This patent among other things defines the method used by Commonwealth Serum Laboratories for the extraction and separation of the various fractions of human blood. The blood processed is that donated by the public to the Red Cross Blood Transfusion Service and I understand that no other country in the world has a blood donation scheme that can be compared with the one operating in Australia.
>
> My colleague, the Commonwealth Minister for Health has discussed the matter with me and is concerned that when the patent expires some commercial interests may pay for blood and engage commercially in the fractionation of blood. This could wreck the Red Cross Society blood donation scheme and deprive the public of readily available free blood and blood fractionation transfusions.
>
> I have considered the question whether the patent can be extended. Part IX of the Patents Act, 1952-1960, provides for extensions of patents on the ground of inadequate remuneration (section 94) and war loss (section 95). It is, I think, obvious that the Commonwealth could not obtain extension on either of these grounds. The only other method would be by an amendment of the Patents Act to extend the Commonwealth's patent. It is extremely doubtful if an extension in perpetuity is within the Commonwealth's power and an extension for a limited period would merely postpone the crisis. In addition, such an amendment would be a major departure from the policy of granting patents under a general law and subject to general conditions, and could open the door to claims for extensions for other patents. A possible solution which I put to my colleague was that the Commonwealth and States pass uniform laws preventing the sale of human blood and I undertook to raise the problem with our Standing Committee to see if an answer could be found by the use of this method.

The Hon. F. J. S. Wise: That seems to be a weakness in the Patents Act.

The Hon. A. F. GRIFFITH: In the Commonwealth Patents Act. Continuing—

> I appreciate, of course, that your colleague administering the Department of Health in your State would be concerned and I would be glad if you could discuss the problem with him and let me know your views.

Following the receipt of this letter and the department being fully appraised of the situation, negotiations were entered into with the Blood Transfusion Committee of the Red Cross Society (W.A.) Division. This committee has twice considered the matter in recent times, and on each occasion it has recommended to the Government that legislation be introduced in this State. The Red Cross Blood Transfusion Service is a humane organisation which neither purchases nor sells blood. It therefore attracts a sufficiency of voluntary blood donors from whom blood is drawn under careful supervision. This blood is submitted to various tests to exclude disease and is reliably typed to safeguard compatibility. A close watch is kept on storage and transport to minimise the chance of deterioration.

The private sale and purchase of human blood could deplete the number of donors now prepared to give blood free. This is something that has happened in America, and it would, indirectly anyway, reduce the total amount of blood available.

A proportion of blood taken by the Red Cross—and not needed for whole blood transfusion locally—is sent to Melbourne to be processed at the Commonwealth Serum Laboratories into products such as

gammaglobulin, albumen, fibrinogen, etc. Equivalent quantities of these are returned to Western Australia free of charge for use in treating and preventing certain diseases. The manufacture of these products in safe and potent form is a highly specialised technical matter, for which private persons and small organisations are not properly equipped on the scale required.

These arrangements for ensuring an adequate and safe supply of blood and blood products have worked very well in Australia up to now, and have been of great benefit to the public. It is felt that they should continue. Provision is made for the Minister by order in writing to authorise a person, subject to such conditions as are specified, to buy human blood when it is found to be necessary by reason of special circumstances. Penalties are also provided for infringement of the law.

THE HON. J. G. HISLOP (Metropolitan) [3.8 p.m.]: I think this is a Bill which everyone in the House must applaud. It is a demonstration of human action of the highest type; and I think we in Australia must congratulate ourselves on having possibly the most satisfactory and complete method of transfusion services. There are probably few services in the world which can compare with those in Australia.

I would very much hate to see this service become commercialised, because, under the present methods, the safety of the blood lies entirely in the hands of the medical profession, the Red Cross Blood Transfusion Service, and the Commonwealth Serum Laboratories. No greater combination of accuracy could be found in any other part of the world. There are countries in which the natives receive payment for the blood they give, but I doubt very much whether any of us would approve of the type of activity which is common in those countries.

I recall the case of a woman who was at one time a resident of this city. She developed a condition which necessitated a venesection—or a taking away of blood—each week or fortnight over a long period. The disease she had is one in which there is an accumulation of iron in the body, and the only way to lessen the condition is to keep on with continuous venesections.

When the lady went to the United States of America she received payment for the blood, which was used by the local transfusion service, and the amount which she received covered the medical costs of her care.

Here, of course, the story is a very different one, and I do not intend to make a long speech on the benefits of transfusion in this State, except to repeat that I do not believe a better system exists anywhere in the world; and I am very grateful to the Minister for bringing down a Bill which will preserve the character of the organisation which we now possess.

Debate adjourned, on motion by The Hon. J. M. Thomson.

LEGISLATIVE COUNCIL PROVINCES

Redistribution and Adult Franchise: Amendment to Motion

Debate resumed, from the 24th September, on the following motion by The Hon. J. G. Hislop:—

> That this House expresses the opinion that there should be a redistribution of the provinces of the Legislative Council of Western Australia, which would involve amendment to the Electoral Districts Act of 1947 which should be introduced into the Parliament of Western Australia, such amendment or amendments to provide that the Electoral Commissioners appointed under the Act shall redistribute the fifty Legislative Assembly districts into Electoral provinces, containing complete and contiguous Legislative Assembly districts so as to provide a more equitable distribution of Legislative Council provinces than obtains at the present time; and that contingent upon a redistribution of the provinces of the Legislative Council of Western Australia as aforesaid and not otherwise, this House expresses the opinion that future elections for the Legislative Council could be conducted upon the basis of adult franchise with compulsory enrolment and compulsory voting; and to that end, this House requests the Government to forthwith introduce legislation to give effect to the provisions and amendments contained within this motion.

To which The Hon. F. J. S. Wise had moved the following amendment:—

> That the word "could" in line 24 of the motion be deleted and the word "should" substituted.

Amendment put and passed.

Motion, as Amended

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [3.13 p.m.]: I feel that the contents of the motion moved by Dr. Hislop are contrary to the principles which were held by the originators or the architects of our Constitution.

The conception of a bicameral system of Government lies fundamentally in two Houses of Parliament, both elected on a different basis or franchise, for the very reason that unless this is so, then there is a grave risk that both Houses will be the same in their methods of operation and, perhaps, the same in political representation.

The system of two Houses elected on a different franchise was intended to provide a second Chamber as a House of review. We have this principle in the Federal Parliament, for the House of Representatives has adult franchise, and the Senate has adult franchise but the basis of representation of the Senate is different from that of the House of Representatives.

The Legislative Council is, as we all know, traditionally the first House in this State, and is a very important legislative body in our State. Despite what has been said in criticism of this House—and as members know, a lot has been said in criticism of this House, much of it unfairly, in my opinion—the Legislative Council has played an enormously important part over the years in the development of Western Australia and in the development of the British parliamentary system in our country.

I have made many speeches in this House on this very question; and, as a member of the House, I have always made an effort to maintain its traditions and original conception, because I am sure it has proved its worth over the years of the State's history.

I have also said—and I repeat it—that in my opinion a voluntary enrolment of an elector and a voluntary vote by an elector is better than compulsion, because the action of the elector is born out of thought and responsibility rather than out of fear of reprisals because he does not go and vote.

The Mother of Parliaments has, in my opinion, proved this. In Great Britain today there is no compulsory voting, but the electors in that country respond to their responsibility without the provision of being forced to vote; and the response is, indeed, something which we can well admire, because the people of that country accept their responsibilities and go to the poll as thinking people rather than as people who fear reprisals if they do not vote.

It appears to me that there is likely to be a change in the Constitution of this House. All I can say is that I hope, if this change takes place, it will not be for the worse.

The Hon. R. F. Hutchison: It couldn't be. It couldn't possibly be!

The Hon. A. F. GRIFFITH: Furthermore, I hope I am going to be able to make my speech unaided and unassisted by the honourable member, who has not had anything to say herself up to date.

I do hope that in the event of a change as foreshadowed by this motion it will not be detrimental to the deliberations of this Chamber as a House of review.

Dr. Hislop's motion, as worded, touches only on prospective amendments to the Electoral Districts Act of 1947; and, of course, we know that other Acts will require amending if this motion is carried; and it will be my responsibility to submit the matter to the Government for its consideration. If the House passes this motion I will be obliged to do just that.

Whatever legislation is submitted for consideration of Parliament, it must of necessity contain some direction to the Electoral Commissioners as to the underlying principles upon which the redistribution of Legislative Council provinces, referred to in the motion, shall, in fact, be undertaken.

This would be a matter for the Government to determine and submit to Parliament for the consideration of both Houses. This was a point which Mr. Wise, during his speech, considerably emphasised. I conclude by simply saying that I do not regard this motion with enthusiasm; but if the House passes it I will, as I have already said, submit it to the Government for consideration.

THE HON. J. G. HISLOP (Metropolitan) [3.21 p.m.]: I must thank the speakers to this motion for the way in which they received it; and it would be unkind of me to pass by the remarks of Mr. Wise without saying anything about them, because they were words of deep sincerity, and I believe that behind the speech he made to this motion there is that sincerity.

I would also thank the Minister because he, like his deputy, finds himself in a difficult position. If I were in the same position I, too, would not be able to make a definite decision but I would just decide, as they have done, to take the wishes expressed in this House to the Government, because they will be involved in the discussions and the decisions which the Government makes to bring the effects of this motion into being.

I would like to emphasise again one or two matters that brought me to the point of introducing the motion. I do not believe, and never have believed, in a partial amendment to the franchise and the conduct of this House. In my opinion the essential basis of this motion lies in a redistribution so that the provinces will be divided on a more equitable basis.

I frankly believe there will be the same sincerity of purpose in the minds of members of the Government, and that when a Bill for redistribution is presented to the House it will be one of very reasonable character. As Mr. Wise said, we can be certain of nothing in regard to the future, once the redistribution is in the hands of the commissioners, but it appears we are all prepared to take that step in the interests of the House and of the State.

I should like to refer again to the sincerity which I am sure lies behind the statements made by Mr. Wise, and I wish to point out that it will be necessary to have a constitutional majority to pass the

legislation which will be introduced. I am sure that we can rely upon him and his party to do whatever they can to assist this Chamber in obtaining the constitutional majority which is not possessed by the Government in another place. If we all accept the motion on that basis I am quite certain we shall see a new sphere of action for the Legislative Council in Western Australia.

Might I add one or two remarks about things that have always intrigued me in regard to people voting in this country. As the Minister said, it is perfectly true that the vote of an unforced person, given willingly and after deep thought, is worth much more than a compulsory vote; and England obtains a voting strength of 90 per cent. at some of its elections. I often wonder whether our attitude is not due to the fact that we in this country have never faced any real disasters; we have never seen a war; and we have never had to face such a disaster.

One must recall that England gained its right to vote by the overthrow of kings, and that many bloody battles were fought before the people obtained the vote. Having gone through those struggles the vote means so much more to them than it does to our people. However, I hope the day never comes when we have to learn the value of a vote by having to face war within our own territory. I think there is a different set of circumstances in the two countries.

Once again I should like to express my gratitude to those who have spoken to the motion, and I trust that it will be passed.

Motion, as amended, put and passed.

MOTOR VEHICLE (THIRD PARTY INSURANCE) ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 12th September, on the following motion by The Hon. E. M. Heenan:—

> That the Bill be now read a second time.

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [3.28 p.m.]: Mr. Heenan's proposition to introduce into third party insurance the principle of spouse v. spouse is one which I believe has been given a lot of consideration, not only in Australia but also overseas, and it is one which has not as yet been accepted as a universal proposition or principle.

I find two things wrong with the honourable member's proposition. Firstly, that a private member should introduce a measure—and he has every right to introduce measures into the House—which, in his own words, in reply to an interjection, could involve the trust to an extent of which the honourable member is not aware. He said he did not have a clue what it would cost the trust. The second point is: he is applying the principle only to third party insurance, which is compulsory, and not to any other form of insurance.

I think the honourable member is wrong on both aspects because the trust operates on a yearly basis. It has to balance its budget, or it is supposed to balance its budget, from revenue received year by year. No provision has been made by the Premiums Committee in its deliberations regarding any further charges. Therefore, to apply an extra charge such as this, without giving the trust an opportunity to increase its charges accordingly, in my opinion is entirely wrong.

I should like to quote some comments made by Dr. Coppell, Q.C., when dealing with the very same problem before a Royal Commission held in Victoria. He said—

> The reason why one spouse cannot recover damages from the other for the negligent driving of a motor vehicle has nothing to do with Part V of the Motor Car Act. It is the result of that branch of the law which governs the legal relations between husband and wife and which, with some exceptions immaterial to the present question, denies to either spouse the right to sue the other for damages in tort. The justification for such a rule is no doubt that the institution of marriage would be weakened if either spouse could sue the other for damages for torts, such as for example defamation.

Therein lies the crux of the position in regard to the general principle. If we are all prepared to accept this as a general principle and to apply it in all walks of life, then I think it could apply to insurance just as it could to anything else.

I do not think we should separate one particular phase of our way of life merely to apply a principle to third party insurance without accepting it as a general principle. I asked my department—the Motor Vehicle Insurance Trust—to give me some views on this. I also asked the Premiums Committee to give me its thoughts in the matter when it was dealing with premiums. The following are some of the thoughts from the manager of the trust.

> The problem must be approached from two angles, i.e., the legal and the moral. Legally there is no argument that at the moment a spouse cannot recover damages from the other spouse under West Australian law for injuries received as the result of negligence on the part of the other spouse. This stems from no limitation of the Motor Vehicle (Third Party Insurance) Act or exclusion in the statutory policy but from the provisions of the Married Women's Protection Act under which the spouse may

> only sue the other spouse at common law for protection of his or her own property. A claim for damages, i.e., compensation for injuries is a claim at common law by the injured party against the wrong-doer. The Motor Vehicle (Third Party Insurance) Act merely establishes a third party insurer and regulates the rights of various persons in regard to insurance. It does not affect the position at common law with regard to negligence. In other words, the standard of care to be observed by a driver and the damages an injured person may receive and the various elements contributing to negligence remain totally unaffected by this Act. If the matter is therefore to receive any consideration, it is a question as to which Act is to be amended.

Again, I repeat, it is a general principle which, in my opinion, should not apply to one particular Act. To continue—

> Of the Australian States only South Australia has taken positive steps to allow a spouse to recover damages where the other spouse is the negligent party. This was effected by the Motor Vehicles Act No. 53 of 1959, section 118 (1) which gave the spouse the right to take action against the insurer of the other spouse direct. It will be noted this overcomes the obstacle of spouse suing spouse. In my humble opinion as a layman, the only effect of this legislation is to virtually exclude the negligence provision—the basis of this type of claim—as far as a claim by a spouse is concerned as an insurer could expect little co-operation from the insured spouse to defeat the claim.

The manager of the trust then went on to talk about the second part which dealt with the moral aspect. I do not think I need read what he said. In effect he indicated that if this right were given under third party insurance, it is possible that the man could have been the driver of the car which met with the accident resulting in his spouse dying; and under our present set-up in relation to third party it would be possible for the judge to make an award for payment of claims for anything up to £20,000 in a lump sum, which amount would probably pass to the husband by law—certainly the greater part of it would —and he would, of course, reap the benefit of his own negligence.

That is one aspect we must consider. It is of no use Mr. Strickland indicating by gesture that I am drawing the long bow. This is most cogent to the proposition. It could certainly happen. People have been awarded these large claims. This argument is used in nearly every spouse v. spouse case.

The Hon. E. M. Heenan: It could pass to other members of the family—to a son or daughter.

The Hon. L. A. LOGAN: That does not mean that the husband, as the spouse, would not get most of the money. I referred this matter to the Premiums Committee, and in a report which was laid on the Table of the House it gives the following views:—

> (1) As the various matters referred to the Committee are capable of affecting the rate of premium which might reasonably be charged, comments are submitted on these points before dealing with the request of the Trust.
>
> (2) The Committee feels that the question of whether the Act should be amended to provide the right for one spouse to sue the other is one of Government policy, rather than one for consideration in relation to premiums or policies.
>
> (3) The Committee, with some hesitation as to its competence to offer advice on this subject, points out that there does not appear to be any good reason why the mere existence of an insurance policy should afford to spouses greater rights than they are given at common law or in other legislation.
>
> (4) So far as the Committee is aware, the only State in which one spouse is given the right to sue the other in respect of Third Party Insurance is South Australia—

The Hon. J. G. Hislop: Do you know the cost in South Australia since 1959?

The Hon. L. A. LOGAN: I think it is approximately 5 per cent. To continue with the report—

> —in which State the injured spouse is given the right not to sue the other spouse, but to sue the insurer, who is deemed a tort-feasor for the purpose.
>
> (5) As there are no data available in this State as to the effect upon premiums of any alteration in the legislation which would enable one spouse to sue the other, enquiries were directed to South Australia, and the reply from the Registrar of Motor Vehicles, dated 4th May, 1962, was as follows:—
>
> > We refer to your letter of the 1st May, reference 277/62, and advise that our Motor Vehicles Act provides for the right of a spouse to recover from a husband or wife.
> >
> > In December, 1960, the Insurance Premiums Committee had investigated some 2,500 accident claims and as a result, authorised an increase of 5% in the premiums

charged for cars registered for private and business use and for hire and drive-yourself vehicles.

The matter was further examined on figures available to the 30th June, 1961, the results of which did not disprove the estimate of increased liability based on the earlier examination.

So I think we can take it from that that the increase in premiums amounted to 5 per cent. The report continues—

(6) From this South Australian experience, and in the absence of data here, the Committee can do no more than suggest that the effect of a change in the rights accorded to spouses, if conferred by legislation similar to that of South Australia, might reasonably be expected to lead to a 5% increase in premiums.

(7) The question of a change in the law on this subject has not been taken into account in calculating the premiums which might reasonably be charged in Western Australia.

If a general change in the law is to be made, and spouses permitted to sue spouses in tort, then there is a much better case for an amendment of the third party insurance Act. Until, however, that decision is made, it is difficult to justify an alteration to the law to compel an insurer who cannot refuse to issue a policy to bear an added risk and to increase the premiums on the general public in order to recoup the additional costs to which he has been subjected.

In other words, the proposals amount in one way to a tax on the motorist to provide that the money awarded against a person be paid to his spouse. This is a principle on which each one of us must make up his mind as to whether or not it should apply in common law. If we can arrive at a decision that it should apply in common law, naturally the Motor Vehicle Insurance Trust will follow suit in respect of third party insurance. Consequently the principle will be accepted under third party insurance and other types of insurance.

The position would not be so bad if, instead of the present system whereby judges in their wisdom award large amounts to injured people, a special tribunal was established which could award weekly amounts of compensation and not large lump sum payments, as has been the practice of the courts in recent years. The award by such a tribunal of weekly amounts would be a safeguard against the spouse who was responsible for the accident through his negligence receiving a monetary benefit in a large sum.

It is all very well for Mr. Strickland to indicate by gesture that I am drawing a long bow. I am not. It is wrong in principle that motorists should have to pay premiums into a fund so that the driver of a motor vehicle will be able to receive a monetary benefit as a result of an accident when the accident was caused by his own negligence.

This matter was discussed at the last conference of Attorneys-General and Ministers for Justice. Although it did not receive a great real of consideration, each of them did make some comment on the principle, not only in respect of third party insurance but common law. They could not make up their minds at that time, so they decided to leave the matter until the December meeting to enable them to give it further consideration. Until this becomes a principle in common law we should oppose implementing it in respect of only third party insurance.

Sitting suspended from 3.43 to 4.3 p.m.

THE HON. H. C. STRICKLAND (North) [4.3 p.m.]: As I understand it, the objective of Mr. Heenan's Bill is to bring spouses into line with every other member of the community in relation to third party insurance. When the principle is examined, one wonders why spouses should be debarred by the companies from insurance under this scheme.

The Minister cited a hypothetical case in which a spouse could be injured and awarded damages to the extent of £20,000, and subsequently pass away as a result of the injuries received. Of course, the surviving spouse would be handsomely rewarded for his own negligence. That was the basis of the Minister's objection. On the other hand, let us look at an intended spouse—it could even be an engaged couple driving to make arrangements for their wedding, or driving to the church or to the registrar's office—who is injured under the same circumstances referred to by the Minister. The injured party could legally sue for damages and be granted the £20,000 suggested by the Minister, after which the two of them could get married when the injured party was sufficiently well for the ceremony to take place.

The Hon. E. M. Heenan: Not only that, but a mistress can claim.

The Hon. H. C. STRICKLAND: As Mr. Heenan points out—and I think he did so, too, when introducing the measure—a mistress or *de facto* wife is covered. The only person barred is the legally married partner. If married, it puts that person outside the insurance scheme. Therefore, I feel there is a lot of merit in Mr. Heenan's Bill.

The Minister stated that Mr. Heenan had not given the insurance trust an opportunity to consider the implications of legislation of this nature if it became law and that was another reason for opposing this measure. That should not be a

reason for opposing this legislation because it could be dated to commence at a time after which the trust would have had an opportunity to examine the position and cover itself accordingly. I do not believe that in these days when insurance has been established—and insurance and assurance are wonderful from every angle and from everyone's point of view—the cost should be considered when contemplating the covering of spouses.

I cannot see the fairness in the present position, particularly when we realise that every other member of the family—father, son, daughter, brother, or sister—are entitled to claim and be awarded damages. I certainly must support the Bill because it will cover the only person who is at present precluded from being awarded compensation.

THE HON. N. E. BAXTER (Central) [4.9 p.m.]: This Bill rather puzzles me because portion of clause 3 reads—

> For the purposes of this Act where an insured person has caused bodily injury . . .

My summing up of third party insurance is that it is not a personal insurance in any way. I think that the Bill should have been worded differently to cover existing insurance policies where bodily injury is caused, because third party insurance is not a personal insurance. It is carried on a particular vehicle and not on a person. It may be a technical point, but I should imagine that the use of the words "insured person," does not fit in legally.

There is another point also in regard to the use of the word "negligence" in clause 3. My knowledge of third party insurance is that the Motor Vehicle Insurance Trust will not pay if it can be proved that there was negligence on the part of the driver who is claiming. I have had experience of this with some of my constituents who have come to me about the matter. They have been involved in an accident and because of negligence on the part of the driver, the injured person receives no compensation from the trust.

If we are going to introduce an amendment like this and provide that in the case of negligence by a driver, the person in his particular vehicle—in this case, the spouse—shall receive compensation, we will have to open the whole thing wide and provide that in any case of negligence the trust will have to pay. Is that intended? Perhaps Mr. Heenan can tell me, because if it is, it will build up the cost of premiums considerably.

The Hon. E. M. Heenan: That is the case now.

The Hon. N. E. BAXTER: I do not agree that that is the case now. If the negligence is on the part of the other driver, where there is a collision between two vehicles, then the trust will pay. But when the negligence is on the part of the driver of the particular vehicle in which the person is injured, it is a different matter.

The Hon. E. M. Heenan: No.

The Hon. N. E. BAXTER: That has been proved by past experience in connection with a case which was placed in my hands several years ago. I am afraid this Bill could have very far-reaching effects in third party insurance premiums—more far reaching than the honourable member anticipates. In that case, I cannot see my way to support this Bill in its present state.

Debate adjourned, on motion by The Hon. F. J. S. Wise (Leader of the Opposition).

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines) [4.12 p.m.]: I move—

> That the House at its rising adjourn until Tuesday, the 8th October.

Question put and passed.

House adjourned at 4.13 p.m.

Legislative Assembly

Thursday, the 26th September, 1963

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