HOUSE OF ASSEMBLY.

Thursday, October 6, 1955.

The SPEAKER (Hon. Sir Robert Nicholls) took the Chair at 2 p.m. and read prayers.

QUESTIONS.

RAILWAY FIREBREAKS.

Mr. O'HALLORAN—This year, as a result of the excellent seasonal conditions in the north-east, there appears to be a potential fire danger along the railway line between Peterborough and Cockburn. Usually, because of the paucity of growth in the area, it is unnecessary for the Railways Commissioner to adopt the normal precautions taken in the inside country to clear inflammable material along the railway tracks, but this year that may be necessary. Will the Minister of Works representing the Minister of Railways ascertain whether the Railways Commissioner has considered the advisability of doing this? I suggest that rather than resort to skimming, which might be difficult with the limited manpower available, a tractor and plough be used in co-operation with pastoralists whose land adjoins the railway line in order that fire danger may be minimized.

The Hon. M. McINTOSH—I think it will be generally agreed that my colleague, the Hon. Mr. Jude, has been most fire-conscious. As a matter of fact he has led a crusade in the South-East which has spread to other areas; so I am sure that in speaking to him on the matter I will not be speaking to one who requires conversion. I appreciate the suggestion that has been made and if anything further can be done to what has already been done I am sure the suggestion that further co-operation should be sought from adjoining landholders will be welcomed. The glorious season has undoubtedly brought about an increased fire hazard. Having regard to the wasteful nature of a fire, which, unlike a flood, rarely leaves any value behind, I will take the matter up and I am sure the Leader's representations will not fall on barren ground.

COURT PROCEEDINGS AGAINST THE CROWN.

Mr. TRAVERS—In South Australia when a private citizen has occasion to take proceedings in court against the Crown or its servants the task of so doing is hedged about by many difficulties which are inconvenient and unnecessary. I suppose they had something to commend them when Governments were content to simply govern, but they are somewhat outmoded in the days when large numbers of instrumentalities are trading or doing things which are very near to trading. In England in 1947 an Act was passed called the Crown Proceedings Act which facilitates the taking of such proceedings against the Crown. Will the Minister of Education, representing the Attorney-General, ask his colleague to consider the practicability of introducing similar legislation here to facilitate such proceedings and to make the lot of the private citizen easier? Will he consider whether the time has not arrived for amending legislation which will repeal the various statutory limits for taking proceedings against Crown instrumentalities? For instance, a private citizen is barred from proceeding against the Engineering and Water Supply Department unless he commences his action within six months. I should like the Attorney-General to consider the desirability of putting the action to be taken by a private citizen against the Crown or a Crown instrumentality on precisely the same basis as an action by a private citizen against another private citizen, namely, that he shall have six years within which to commence his action and not six months?

The Hon. B. PATTINSON—I shall be pleased to refer the statement and the several questions to my colleague and ask if he can give them early consideration.

SCHOOL-LEAVING AGE.

Mr. FRANK WALSH—Has the Minister of Education a reply to my recent question relating to the number of teachers who would be required if the school-leaving age were extended to 15 years?

The Hon. B. PATTINSON—The most accurate estimate I have been able to obtain in the short time since the question was asked is that there would be an increase of practically 3,300 pupils, almost all of whom would be in secondary schools. A conservative estimate of the number of additional teachers required would be 160, of whom 30 would be craft teachers. I would think that possibly the number could be increased to 200. As a rough and ready estimate, which is my own, we are probably short of about 100 teachers at present, so if the school age were extended to 15 we would be short, I should think, of anything between 250 and 300 teachers.

RIVER MURRAY FLOOD.

Mr. WHITE—Last night I attended a meeting of people who occupy the reclaimed swamp areas between Mannum and Wellington. The object of the meeting was to arrange for fighting the expected flood. A resolution was passed asking for the help of the military forces in the event of the flood position becoming critical. During the 1952 flood help came from the military authorities and I believe it was the extra manpower available that assisted the settlers to go through the bad period without any of the banks breaking. The purpose of my question is to try to obviate this time the mistakes that were made during the previous flood. Will the Minister of Works contact the military authorities and ascertain whether the settlers could enlist their help if the flood position becomes dangerous?

In 1952 these arrangements had to be made when the critical stage of the flood came, and the delay in making them could easily have lost the fight against the flood. Will the Minister also endeavour to have military personnel posted at Murray Bridge during the whole of the flood period, so that they can learn the geography of the reclaimed swamp areas, and be in a position to direct help to the various points in the area where it may be required should an emergency occur? During the 1952 flood valuable time was lost through this help being misdirected. Will the Minister regard the matter as urgent? It would be appreciated if the information sought could be made available by next Wednesday when the final meeting of the settlers will be held?

The Hon. M. McINTOSH—The usual method of contact between the Federal Government and the State Government is through the Premier, but in his absence I will endeavour offhand to indicate the position. As far as Government banks are concerned, everything that can be done has been done, but if anything necessary has not been done we seek the advice and assistance of people in the area. I would think, therefore, that the honourable member's remarks apply not so much to Government banks and settlements as to private banks. I think he has rightly asked his question, having regard to the great value of the development that has taken place on these areas and the need for their protection. In the U.S.A. most of the flood control is in the hands of Army personnel. As a matter of fact, our South Australian barrages were in the first place designed by American engineers, and from time to time they have laid the foundation for the control of the river. Therefore, it is a natural corollary that the Federal authorities should be brought into line to assist. I am sure the Premier would agree to ascertaining whether military personnel could assist, as it would be first-class training, and it is a matter of national importance. I shall study the question further and endeavour to obtain a reply as early as possible, but I think by the time the Premier takes it up with the Federal authorities it will not be possible to have a reply by next Wednesday. However, no time will be lost.

RECRUITMENT OF TEACHERS.

Mr. HUTCHENS—I have received a pamphlet issued by the Department of Education for the purpose of recruiting teachers. Will the Minister of Education inform me to whom those pamphlets were sent and whether there have been any results from the campaign to recruit teachers? If so, to what extent has the campaign been a success in the recruitment of teachers, particularly for secondary schools?

The Hon. B. PATTINSON—The department has instituted the most extensive and intensive campaign for the recruiting of teachers in its history. The booklet to which the honourable member referred was forwarded to every member of Parliament, and about 5,000 were distributed to all the secondary schools throughout the State. In addition, 2,000 posters were distributed throughout post offices, railway stations, and schools. The department is also inserting a large number of advertisements in the newspapers, and will continue to do so until the end of the school year. Apart from this, three recruiting teams, each consisting of an inspector and two teachers from different types of schools, have been visiting all secondary schools. I have received an interim report on the result of the recruiting campaign, and for the benefit of honourable members and the public I shall read it. The report states:—

The intensive campaign to attract more young people to train to become teachers in the South Australian Education Department will end with a public meeting at the Teachers College on Friday night. Since September 19 the three recruiting teams each consisting of an inspector and two teachers from different types of schools in the Education Department have been visiting secondary schools and addressing gatherings of students and parents throughout the State. The recruiting officers have been delighted with the response to their appeal. At some schools the staff has been amazed when almost all students in a class have been

sufficiently attracted to a teaching career to seek further advice at interviews with the recruiting officers.

During the first fortnight of the compaign country schools in the South-East, the Upper Murray, Yorke Peninsula, the northern districts, and the hills districts were visited. Well-attended parents' meetings were held at Murray Bridge, Whyalla, Renmark, Glossop, Clare, and Minlaton. Some parents came long distances to seek advice from the recruiting officers, but most parents are prepared to leave the inquiries to their children. More than 5,000 country students were addressed and more than 1,000 of them came for personal interviews. Parents generally expressed satisfaction at the recently increased allowances for Teachers College students ranging from £305 to £350 a year for students living at home, and for a student boarding away from home from £375 to £420 a year. This week the recruiting teams are visiting high schools and technical schools in the metropolitan area where they are finding a marked increase in interest in teaching as a career among students. At Norwood High School more than a third of the school's 700 students sought further advice from the recruiting team after the addresses. By the time the campaign ends the recruiters will have addressed 15,000 students and held 12 public meetings.

That is merely an interim report, but I am highly delighted with the results so far. Apart from its being the most extensive recruiting campaign that the department has conducted, I prophesy that it will be the most successful if that interest is maintained.

HOUSES FOR COUNTRY FIRM.

Mr. MICHAEL—Some time ago a deputation waited on the Premier and the Housing Trust and it was decided that two additional houses would be made available as soon as possible for Hawke & Company, of Kapunda. They have not yet been made available and I ask the Minister in charge of the House whether he will ascertain from the trust why they have not been made available and when they will be?

The Hon. C. S. HINCKS—I shall be happy to take up the question with the Housing Trust and endeavour to have a reply for the honourable member next Tuesday.

HIGH OCTANE PETROL.

Mr. TAPPING—Today's *Advertiser* reports a statement by the Federal Minister for Supply that all vehicles in his department, except two, are not using high octane petrol. Will the Minister of Lands have tests made to see which type of petrol is most suitable for Government motor cars?

The Hon. C. S. HINCKS—As soon as the high octane petrol became available I asked the manager of the Government motor garage to make tests to see what petrol would be the most economical for Government vehicles. He informed me that for certain vehicles the high octane petrol was the more economical and suggested that possibly in the near future, when it was hoped to have a new Government garage, we could install pumps for the different types of petrol and supply our cars with the most economical grade for them; but I will endeavour to get a later report for the honourable memoer.

MARINE DRIVE.

Mr. FRED WALSH—Last Tuesday, when the Highways Commissioner was giving evidence before the Public Works Committee on a project that involved the closing of portion of Military Road between West Beach Road and the Glenelg sewage treatment works, he said it was unlikely that the construction of the proposed Marine Drive from Marino to Outer Harbour would be proceeded with. This evidence was published and it has given considerable concern to various seaside councils who are very interested in the construction of what they consider would be an attractive drive. Does the Commissioner's statement coincide with the views of the Government?

The Hon. M. McINTOSH—Anyone called before the Public Works Committee says what he believes to be the truth and necessarily does not know what questions may be asked. To what extent the Minister's viewpoint is involved I do not know because I have had no opportunity to confer with him upon it, but I will take up the question with my colleague and bring down a reply as soon as possible.

MOUNT GAMBIER RAIL CAR SERVICE.

Mr. CORCORAN—Has the Minister of Works yet ascertained when the new rail car service to Mount Gambier is likely to commence and what time will be cut off the journey as a result?

The Hon. M. McINTOSH—The honourable member has added a supplementary inquiry to his question of September 20 which referred to the commencing date of the new service, and I cannot say what time is likely to be saved on the journey. I will make inquiries. However there has been a very satisfactory trial run of the new car, named Pelican, for reasons that I do not know.

Mr. McAlees—It is on our line. You cannot take that one.

The Hon. M. McINTOSH—The Railways Commissioner advises through his Minister that it is expected that the regular service will be commenced before Christmas.

ACCOUNT FOR BLIND REPAIRS.

Mr. JENNINGS—I have been asked by one of my constituents to take up the matter of an account he received from a firm which contracted to repair blinds at his business premises. The account shows "labour—10 hours—£12 10s. 5d." On the basis of a 40-hour week this is the equivalent of about £50 a week, and I do not think the man who did the work would receive that, or anything like it. I know there is no price control in this instance, but I ask the Minister of Lands whether he will arrange for the officers of the Prices Department to check up on this particular case in order to afford some relief to the person concerned.

The Hon. C. S. HINCKS—If the honourable member will give me the correspondence I will take up the matter with the Premier, as Minister in charge of prices, and get a report.

UNIVERSITY LECTURER'S CANDIDATURE FOR PARLIAMENT.

Mr. RICHES—Is the Minister of Education now able to elaborate on a reply he gave me yesterday to a question concerning a University lecturer offering his services as a member of Parliament; is any hindrance being put in his way, and is there any cause for embarrassment in such a case?

The Hon. B. PATTINSON—What I surmised to be the position is correct. Chapter VI of the Statutes of the University of Adelaide, dealing with leave of absence, states:—

> The council may grant to any professor, lecturer, officer or servant of the university leave of absence from the duties of his office for such period, for such purpose, and on such conditions as it shall in each case determine.

I made unofficial inquiries concerning the Parliamentary candidature of Dr. Forbes (Lecturer in Political Science), and I understand that he lodged with the Liberal and Country League his nomination for the Federal Division of Kingston and then applied to his employer (the Council of the University of Adelaide), the same as any public servant or any other employee, for leave of absence to contest the election.

Mr. Riches—He would naturally want to come back after the election.

The Hon. B. PATTINSON—The matter does not concern me personally, and I do not know that I am entitled to divulge the full purport of Dr. Forbes' letter to the council, but Mr. Riches is not correct in his guess, because Dr. Forbes seemed so confident of his success that he offered to resign his lectureship so that he could fill the distinguished office of member for Kingston after being elected. Further, I understand that his application for leave arrived at the university shortly after the council's August meeting and that leave was granted at the next meeting. Last evening, in addressing a meeting at Seacliff, I had great pleasure, as the State member for Glenelg, in having Dr. Forbes as the L.C.L. candidate for Kingston as a supporting speaker.

KAROONDA SCHOOL SEPTIC TANK.

Mr. STOTT—Some time ago the Karoonda Area School Committee asked the Minister of Education to install septic tanks at the school and a definite promise was given, either by the Minister or the department, that their installation would be finished some months ago. They are not yet completed, however, and as the summer months are coming will the Minister have the tanks installed because the matter is now urgent?

The Hon. B. PATTINSON—I will be pleased to do so but I cannot remember offhand whether I or the department made the promise, but if it was the department I will be only too pleased to honour it when it is possible. I work in close collaboration with my colleague, the Minister of Works, on these matters and he knows that it is not through lack of desire on his, my or the Architect-in-Chief's part that the work has not been done. It is the difficulty of obtaining manpower and materials for all jobs. I will have specific inquiries made concerning the Karoonda school and let the honourable member know next week.

MOONTA RAIL SERVICE.

Mr. McALEES—In reply to a question this afternoon concerning the rail service to Mount Gambier the Minister mentioned the name of the rail car which is at present running between Adelaide and Moonta. Will the Minister of Works, representing the Minister of Railways, ensure that no matter what rail cars are put on the Mount Gambier and Morgan services the Moonta service will not be interfered with, particularly as Moonta pioneered the introduction of these rail cars to South Australia?

The Hon. M. McINTOSH—All I said this afternoon was that a rail car named "The

Pelican'' had made a successful trial run to the South-East and as a result it was hoped that the Mount Gambier service would be improved. There was no suggestion, simply because the name of a rail car was mentioned, that the Moonta service would be disrupted.

SALE OF SMALLGOODS.

Mr. TAPPING—In the Adelaide Police Court last Tuesday two Adelaide manufacturing butchers were charged with selling smallgoods below the regulation standard. As a number of cases have occurred in recent months will the Minister of Lands obtain a report indicating the circumstances surrounding those cases and ascertain the percentages below the regulation standard?

The Hon. C. S. HINCKS—I will endeavour to get that information and let the honourable member have a report.

RADIUM HILL WATER SUPPLY.

Mr. O'HALLORAN—Last week I asked the Minister of Works a question concerning a suggestion to augment the Radium Hill water supply by using railway dams at Mingary. Has the Minister any further information on this matter?

The Hon. M. McINTOSH—The Railways Commissioner has reported as follows:—

There is no record of any discussion such as is referred to by Mr. O'Halloran, M.P., having taken place, and no investigations have been made into the economics of enlarging Nos. 1 and 2 dams at Mingary, or of providing water for Radium Hill. It should be stated, however, that although water is available, no water has been drawn from these reservoirs for use at Radium Hill for some considerable time. The matter has been taken up with the department concerned.

I will bring down a further reply later.

INTER-STATE DESTITUTE PERSONS RELIEF ACT AMENDMENT BILL.

Second reading.

The Hon. C. S. Hincks, for the Hon. T. PLAYFORD (Premier and Treasurer)—I move—

That this Bill be now read a second time.

Its principal purpose is to apply the Inter-State Destitute Persons Relief Act to orders registered under maintenance orders (facilities for enforcement) legislation. The Inter-State Destitute Persons Relief Act is an Act similar to Acts of other States, all of which are passed for the purpose of securing that persons resident in one State shall not escape their obligations to maintain their dependants resident in another State. The Act provides facilities for the service in one State of a summons for maintenance issued in another, and provide machinery whereby maintenance orders made in one State may be enforced in another.

The maintenance orders (facilities for enforcement) legislation is legislation passed as part of a scheme for the reciprocal enforcement of maintenance orders between parts of the British Commonwealth. There are two procedures under the scheme. First, where a person against whom an order for maintenance has been made leaves a country participating in the scheme and goes to another part of the British Commonwealth with which his country has reciprocity, the order may be registered and enforced against him in that part.

Second, where a person leaves a participating country before an order can be made against him, and goes to another part of the British Commonwealth with which his country has reciprocity a provisional order may be made against him in his country. The provisional order is forwarded to the part of the British Commonwealth to which he has gone and may be confirmed by a court in that part and enforced against him there.

The inter-State destitute persons relief legislation did not originally provide for the enforcement under the legislation in the States of orders registered or confirmed in other States of the Commonwealth under maintenance orders (facilities for enforcement) legislation. However, in 1931, at the suggestion of the Premier of New South Wales, the South Australian Act was altered to apply to orders confirmed under the maintenance orders (facilities for enforcement) legislation. The Acts of several other States were similarly altered at about the same time. The question of applying the legislation to orders registered under the maintenance orders (facilities for enforcement) legislation does not appear to have been raised.

Last year, a conference of State officers was held in Sydney to consider the enforcement of maintenance orders in the Commonwealth. The conference considered the question of the application of inter-State destitute persons relief legislation to orders registered or confirmed under maintenance orders (facilities for enforcement) legislation, and resolved that it was desirable that the inter-State destitute persons relief legislation should apply to both kinds of orders. The Government has decided to adopt this resolution, and is accordingly introducing this Bill which makes

the necessary amendments to the South Australian Act to give effect to the resolution. Clauses 3 (*a*), 3 (*c*) and 4 to 13 make the necessary amendments to the principal Act for this purpose.

The Bill also deals with another matter raised at the conference. Although inter-State destitute persons relief legislation has functioned for many years among the States, similar legislation has never been passed in Commonwealth Territories. The conference thought it desirable that there should be such legislation in Commonwealth Territories, particularly for the purpose of enforcing affiliation orders. Commonwealth Territories participate in the maintenance orders (facilities for enforcement) scheme, but that legislation does not apply to affiliation orders. The conference resolved that the Commonwealth should be approached with a request that inter-State destitute persons relief legislation should be enacted in Commonwealth Territories, and also resolved that the inter-State destitute persons relief legislation of all States should be amended to provide for the reciprocal enforcement of maintenance orders with Commonwealth Territory, including United Nations Trust Territory administered by the Commonwealth.

The South Australian Inter-State Destitute Persons Relief Act was amended in 1931 to provide for reciprocal enforcement of maintenance orders with Commonwealth Territory. However, the terms of that amendment do not permit the Act to be extended to United Nations Trust Territories administered by the Commonwealth. The Government thinks it desirable that reciprocal enforcement of maintenance orders under the legislation should be possible with United Nations Trust Territories administered by the Commonwealth in addition to other Commonwealth Territories. Accordingly clause 3 (*b*) of the Bill makes the necessary amendment to the principal Act for this purpose.

Mr. DUNSTAN secured the adjournment of the debate.

EVIDENCE ACT AMENDMENT BILL.

Second reading.

The Hon. B. PATTINSON (Minister of Education)—I move—

That this Bill be now read a second time.

It makes three amendments to the Evidence Act. Two of them are included in a Bill introduced last year which lapsed. The third, which deals with evidence given by children, has been included in the Bill as a result of consideration given by the Government to an amendment moved last year. The Bill provides as follows:—

Clause 3 requires unsworn evidence given by a child in proceedings for any offence to be corroborated in a material particular if the accused denies the offence on oath. At common law, evidence could only be given on oath, and this meant that a person could only give evidence if he was capable of understanding the nature of the oath. A result of this rule was that in many cases small children, whose evidence might be essential to prove an offence, could not give evidence. In the past century in most British communities the rule has been relaxed to allow children of tender years to give unsworn evidence. In almost all cases where children of tender years have been permitted to give such evidence, it has been provided that the evidence must be corroborated in a material particular implicating the accused. Thus the laws of England, Canada, and all other States of the Commonwealth so provide. However, section 12 of the South Australian Evidence Act, which provides for children under ten to give unsworn evidence in proceedings for offences, does not require the evidence to be corroborated.

The explanation for this difference appears to be historical. South Australia first permitted such evidence to be received by the Offences against Women and Children Act, 1874, and was one of the first British communities, if not the first, to permit such evidence to be received. The South Australian provision, now section 12 of the Evidence Act, has not been substantially altered since then. The common law rule was first relaxed in England by the Criminal Law Amendment Act, 1885. This Act required such evidence to be corroborated. Acts dealing with the subject, which were passed subsequently in England, Canada and the other States of Australia are all based on the provisions of the Act, and require the evidence to be corroborated.

Last year the Supreme Court, in giving judgment on an appeal against a conviction of a charge of indecent assault, drew the attention of the Legislature to the fact that South Australian law was out of line with the law of other parts of the British Commonwealth. (*R. v. Williams* [1954] S.A.S.R. p. 216 at pp. 226 and 227.) The circumstances of the case were that the accused, a bread carter, was accused of indecently assaulting a girl of six in the course of a very short journey in his cart. Although the accused denied the offence

on oath, he was convicted of the offence on the unsworn and uncorroborated evidence of the child. There were some unsatisfactory features about the case, but on appeal the Supreme Court did not feel able to disturb the verdict of the jury. Had South Australian law been the same as the law of other parts of the British Commonwealth, the accused could not have been convicted because of the lack of corroboration. The Government has given careful consideration to the whole question, and has come to the conclusion that it is desirable in the interests of justice that corroboration of such evidence should be required where the accused denies the offences on oath. Clause 3 makes the necessary amendment to the principal Act for this purpose.

Clause 4 repeals section 17 of the principal Act. That section provides that in proceedings instituted in consequence of adultery, a witness shall not be liable to be asked nor compelled to answer questions tending to show that the witness has been guilty of adultery, unless he or she has given evidence in disproof of the adultery. It is proposed in this Bill to abolish this rule of evidence. The primary reason for so doing is that the rule has completely ceased to have any logical justification. Until some time in the last century there was a general rule of law in England in both ecclesiastical and civil courts that a person should not be compelled to answer a question tending to show that he or she had been guilty of adultery. The reason for this rule was that to compel a person to answer such questions might expose the person to ecclesiastical censure or punishment by an ecclesiastical court.

In early English and South Australian enactments relating to the evidence of parties in matrimonial causes, exceptions are made which make it clear that such a general rule was still regarded as being in existence, and that it was desired to preserve the rule. Section 17 is in origin an enactment of this kind, though it appears to be a modification of the general rule. It originally formed the proviso to an enactment passed in England in 1869 which made parties and their husbands and wives in divorce proceedings instituted in consequence of adultery competent for the first time to give evidence in such proceedings. The position at present is that there is no longer any such general rule of privilege from answering questions tending to establish adultery, the courts having recognised that the privilege had become an anachronism. The general rule has certainly ceased to exist for 50 years and probably for considerably longer. As section 17 is confined to proceedings for divorce on the ground of adultery, it preserves for those proceedings a rule which has long since ceased to apply to other proceedings, and is therefore an anomaly. The continued preservation in England of the rule laid down in section 17 was severely criticized early in the century. A Royal Commission which sat there in 1912 to consider the law of divorce recommended the abolition of the rule. More recently, in 1947, it was considered by a committee presided over by Lord Justice Denning, and was again condemned.

Although the rule has nevertheless not yet been abolished in England, it was abolished both in Western Australia in 1948 and in Victoria in 1952. The rule is one which leads to unfortunate results. First, it may prevent the parties in divorce proceedings instituted in consequence of adultery from being questioned about the very matter in issue, a situation which seems contrary to common sense. Second, the rule has given rise to a series of complicated and divergent judicial decisions. The rule is not well framed and the courts have found that this, coupled with its anomalous nature, has made it very difficult to apply. Third, the rule has the extraordinary result that a plaintiff seeking a divorce on the grounds of adultery, who is himself guilty of adultery, is, so long as he does not deny his adultery, privileged from answering questions about the adultery. It also may prevent the defendant from calling another party where his evidence would be valuable to the defendant, and *vice versa*. It was this aspect of the rule which most concerned the commission of 1912 and the committee presided over by Lord Justice Denning. The Denning Committee quoted the following passage from the report of the commission:—

> The result is that however guilty the petitioner may be and however much the judge may suspect his or her guilt, so long as he or she confines his or her evidence to the case against the respondent, no question can be put to the petitioner as to guilt on his or her side, and all the court can do is to direct the King's Proctor's attention to the case. Moreover, if the respondent does not choose to appear, and the co-respondent does and fights the case, he is in a difficulty about compelling the respondent to give evidence. So, also, is a respondent if a co-respondent will not contest a case. These restrictions should, in the interests of justice, be done away with.

It is impossible in the present day to find any justification for the retention of the rule. To any suggestion that it protects innocent persons from being injured by disclosures

of adultery or that it prevents the asking of vexatious questions, it can be answered that there are nowadays adequate provisions in the law for prohibiting the publication of evidence and for preventing the asking of vexatious questions. The rule is an artificial and technical one, the main effect of which is to hinder the courts in finding out the truth. The Law Society has been approached about the matter and supports the proposal to abolish the rule.

Clause 5 makes comprehensive provision for the performance of notarial acts in South Australian matters by Commonwealth diplomatic and consular officials. I use the expression "notarial act" to mean the taking of oaths, affidavits and declarations, the attestation, verification and acknowledgment of documents and generally all forms of notarial acts. At present, section 67 of the Evidence Act provides that notarial acts relating to South Australian matters may be performed outside this State by British or Australian diplomatic or consular agents. The section defines the expression "diplomatic agent" and "consular agent" to include a variety of diplomatic and consular officers. Prior to 1947, the section applied only to diplomatic or consular agents of Great Britain. In that year, however, the section was amended at the request of the Commonwealth to apply also to Australian officials. The Commonwealth was greatly increasing its representation abroad at the time, and desired that its representatives should be able to perform State notarial acts. All States were asked to amend their law to this effect. The Commonwealth asked only that its officials should be enabled to perform notarial acts to the same extent as British officials and, accordingly, when the principal Act was amended in 1947, that was all the amendment did. It has since transpired that there are a number of Australian diplomatic and consular officials who could perform notarial acts outside the State, but who did not fall within the definitions contained in section 67. The Commonwealth desires these officials to be included.

The Commonwealth has requested each State to embody in their law a model definition of the Australian officials who are to be permitted to perform the notarial acts of the State abroad. This definition mentions the following officials who are not so permitted at present under the principal Act, namely, High Commissioner, Head of Mission, Commissioner, Councillor or Secretary at a diplomatic post other than an embassy or legation, and Trade Commissioner. The Government considers it desirable that these officials should be enabled to perform notarial acts in South Australian matters abroad and has agreed to embody the model definition in the Evidence Act. Clause 5 makes the necessary amendment to section 67 of the principal Act.

Mr. DUNSTAN secured the adjournment of the debate.

METROPOLITAN MILK SUPPLY ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 29. Page 941.)

Mr. O'HALLORAN (Leader of the Opposition)—This is an important Bill dealing with three matters relating to the production, supply and distribution of milk in the metropolitan area. The first deals with the registration of dairies and is related to the steps taken by the Milk Board to insist upon the observance of proper standards of cleanliness of premises and health of cows. I understand from the Minister's speech and information I have gathered from various persons with a knowledge of the industry, that difficulties have been encountered following on the drafting of the original provision dealing with registration. When the measure was passed there was a grave shortage of building materials because of the war and some latitude had to be permitted in order that injustice would not be imposed on persons seeking licences to supply milk for metropolitan consumption, although personally I could see very little reason why there should have been any confusion as a result of the drafting because it was fairly clear that certain standards had to be maintained, and if they were not, they could be insisted upon by the Metropolitan Milk Board. However, confusion has arisen and the suggested amendment makes the position clearer because it will enable the board to take the necessary steps to see that dairies, the owners of which are applicants for licences for a first time, can be brought up to standard within a reasonable time. Of course, there is provision in the original Act to see that the required standards are maintained, so I have no hesitation in supporting the amendment.

It requires little or no argument to convince the House that the amendment relating to the sale of reconstituted milk in the metropolitan area is necessary. At first, when I heard the proposal suggested by the Minister, I thought that some danger might lie in the application of this provision to outback areas

where, because of various conditions, powdered milk is the only type of milk available. However, the proposed provision applies only to the metropolitan area and is designed to protect the suppliers of whole milk, whose supplies are limited, from unfair competition from persons purveying reconstituted milk which is made from milk purchased at a considerably lower price than that paid to the producers for whole milk for distribution in the metropolitan area.

I notice that the Minister will have power to grant permits for the sale of reconstituted milk. Unfortunately the Minister did not explain the circumstances under which such permits may be acquired, but I hope they will only be provided in proper cases. At the moment I cannot conceive any circumstances that would warrant the granting of these permits, but there may be some. For instance, a very disastrous drought might result in a shortage of whole milk, but I can scarcely visualize that taking place in view of the rather abundant supplies of whole milk available in the area that has been set aside for metropolitan supplies. However, there may be some circumstances that would warrant the granting of permits and, subject to the proper exercise of this power by the Minister, I see no reason why it should not be included in the legislation.

I now turn to the third and most important matter—that of zoning. As members are well aware, zoning was introduced during the war as a means of increasing efficiency by saving manpower. Since the war voluntary zoning by vendors has been continued mainly in their own interests. When compulsory zoning was introduced by the Federal Government under war-time regulations, in order to conserve manpower and perhaps result in savings in transport costs in the metropolitan area, to compensate consumers to some extent for what inconvenience might ensure a reduction of 3¼d. a gallon was granted. It would be interesting to know if that 3¼d. per gallon is still being passed on to consumers under the present system of voluntary zoning. Although it is called voluntary zoning, some people have very strong suspicions that it is not quite as simple as that, and indeed some evidence has been furnished from time to time that vendors who desired to go into certain zones to encourage competition had great difficulty in securing supplies of milk from the wholesalers. However, I think that on the general question, zoning has something to commend it provided that the interests of the public are properly safeguarded.

When I resided for a period in a very good northern suburb, which is now very excellently represented by the honourable member for Prospect, there were no restrictions on the deliveries of any kind of commodity, and it seemed to me that having so many vehicles and so many men engaged in distribution was an economic waste. Zoning, properly policed and implemented, undoubtedly results in some saving that could and should be passed on to consumers. It is very interesting to find a Liberal-Country Party Government interfering with private interests to this extent. Of course, as I have remarked before, it is difficult to ascertain the real policy of the Government and the principles for which it stands, but occasionally we hear it proclaimed from the housetops that one of its fundamental principles is freedom of enterprise, yet this Bill is not calculated to promote it. It will give the Metropolitan Milk Board the power to zone the metropolitan area and license not fewer than three vendors to distribute milk in each of the zones, and to apply conditions to the licences. If they are not observed the board has power to cancel the licences.

Of course, this Bill represents another acceptance by the Liberal and Country League Government of the policy that we on this side of the House have always advocated, that in modern communities, such as ours, where the activities of the whole community are so closely integrated, it is necessary to have some co-ordinated plan. Therefore, zoning should be acceptable to the House because it will eliminate complaints made from time to time about deficiencies on the part of volunteer milk distributors. Because not less than three vendors will be licensed for each zone there will be some competition, but the price will be fixed by the board, as at present. I have been wondering whether we should fix some upper limit to the number of vendors to be licensed. I think a minimum of three is desirable because it will ensure real competition in delivery, but if the board makes the zones too large and licences four or five or more vendors within a zone it may lead to a certain amount of unwieldy working with the result that we may get back to the undesirable position I mentioned earlier. However, I decided against moving an amendment to fix the maximum number of vendors because I am prepared to trust the board to administer this important provision with discretion. If we are not satisfied with the board's administration we can easily amend the provision.

I regret that the Government has apparently not been prepared to put the distribution of milk on a hygienic basis. I have long believed that conveying milk around the streets in cans and delivering it from open containers into consumers' open containers is completely unhygienic. Milk should be delivered in sealed bottles or cartons. This method has found favour in many parts of the world and it would ensure that the milk would reach the consumer free of germs. Of course, such a progressive move is too much to expect from the present Government, but I support the second reading.

Mr. SHANNON (Onkaparinga)—The Leader of the Opposition seemed to place greater importance on the last part of the Bill, but I do not know that he is right. He is anxious to ensure a pure milk supply for the metropolitan area, but possibly he does not know that the Metropolitan Milk Board is pressing for the supply of milk in bottles or cartons. It can enforce that method under the Act, but the board members are realists, and we, too, must be realists. If the board enforced this method the demand in the metropolitan area could not be met because we have not sufficient bottling capacity. I agree that some countries insist on milk being delivered in bottles, but others have made no move in this direction. However, if the board presses the matter sufficiently we shall ultimately have a bottled milk supply.

Mr. O'Halloran—To what extent has it been pressed?

Mr. SHANNON—To the extent that large sums have been spent by some of our big firms in order to meet the board's demand. Even today some vendors deal almost entirely in bottled milk.

Mr. O'Halloran—Is there any area where it is compulsory?

Mr. SHANNON—No, the Milk Board knows that it cannot make it compulsory because there is not the bottling capacity available to supply the necessary volume. It took two years for the last bottling plant installed by the firm with which I have the honour to be associated to be delivered.

Mr. Stephens—Is there a shortage of bottles?

Mr. SHANNON—It is not a question of bottles but of the machinery for putting milk into bottles. Obviously there must be a proper bottling plant if the job is to be done in an hygienic way, and these machines are not made in Australia. The pressed cardboard cap is a much greater menace than the ordinary open can because it makes a beautiful little cup at the top of a bottle that catches all the dirt and dust, and the housewife lifts the cap and pours the dirt into her jug or container. The new system is to use a small metal cap that fits over the top of the bottle and prevents any possibility of anything untoward happening until the cap is taken off. I point out also that a proper understanding of this commodity by the housewife is essential. It is very simple to deliver a perfect article, but milk is most easily contaminated and if there is lack of understanding or carelessness on the part of the housewife all the good that has been done can be wasted. Certainly this method would cost a little more, but even with bottles there are breakages and, of course, the cardboard container is non-returnable so whatever it costs is a loss.

I am happy to know that the Government is bringing in a zoning system in preference to the block system. When this matter was formerly discussed in this place I suggested that the block system would ultimately cause much heart burning. The difference between the two systems is this: under the block system one vendor is the sole distributor within a zone, whereas under the zoning system now proposed a number of licensed vendors operate within a zone. I said on that occasion that the zoning system would be the only one that would satisfy the housewife that she was getting the service to which she was entitled. I know, from complaints I have received, that housewives do not all get the milk at the time they want it; obviously everyone cannot have it at half past five or half past six. Very often also there are complaints on the score of quality. Under the existing system there is very little hope of remedy, but under the proposed zoning system there will be at least some competition for the housewife's custom and, I believe, a weeding out of the inefficient or careless purveyor. If he is not prepared to give the service his customer wants he will lose that trade and his business will go to his competitor. Under this proposal no fewer than three licenced vendors shall operate in any one zone, but I think the board might be well advised to create zones of sufficient size to accommodate more than three.

Mr. Quirke—What does it take to provide a living zone?

Mr. SHANNON—That has been variously stated as 50 to 100 or 150 customers, depending on the standard of living desired, but I think the Milk Board will see that sufficient milk will

be consumed within a zone to afford a living to the vendors licenced. If the zones are made too small the time may arise when, by competition, the inefficient vendor will be weeded out, and only two would be left in the zone. If the same thing occurred again and the more efficient purveyor ousted his remaining competitor we would be back where we are with one again. I do not know how the board proposes to deal with this difficulty. To put in another man in place of the one who dropped out would not be fair or reasonable, and I would much prefer larger zones with five or six competing for the trade. Then if one dropped out as the result of fair competition—and remember that they will all be on the same price basis so that it will come down to a question of efficiency—there would still be four or five vendors left to compete for the business and there would be no need for the board to put in another. I think this might overcome what could cause a good deal of heart burning if we create zones of a sufficient size to accommodate only three vendors. They are the factors about this zoning system that I have always appreciated. I favour encouraging private enterprise and helping the man who is out to do a good job.

Mr. Quirke—Won't referees be needed in each zone?

Mr. SHANNON—No; they are not required in the selling of bread, so none should be needed in this industry. More is being said about reconstituted milk than is merited, for I see no real threat from reconstituted milk to the genuine whole milk supplier. The Leader of the Opposition (Mr. O'Halloran) said that the supplier of whole milk would have to be protected against unfair competition from persons selling reconstituted milk made from milk purchased at a considerably lower price than that paid to producers for whole milk for distribution in the metropolitan area, but that is counter-balanced by the additional costs involved in the processing of whole milk into powdered milk, which can be reconstituted by the addition of only water. The cost of drying, packing and delivery of powdered milk to the metropolitan area would probably be all the protection the ordinary dairy farmer would require. The housewife running short of milk over the week-end may not be able to buy whole milk from the shop, and even now she keeps powdered or condensed milk which she can reconstitute in her own kitchen.

Mr. Stephens—Is much powdered milk made in South Australia?

Mr. SHANNON—Yes, and it is sold in certain parts, such as the outback, where whole milk is not available. It keeps fairly well, although not indefinitely, and it will stand high temperatures. The power of the board to refuse to grant a licence to a dairy farmer for the sale of whole milk in the metropolitan area does not comply with certain conditions laid down by the Milk Board. After all, it is the human factor rather than the type of dairy and the equipment used that determines the quality of the milk. Some people are naturally clean and know how to keep things clean; everything they do is done cleanly and neatly, and such people have produced the purest milk on dairy farms, farms that would be condemned by Milk Board inspectors. On the other hand, I have seen elaborate dairies with the most modern equipment, yet the milk from those farms would not stand up to the methylene blue test and the farmer has had to be told that certain parts of the equipment must be stripped down and cleaned each time they are used or else they will retain the residue of the milk, which will contaminate all milk subsequently passing through the machine. Although there are many well-informed dairy farmers, there are some careless men in the industry and, whatever standards are provided for the equipment, they will not ensure the highest standard of milk; that will depend on the human factor. I would prefer the raising of the standard of whole milk, including its keeping quality, bacteria count, and butterfat content, rather than the enforcement of expenditure on equipment that may or may not result in a higher standard of milk.

I understand that in some parts of the world if a dairy farmer's milk is found not to be up to standard he is warned the first time, suspended for a certain period the second time, and delicensed the third time; after the third offence he is not allowed to supply milk for human consumption. Those may seem harsh rules, but at least they warn a man and ensure a higher standard of milk supply than does any artificial standard of equipment.

Mr. Stephens—What is the practice today?

Mr. SHANNON—Today an inspector of the Milk Board may visit a dairy farmer and, if conditions there are unsatisfactory, he tells the farmer that certain improvements must be made. If the farmer agrees to comply with the instructions he is given three months to effect the improvements, and if they are effected he is given a licence, although, despite such improvements, he may produce milk of a standard below that which we consider proper.

Thus he is able to share in this very profitable trade, although helping to reduce the overall quality of the total milk supply, and the man who tries to provide the best is carrying him.

There are many heartburnings in this industry. For instance, there are dairy farmers not far from the metropolitan area who cannot get a metropolitan milk licence no matter what they spend or what quality article they produce because they were not in the whole milk business on a certain date. I would rather see a standard set by which we would weed out the inefficient suppliers from this good market and only the best suppliers could enjoy the benefits derived from supplying to the metropolitan area. If such a policy were pursued more energetically than the present method we would obtain a better article.

When I first entered this Chamber questions were frequently asked concerning the running of the dairy industry and whether the dairy farmers were getting a fair deal from the people handling their commodity. Most of the problems have been overcome mainly through the dairymen's own efforts in organizing the industry on a fair and equitable basis. They have done well in removing one of the greatest causes of dissension among them—the varying prices they received from the wholesalers—by implementing what is known as the equalization scheme, which operates entirely in the interest of the dairy farmer. It is of no interest to the wholesaler or retailer, although wholesalers are in duty bound to pay into the equalization fund appropriate amounts depending on the quotas fixed monthly. The dairymen have members on the equalization committee, which is responsible for administering the fund and decides from time to time how much the dairy farmers will receive from it. The machinery of that committee has been set up on a purely voluntary basis and the farmer and the person handling his milk both have a say.

Recently a rift in this system has been brought about by a small clique. I believe that too much consideration has been shown to a very small section of the industry who seek an unfair advantage over their rivals. Six of the major persons concerned in the wholesale business in the metropolitan area have agreed to continue equalization on what they consider a fair and equitable basis for themselves and the dairymen, but one has stood out because certain parts of the agreement do not meet with his approval. I suggest, however, that this is a matter best left to the industry. Equalization was not included in the Act because we had no power under our Constitution to include it. It was left to the industry and it has worked smoothly and well. There is no complaint from the vast majority of dairymen and if the Government does not want its fingers burnt it would be wise to leave equalization to those who understand it. It is not easy to explain equalization and I will not endeavour to do so. Dairy farmers in my district are perfectly happy with the present set-up and do not want it interfered with. The Bill represents a step in the right direction, and although my comments may sound critical they are designed to be helpful. I hope the board will consider what I have said and step up the service rendered to the housewife.

Mr. FRANK WALSH (Goodwood)—I support the second reading, but I am somewhat concerned about clause 5 which relates to the powers to be conferred on the board in respect of zoning. In the early stages milk zoning was introduced on a voluntary basis to conserve manpower during the war and it met with the approval of the Department of Agriculture. Clause 5 provides that the board shall, as far as possible, ensure that in each zone there are at least three persons carrying on business, independently of each other, as retail vendors of milk and cream delivered at the premises of customers. There is no mention of shopkeepers who supply milk to the general public and I assume it will be the responsibility of the wholesaler to cater for those shops. The board is empowered to allot to any person a zone or zones in which he is permitted to operate. The board is to be given power by regulation to divide the metropolitan area into zones, in which there can be three vendors. What has to be considered is what is regarded as an adequate gallonage to enable a man to get a living. I should think that anything between 70gall. and 80gall. would be sufficient. It is not so much the number of customers a vendor may have, but the number of gallons of milk he sells. Clause 5 provides that when a vendor has been allotted a zone he must carry out certain obligations to the public in supplying them with their milk and cream requirements. Will the board take into account the time involved in a vendor completing his round? Under the same clause the board is empowered to delicense a vendor who has been guilty of any breach of the regulations. I should like to know what compensation would be paid to a man who had his licence taken away for such

a breach; or if a vendor was no longer required in a zone, would the board be prepared to pay him compensation?

The value of a zone is calculated according to the gallonage sold on the round. It is possible that a man with only a few customers in a zone may obtain additional customers because of nearby large-scale building operations. A vendor is involved in certain expenditure in establishing his round and therefore under the circumstances already mentioned he should be compensated. Also, if an incoming vendor took his place he should be expected to provide compensation according to gallonage. I should also like to know whether one man in a zone would be permitted to purchase gallonage from the other two in the same zone to enable him to get sufficient for a livelihood. Under certain circumstances a zone of three vendors might be reduced to two. A vendor could lose a customer who removed to another area. The incoming tenant may find that one of the new vendors coming into the area is a friend and he may give him his custom, with the result that the original vendor loses a customer. Could an arrangement be made between the Milk Board, the vendors, and the police? I live in one of the select localities in Adelaide, yet from time to time residents lose money they have placed in their milk cans. The police try to find the culprits but without much success. There should be some sort of protection available to them, and that is why I suggest an arrangement between the board, the vendors, and the police. I support the Bill, but hope that in Committee I shall get information on the matters I have raised. People who have complained in the past that they had only one milk vendor in their district may now be satisfied.

Mr. BROOKMAN secured the adjournment of the debate.

PORT ADELAIDE WHARF RECONSTRUCTION.

The SPEAKER laid on the table final report of the Public Works Standing Committee on Port Adelaide Wharf Reconstruction, together with minutes of evidence.

Ordered that the report be printed.

SURVEYORS ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 29. Page 950.)

Mr. TRAVERS (Torrens)—In its present form this Bill is not acceptable to me, although I sympathise with its general objective. Unless it is amended I shall not support it. It contains only three operative clauses. The general objective is to be commended because it is to prevent hooliganism and sabotage in connection with the removal of and damage to survey marks, but as I see it the Bill goes beyond the objective set out. In the Minister's second reading explanation, for instance, it is said that section 34 of the principal Act is to be extended to apply to a number of things, but the Bill does more than that. Clause 3 contains a definition of "survey mark." The Surveyors Act has been in operation for a long time but nowhere does it contain a definition of "survey mark." Therefore, the clause contains something new and to some extent it may be desirable, although a surveyor's mark is well known to all people, and one would imagine that it does not need defining. The definition is:—

> "Survey mark" means a peg, picket, beacon, mark or thing of any kind placed on any land for the purpose of making a survey of any kind or for the purpose of indicating a boundary on any land.

No-one would object to a peg, picket or beacon of the type ordinarily used by a surveyor for marking a boundary, but if a surveyor drags his pick along the ground and marks the boundary it comes within the definition. How a person would know that the mark was there as a survey mark, and that he would subject himself to a penalty if he obliterated it, I do not know. A surveyor may put down a stone, empty beer bottle or tin as a mark. The removal of these things ought not to be an offence. If a surveyor put down a peg, picket or beacon as the mark no-one would object, but there is an objection to the words "or thing of any kind placed on any land for the purpose of making a survey of any kind or for the purpose of indicating a boundary on any land." One of the mischiefs of that definition is that those marks or things of any kind are put there for the purpose of marking a boundary—in other words, it is the mental process of the surveyor, and who is to know what his mental processes are? The man who will be convicted should not be expected to know. If the definition is limited to "peg, picket, or beacon of a type ordinarily used for surveying," I shall be perfectly content with it, but otherwise far from content. In his speech the Minister said that clause 4 is to extend the provisions of section 34 of the original Act. He said:—

The Government therefore proposes to give section 34 of the Surveyors Act a general

application so that it will apply to interference with any survey marks at any time. However, the Bill goes a great deal further than that. New section 34 (1) provides as follows:—

Any person who, without lawful authority, interferes with any survey mark, shall be guilty of an offence.

I shall make two points on that. It means that any person who interferes with any survey mark, which includes such things as tins, beer bottles or pick marks, is guilty of an offence. My second point is that it completely alters the meaning of the old section because it omits the word "wilfully"; it does not merely extend the section as the Minister said it did. Under the original section it was an offence to do these things wilfully, and that is the only type of act that should be included in regard to this type of offence, because it is an act of hooliganism. If a man accidentally moves a mark without realizing it is there he should not be punished criminally, and this of course is a criminal matter. Section 34 provides:—

Any person who during the progress of any survey wilfully pulls up, removes, destroys, or injures any peg or other survey mark driven, made, or put up, by or under the direction of any such surveyor on the boundaries of any roads or other property surveyed, or for the purpose of defining the boundaries, shall be guilty of an offence.

The Minister said that the design of the Bill is to get over the words "during the progress of any survey" and to extend the matter to a survey at any stage. That is quite commendable and I do not think anyone would quarrel with it, but the second reading speech does not indicate that the whole complexion of the offence has been altered by leaving out the word "wilfully." Under the original section no person could be convicted unless it were proved by the Crown that he had done this thing wilfully. The modern tendency of cases, as any lawyer knows, is that where an offence is stated absolutely without the words "knowingly" or "wilfully" or similar words inserted, mental elements are eliminated and the offence is absolute. That is not of universal application, of course, but where a section containing the word "wilfully" is repealed, the element of wilfulness being thus destroyed, and a section not containing the word "wilfully" is put in its place, the mere commission of the act would render the man liable to conviction. In other words, the offence is absolute. I strongly object to that because it seems to me that even if we modify the definition clause so as to limit it to peg, picket or beacon and add "of the type ordinarily used by a surveyor to mark a boundary or to indicate a survey," the offence should not be absolute, because one might run into such a mark, and that should not in my view be an offence.

The penalty provided is £50, which increases the former penalty of £20. In these offences involving hooliganism the proper approach is to make the proof stricter and the penalty higher so that when a man is really proved to be guilty he will be subject to a punishment that will be a real deterrent. It is no use providing for artificial proof, because this will bring the law into apparent disrepute.

My criticism of new section 34 (2) is the most severe of all, because it brings in a provision that was not in the Act in any shape or form, and which is not pertinent to the extension of the provisions of section 34 to a survey at any of its stages. The second reading speech indicated that the amendment is aimed at the words "during the progress of any survey" in section 34, and that it is in reality designed to make the offence apply to an interference at any stage. This new provision is a completely new departure. It provides:—

In proceedings for an offence against subsection (1) of this section, the allegation in the complaint that any peg, picket, beacon, mark or thing of any kind was a survey mark shall be *prima facie* evidence of the matter so alleged.

I strongly object to that type of provision. I have not heard of any complaint about the matter of proof in the original Act, which has been in existence since 1935, and the second reading speech made no suggestion that there were any insuperable difficulties in the matter of proof. Under the original Act several offences are created under section 45. It was not found necessary to have any artificial means of proof included, and, of course, the ordinary British principles of proof are that the Crown must prove its case. Unless there is some strong reason for departing from that principle we should stick to it. I sound a solemn warning against the danger that is rapidly growing in this community and which had its rise, no doubt, in wartime legislation, of transferring the burden of proof from the prosecution to the defendant.

It is all very well to say, "If a man is innocent, let him go into the witness box and prove it." That sort of specious argument made no impression on the founders of English common law, which has been taken as the basis

of the laws of all British and American communities. There are many recorded cases of large commercial interests who were in a dispute so wangling their affairs that they could get their cases tried in England, such was their opinion of British common law. We should hesitate a long time before we start tinkering with it. During wartime the Legislature had to do many things because things were different then, and I am not concerned to discuss their wisdom. What applies in wartime about sudden death for suspects finds no place in peace time, but we cannot go through years of war without a habit growing and without familiarity breeding a certain amount of contempt, and without a generation growing up under the system of national security regulations under which a mere allegation was sufficient to make a man prove his innocence. That is a gross departure from the system under which we live, and one that ought not to be tolerated.

I concede readily that in certain classes of cases it may be necessary to put the onus of proof on the defendant. In a case involving the proof of some mental attitude of the defendant or lawful excuse it may be wise to place the onus of proof on the defendant because he is the only person who knows his attitude or excuse. No-one else can prove it, and in that case it is acceptable that he shall be *prima facie* guilty. However, there is no need for transferring the onus of proof to the defendant under this legislation. Let us have a look at the effect. Suppose a surveyor puts down a beer bottle in one place, and an empty tin and a stone in other places, intending them to be his survey, but tells no-one about it and goes away. He had no pegs to drive in, and overnight children play there and one throws a stone at the beer bottle and breaks it and another kicks the tin away. Why should the law be so absurd as to say that *prima facie* those children were guilty, particularly where the definition refers to the intention of the surveyor It states:—

"Survey mark" means peg, picket, beacon, mark, or thing of any kind placed on any land for the purpose of making a survey.

That is the undisclosed purpose of the surveyor. *Prima facie* one is guilty if he removes the mark. The Bill pursues a laudable objective which is to prevent hooliganism and sabotage of surveys, and I concede that that sort of thing can cause much trouble, anxiety, expense, and possibly loss, but I repeat that the remedy is not to facilitate proof. The remedy is to insist on strong proof, and once a person has been found guilty, punish him properly and provide a deterrent to others. To enable the Bill to achieve its object we should amend clause 3 by striking out all the words after "beacon," so that the definition of "survey mark" would read, "peg, picket or beacon of a type ordinarily used by surveyors to indicate survey marks or boundaries."

Mr. Shannon—Would it be difficult to define a survey mark?

Mr. TRAVERS—I do not think so, because all that would be necessary is to call a surveyor and ask him, "Is that the type of thing ordinarily used?"

Mr. Shannon—Wouldn't there be some value in having a standard type of mark?

Mr. TRAVERS—There would be if there were a standard type, but probably there is not. I do not suppose that all surveyors' pegs are of the same type. If they were "peg" would be a sufficient definition. The beacon is a different thing. I understand that to be the tripod arrangement one sometimes sees on the top of a hill and which is used as the starting point for a survey. The court should be credited with having, as it almost invariably has, a great deal of common sense. It does not find the slightest difficulty in deciding whether a particular kind of peg, picket or beacon is the type ordinarily used by a surveyor. If it were so defined that would be adequate and we should get rid of the other extraneous words. If we could amend that definition accordingly I would be perfectly happy with it. I would be happy with subsection (1) of proposed new section 34 if "wilfully" appeared before "interferes," because that would put it on the same basis as the section it replaces, and it would prevent a man from being convicted for accidentally knocking over a survey mark. I have already said that there is no need to place the onus of proof on the defendant. Suppose a surveyor who made a survey died. If anyone is going to allege that a survey mark has been removed by a defendant he, or someone else, must have seen the survey mark. There must be some available witness to prove it was there; otherwise, why prosecute the defendant? All that needs to be done is to call a witness to say that on the particular site he saw a peg. Then a surveyor could be asked whether the peg was the type ordinarily used. That would be in accordance with ordinary principles.

Mr. O'Halloran—If a peg had been removed how would you prove in evidence that it was in a particular spot?

Mr. TRAVERS—It would be described.

Mr. O'Halloran—That is the very thing I am saying.

Mr. TRAVERS—But there cannot be a prosecution unless someone knows a peg was there, and if someone comes along and proves it, well and good. In conclusion, I sound a solemn warning about this growing practice of inverting the onus of proof. I do not want any officers of the Crown to take offence at what I am about to say, but I say deliberately that this practice has grown up very largely because of the obvious fact that Acts and amendments, in the main, have to be recommended through official channels. They go to to Crown Law Department, and the great tendency is to facilitate their task in proving an offence. In many cases, of course, those who have to prosecute welcome it with open arms, but we should adhere closely and slavishly to the English common law.

Mr. O'HALLORAN secured the adjournment of the debate.

ADJOURNMENT.

At 4.37 p.m. the House adjourned until Tuesday, October 11, at 2 p.m.