

LEGISLATIVE COUNCIL.

Thursday, November 8, 1951.

The PRESIDENT (Hon. Sir Walter Duncan) took the Chair at 2 p.m. and read prayers.

GALVANIZED IRON SUPPLIES.

The Hon. C. R. CUDMORE—Has the Government noticed that there are many advertisements for the sale of galvanized iron in the press and will it give sympathetic consideration to applications made to the Building Materials Office for the use of this material?

The Hon. R. J. RUDALL—The position is that at present there are ample stocks of imported galvanized iron available in South Australia. I can assure the honourable member that the Building Materials Office will give most sympathetic consideration to any application for its use, provided it is for useful purposes.

APPROPRIATION BILL (No. 2).

Adjourned debate on second reading.

(Continued from November 7. Page 1129.)

The Hon. Sir WALLACE SANDFORD (Central No. 2)—The Bill is essentially a financial measure and therefore we are not permitted to amend it. However, it offers an opportunity for members to review the figures of past years, and, in planning for the future, to endeavour to gain from experience some knowledge of how we should shape our course. Yesterday we listened with interest and I am sure with benefit to Mr. Condon's comments on questions of the day. He gave us much to think about. His cautious opening, followed by the speeches of Mr. Anthony and Mr. Rowe, was clearly indicative of the apprehension felt generally at the meaning of the figures presented in the Bill. In so short a time as five years since 1946 the Appropriation Bill has grown from £11,616,000 to last year's figure of £25,357,900, and this year the Bill covers £34,220,800.

In explaining the measure the Attorney-General provided us with details which gave the position so clearly that it is not necessary for me to traverse that path again. As a Parliament we are faced with the necessity of assisting in the management of South Australia's affairs at a time when the whole world is trying to adjust itself to the upset caused by the two greatest wars in history. We have many problems peculiar to ourselves, but at the same time we also enjoy benefits and advantages that are the envy of many

countries. More than ever it is emphasized that the Commonwealth is being looked upon to produce foodstuffs for a world which is becoming increasingly aware of the danger of famine and what that means. Consequently, the call is for increased production. I thought I sensed some doubt in Mr. Condon's demand for increased production. However, our population is growing rapidly and, properly directed, might be expected to assist greatly in producing exports for which the demand is continually increasing. From statistics quoted by the Minister it will be seen that the State debt has risen steeply during the seven years to June 30 last. The figures for those years are as follows:—1945, £108,000,000; 1946, £110,000,000; 1947, £114,000,000; 1948, £118,000,000; 1949, £124,000,000; 1950, £133,000,000; and 1951, £148,000,000. There has been an increase during the last 12 months of £15,213,000. Actually the borrowings of new moneys total £16,500,000, as about £1,371,000 worth of securities were redeemed and purchased by the National Debt Commission on behalf of the State and this therefore reduces the total of £16,584,000 to £15,213,000. To provide for the development of our primary industries and meet the demand for water, coal, electricity, transport, and housing it has been necessary to substantially increase the public debt during the year. These undertakings cannot be put on the shelf until some future date. They are things which must be done to develop and protect our country and carried out for the benefit, not only of South Australia, but the Commonwealth as a whole.

On a previous occasion, when speaking to a similar Bill, I referred at some length to certain details of the financial agreement with the Commonwealth, one of the few occasions when a referendum was voted for in the affirmative. During the 51 years that we have had a State Parliament about 24 questions by way of referenda have been submitted to the people by the Commonwealth seeking greater powers or greater benefits, but in only four cases has the answer been in the affirmative. That is clearly indicative that, generally, the Australian people are of opinion that the Commonwealth can get along with such powers as it has and unless that part of the Constitution is altered it is an extremely remote chance that answers will be in the affirmative. It is unquestionably the only hope we have where questions of that nature put to the people can be solved. It is interesting to note the very clear and definite points made by the Minister

in his second reading speech about the National Debt Sinking Fund and his reference to the fact that certain securities were cancelled by purchase. The National Debt Commission purchased and redeemed during the year securities to the face value of £1,371,000. I was surprised to know that those securities cost £1,455,000, which means that the State paid £184,000 above their par value. In view of the state of market quotations for Commonwealth stock for some time, one might have expected that they would have been purchased at a profit to the Treasury rather than costing the State £184,000 over their face value. Of course, it may be that it was necessary to purchase some stocks in which this State was particularly interested. That may be the explanation, but one would prefer to know that they had been "picked up" at no more than par, because otherwise that money has to be made up in some other way.

The Minister, in the early part of his explanation of the Bill, set out the expenditure on main items during the year, all of which ran into six figures and one into seven. In view of existing conditions there is nothing to be surprised at in the size of them, but I cannot understand why a line for the Education Department shows an increased cost of £576,000, and on another line £194,000 is for grants to the University and School of Mines. That is part of our education system and one might have expected that the two lines would have been added together instead of having them in two doses, making a total of £770,000. We might have expected that all the other items would have been likewise divided.

The Hon. K. E. J. Bardolph—Why mention them?

The Hon. Sir WALLACE SANDFORD—Because I am surprised that the Education Department gets two lines and the rest of the items single lines.

The Hon. K. E. J. Bardolph—They are two distinct institutions.

The Hon. Sir WALLACE SANDFORD—I do not agree. One is called "Education Department" and the other "Grants to University, etc."

The Hon. R. J. Rudall—They all come under the Education vote.

The Hon. Sir WALLACE SANDFORD—The Appropriation Bill is to provide finance for the maintenance of the business of South Australia. It is based on figures for the year

ended June 30 last, when the revenue for the 12 months was £33,672,000 and expenditure £33,442,000, resulting in a surplus of £230,000.

The Hon. F. J. Condon—Much of which was due to the winnings tax on betting.

The Hon. Sir WALLACE SANDFORD—We might expect to receive a little more this year from that source. For the 12 months on which we have now embarked, up to June 30 next year, the revenue includes the £230,000 surplus from last year. The revenue is calculated at £42,308,000 and the expenditure at £42,293,000, giving an estimated surplus of £15,000. That is a very fine calculation. We all know that costs have increased in all directions in our individual affairs and the same influence is at work in our collective affairs. Whilst we must develop our country and expand its activities we must live within our incomes. In the meantime we must not lose sight of the fact that with the growth of debt comes a larger interest bill—its levies are unseen but not unfelt—and a charge upon all the services provided by the State and upon all its production. When we reflect on the progress made even in the first 10 to 15 years of the State's colonization, without the mechanical aids we now enjoy and without the host of restrictions which now envelop us, we see what can be done where effort is encouraged and untrammelled. The net result of public expenditure should be to increase production and thus to permit well-being in raising the real standards of living.

We are dealing with a tremendous sum this year and I am sure every department has carefully scrutinized such costs and expenses as it is able at this moment to envisage to see that all expenditure is for the benefit of the State. I had hoped that our new member, Mr. Bevan, would be here this afternoon because I had intended to take this opportunity—the first time I have been on my feet since his arrival—of welcoming him. Yesterday the youngest member of our Chamber extended a welcome and therefore it seemed to me not altogether unbecoming, as one who came up from the old Chamber to the building to which we had looked forward for such a long time, to do so. Mr. Bevan takes the place of a member whom we held in the highest regard, who is sadly missed by us and whose memory is cherished by us all. I support the second reading.

The Hon. F. T. PERRY secured the adjournment of the debate.

BUILDING MATERIALS ACT AMENDMENT BILL.

In Committee.

(Continued from November 7. Page 1136.)

Clause 2—“Control of use of essential building materials to which the Hon. C. R. Cudmore had moved to delete paragraph (d) which proposes at the end of subdivision (i.) of subparagraph (c) of paragraph I. of subsection (2) to add—

and the said person has not, since the twenty-fourth day of January, 1946, constructed or caused to be constructed a dwellinghouse upon land in which he had a registered interest or beneficial interest at the time of the construction of the dwellinghouse.

The Hon. R. J. RUDALL (Attorney-General)—I hope members have looked at the effect of this amendment since the adjournment. I emphasize strongly that if this paragraph is struck out the practice which has grown up under the existing legislation will continue. If members examine the words of the existing legislation I do not think they will deny that the spirit of the Act was that it was to be a permanent home. Builders have merely sidetracked what was the intention of the legislature. A builder constructs a home and then says he is not satisfied and is going to build another one. He cannot be touched so long as he says the second house is to be his permanent home. That is what is happening in certain instances with the result that builders are making huge profits. Members will not agree that that is a proper thing to do. A builder who adopts that practice has access to materials which the ordinary person has not and he can continue accumulating profit whereas he should be compelled to build under contract for other people. That is the real position and I ask members not to agree to the amendment.

The Hon. F. T. PERRY—I support the amendment. The building of houses is one of our vital necessities and if people can build houses outside the present legislation it is advisable to encourage rather than to discourage them. I have had to assist a lot of people to build houses, mainly from the financial aspect. Our controls do not permit a man to build a house for sale, and a man cannot continue building unless he has clients who order homes. Certain people are prepared to build homes without permits and I see no reason why we should prevent them from expressing their initiative in this way. The objection of the Government is that a man makes a profit out of it. Not much profit is made

from building, but a large profit can be made through other avenues, and it is those avenues which attract; consequently, we should not prevent a man with initiative from having the opportunity to build a house even if he does make £100 or so.

The Hon. K. E. J. Bardolph—It is more than that.

The Hon. F. T. PERRY—The honourable member may not be justified in saying that. I gather that the fact he makes a profit is the reason for the objection. I support the amendment.

The Hon. F. J. CONDON (Leader of the Opposition)—The recommendations in the Bill have been made by people in authority in whom Parliament has often expressed complete confidence. There would be much justification in the remarks of Mr. Cudmore and Mr. Perry if conditions were normal. A man has a perfect right to receive a certain profit from home building and should be encouraged to undertake that work, but not during the present abnormal times.

The Hon. N. L. Jude—Who introduced this clause—the Government?

The Hon. F. J. CONDON—Then the objection to it is that a Labor man in the Assembly introduced it?

The Hon. C. R. Cudmore—No.

The Hon. F. J. CONDON—The view is taken that it is no good because it was introduced by a Labor man. Power has been abused by certain persons interested in housing.

The Hon. F. T. Perry—What cases can you cite?

The Hon. F. J. CONDON—If the honourable member reads the debate in the House of Assembly he will see instances of abuse recorded. Thousands of people are seeking permits to build houses and those in authority consider each case on its merits. It is justifiable for a man during normal times to build a home and sell for a profit, but not under present day conditions. We have to legislate in this way because some people are not prepared to play the game. The Treasurer in the House of Assembly made certain suggestions to whittle down the effect of the original amendment, and his proposal was accepted. Are members to be vindictive simply because a certain member who has not been treated very fairly by this Government dares to introduce an amendment? I oppose the amendment on the ground that it would be unwise to interfere with the legislation passed by the

House of Assembly. A fair compromise has been arrived at, and I therefore ask the Committee to support the Government in this matter.

The Hon. R. R. WILSON—Since the adjournment of the debate I have spent much time seeking information from reliable sources. It is a fact that there is a racket in house building. Although many houses are supposed to be built from imported materials, that is not always the case. There is a leakage somewhere. I have known houses to be built and sold for a profit of up to £1,200, and that often prevents the genuine home builder from getting a roof over his head. The Bill should be passed in its present form.

The Hon. L. H. DENSLEY—The word "profit" is not as dreadful as some members seem to think. We must remember that builders who are being aimed at in the amendment are those who have made it their life-long job to build and sell houses. When the Building Materials Office grants a permit it gives some people the opportunity to receive even greater profits than the builder who builds from imported materials. Is there any reason why the rank and file should be put in a better position to sell houses than a man whose normal work is to build and sell houses? I understand that many priority permits have been granted to people who sold homes that were too small for them. Are we to give these people an opportunity to make a profit and deny the same privilege to builders? Smaller builders are aiming to keep their men by providing overtime. I support the amendment.

The Hon. A. A. HOARE—I do not agree with the amendment. Although a man intends to sell at a profit and build another home he will state in his application that he is building the home for the purpose of living in it. It seems to me that such a man is endeavouring to obtain a house by false pretences and is trying to exploit the honest man. He should say straight out what he intends to do. We should endeavour to prevent any person from doing such things. I know of one person who is living in a house that is only an apology for a stable. This woman has three children, her husband working at Broken Hill. The house, which faces a side lane, has a leaky roof. The boards on the house are about 6in. apart and any "peeping Tom" could look through and see her undressing. Many honest people cannot obtain materials to build a house, but "exploiters" seem to be able to get them.

The Hon. C. D. ROWE—I can think of only one case where a man has built a house to live in and subsequently sold it and built another. He was a carpenter in a country town and built the home for permanent occupation by himself and family. It was constructed of compressed straw, cement covered. He built it mostly outside working hours and was entertaining some friends after its completion. The father of the friends came in and said "This house would suit me very well and would meet my requirements nicely. Will you consider selling it?" The young man at first refused but eventually sold it at a profit, the purchaser allowing him time to build another house for himself before vacating it. The young man said that his action had taught him a lesson as he had spent much time in making expensive fittings for cupboards in the kitchen and remodelling the interior. He felt he would be better off if he concentrated on building houses and shifted his activities from one particular class to another. Nobody can direct a builder how he shall occupy his time. No man has to purchase a house at a particular price. Plenty of houses are available in the metropolitan area at a reasonable price today. I have had three instances brought under my notice during the past 12 months of country people wanting to purchase a house in Adelaide. They inspected houses and were able to purchase them, with vacant possession, at a reasonable price. This morning I interviewed a lady who had been in Adelaide for three weeks looking for a house. She informed me that she had purchased one, which suited her requirements, at a reasonable price.

The Hon. C. R. CUDMORE—Nothing has been said in support of paragraph (d). I deprecate some of the statements that have been made. It is getting close to slander for any member to say that people are getting materials dishonestly and are racketeering. People should not make those kind of statements. Mr. Hoare has no right to say that people have certain intentions when they start to build a house. Mr. Rowe has pointed out a definite case of a person who built a house to live in, but sold it because of certain circumstances. Are we to say that no person in such circumstances shall build another house? The paragraph will hinder rather than help house production and it is on that ground alone that I seek its deletion.

The Committee divided on Mr. Cudmore's amendment to delete paragraph (d).

Ayes (5).—The Hons. E. Anthoney, C. R. Cudmore (teller), F. T. Perry, C. D. Rowe, and Sir Wallace Sandford.

Noes (8).—The Hons. K. E. J. Bardolph, J. L. S. Bice, F. J. Condon, J. L. Cowan, A. A. Hoare, W. W. Robinson, R. R. Wilson, and R. J. Rudall (teller).

Pairs.—Ayes—The Hons. A. J. Melrose, L. H. Densley, and N. L. Jude. Noes—The Hons. E. H. Edmonds, C. S. Bevan, and A. L. McEwin.

Majority of 3 for the Noes.

Amendment thus negatived.

The Hon. R. J. RUDALL—I move to delete in line 20 of page 2 the figure "III." and to insert in lieu thereof "IV." This is merely a drafting amendment.

Amendment carried.

The Hon. C. D. ROWE—This drafting amendment has had an effect upon my proposed amendment. Had the figure not been altered it would have meant that nobody could spend another £100 on his completed house in a farming, grazing, orchard, or vineyard area. Now that paragraph (f) is to apply after paragraph IV. it means that a person in those areas will still be able to build to the extent of £150 immediately after he has completed the structure. The person who has a house in a township will still be restricted to building one out-building. The definition of "out-building" includes garage, stable, shed, workshop, laundry, or any other building of a similar nature, so long as it is separate from the main structure. In these circumstances I will not proceed with my amendment.

Clause as amended passed.

Remaining clauses (3 to 10) and title passed. Bill reported with an amendment and Committee's report adopted.

YOUNG MEN'S CHRISTIAN ASSOCIATION OF PORT PIRIE ACT AMENDMENT BILL.

Received from the House of Assembly and read a first time.

WRONGS ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from November 6. Page 1085.)

The Hon. C. R. CUDMORE (Central No. 2) —I sympathize with members who have studied the Bill and found it deals with tort-feasors, torts, and faults for which persons are vicariously responsible. It is a legal matter and one of great importance to our State legal system. For many years in England

there was a difference between the law for contributory negligence at sea and on land. The law as administered by the Admiralty Courts was that if two ships collided at sea and it was partly the fault of both, damage was paid in proportion to negligence. On land the difficulty was that if any person who sued somebody else for negligence was found to have contributed at all to the negligence he could not recover damages. In England in 1945 the law was altered to apply on land, and was called the Law Reform (Contributory Negligence) Act. It seems only reasonable that if there is an accident between two motor vehicles or an injury happens to a person riding in a tram-car and both parties have been at fault, damage should be paid in proportion to the negligence. The main part of this Bill is subsection (3) of new section 27A of clause 4 which reads:—

Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

This is the same wording as the English Act which has, with few exceptions, worked well. We have had an opportunity of considering some of the small difficulties which have arisen under the English Act, and of making further provisions in this Bill. The matter has been the subject of a number of conferences between very eminent legal men of Australia. The Law Council of Australia appointed a committee comprising Professor C. W. Paton (Vice-Chancellor of the University of Melbourne), Mr. K. A. Ferguson, K.C., of Sydney, and Mr. D. B. Ross, K.C., of this State. They apparently held a number of discussions and had a draft Bill before them for some time, so the matter has not been hurriedly considered. The South Australian Law Society brought the matter before the Government at the end of 1945, and in 1950 the committee covering Australia as a whole was established. A Bill copying the English Act was passed in Western Australia in 1947. One matter in the English Act which is clarified in this Bill is the question of whether liability is limited by contract. The best instance of that I can think of at the moment is when a person buys a ticket to travel on the Commonwealth railways, the liability under the contract ticket being limited to £2,000. It is difficult to imagine a

person travelling in a train contributing to an accident, but he might open a door or do something else while the train is still travelling. The question has arisen in England whether the apportionment should be on the basis of the £2,000 or a total of £5,000, the amount of the damage. That position has been made clear in the Bill.

The Hon. F. T. PERRY—Which is it?

The Hon. C. R. CUDMORE—That a person can get up to the limit of the contract. I draw attention to paragraph (c) of subsection (4) of new section 27a which is as follows:—

If the amount of damages as reduced under paragraph (b) of this subsection exceeds the limit provided for in the contract or enactment or the limit of the jurisdiction of the court the court shall award the maximum amount of damages permitted by the contract, enactment, or limit of the court's jurisdiction.

Clause 4, dealing with the apportionment of liability in cases of contributory negligence, comprises practically the whole of the Bill. Clause 3 relating to insurers and nominal defendants under the Road Traffic Act clears up a small doubt which has arisen under that Act as to whether joint tortfeasors can be brought in and made liable. When a hit-and-run motorist injures someone an insurance company becomes the nominal defendant. There has been doubt as to whether it can be joined in an action. This question has been raised several times. Clause 3, which clears up the matter, is in the following terms:—

An insurer or nominal defendant who has been properly sued under section 70d of the Road Traffic Act, 1934-1950—

(a) for the purposes of this Part shall be deemed to be a tort-feasor in relation to the relevant death or bodily injury if the insured person or (as the case may be) the driver of the motor vehicle the identity of which cannot be ascertained, was a tort-feasor in relation to that death or bodily injury:

(b) for the purposes of section 26 of this Act shall be deemed to be responsible for the damage to the same extent as such insured person or driver would have been held to be responsible if sued.

That is to say the insurance company must legally take the place of the person injured. The Bill is certainly an advance on the present position. The need for it has arisen because the world is moving faster. In the old days it was a question of whether the man who was driving along a road and ran into a donkey on the road could get damages against the owner of the donkey, or whether he should have seen it on the road and pulled his horse

up before hitting it. It was a simple matter in those days, but now with fast moving vehicles it is not so simple, and therefore it is advisable that the law should be altered. I have pleasure in supporting the second reading.

The Hon. E. ANTHONY (Central No. 2)—Can the Minister explain just how damages would be allocated in a case where a Rolls Royce valued at more than £2,000 and a Ford valued at much less collided?

The Hon. C. D. ROWE (Midland)—To answer the question raised by Mr. Anthony, the damages would be apportioned according to the amount of damage to each vehicle. If it cost £100 to repair the Rolls Royce and £50 to repair the Ford, that would be the basis on which the matter would be settled. The original values of the vehicles have nothing to do with it, it is a question of the damages incurred. After hearing the facts contained in the excellent second reading speech by the Minister and Mr. Cudmore there is very little more to be said. However, I draw attention to the fact that various eminent legal men whose names were mentioned in the Minister's speech have given much time voluntarily in preparing this Bill. We are certainly indebted to them and I express my appreciation of their work.

I am always sorry when we have to amend what was the original common law of England, because I think that the more statute laws are passed by Parliament the more complicated our life becomes. When we have to enforce that common law by statute law it generally means there is a falling off in the appreciation of their responsibilities by individual citizens. It does not necessarily apply in this case, because life has become more complicated. The motor car has created problems not known to a previous age, and I am afraid our continual alteration of the Road Traffic Act, whereby people handling those vehicles are finding their responsibilities changed from day to day, is also adding to this confusion. When the Bill is passed it will be a worthy contribution to our law and I hope a tribute to those who have done so much work to enable it to be submitted to this Chamber in its very effective form. I support the second reading.

The Hon. F. T. PERRY (Central No. 2)—The explanations of the Minister, Mr. Cudmore, and Mr. Rowe have elucidated the position for me, and from their comments it would appear that the aim is to do justice to all parties concerned. Time has shown that the

old law is now ineffective and therefore it is time it was revised. On the advice of our own Chief Justice and the panel which evolved the Bill, I am prepared to support it, but should like to know the extent of its operations. From the Attorney-General's remarks it apparently applies mainly to transport. Sea transport was instanced. Is that the limit of its operations?

The Hon. Hon. R. J. Rudall—No.

The Hon. F. T. PERRY—I draw attention to clause 4 which provides:—

“damages” includes any such solatium as mentioned in section 23a or 23b of this Act but does not include any sum payable as compensation pursuant to the Workmen's Compensation Act, 1932-1950.

There was a time when workmen's compensation was limited, but as time went on common law came into it, and a person could claim a greater amount under common law than under the Workmen's Compensation Act. That applies today. Is the Wrongs Act superimposed on that?

The Hon. R. J. Rudall—The Wrongs Act deals with what is called solatia.

The Hon. F. T. PERRY—I was somewhat at a loss to understand the Minister's statement that the Workmen's Compensation Act was not affected.

The Hon. R. J. Rudall—Clause 4 explains the position.

The Hon. F. T. PERRY—I should like the Minister to explain its application when we get into Committee.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—“Apportionment of liability in cases of contributory negligence.”

The Hon. C. R. CUDMORE—I think Mr. Perry wanted to know to what extent an employer is liable in cases of negligence of an employee. The provision concerns an employer whose servant might cause injury to somebody else and makes it clear that he shall be liable for the faults or negligence of his servant.

The Hon. F. T. PERRY—I desire to know to what extent an employer is liable, over and above the Workmen's Compensation Act, in any claim at common law for injury, or whether he is liable under the Wrongs Act. Apparently a person can select which Act will give him the highest compensation.

The Hon. C. R. CUDMORE—I do not think the Bill affects the position or the rights of any person under common law. All it does is to say that if there has been an accident and two persons are involved and injury caused, they should pay in proportion to the damage done. The Bill will not alter the existing state of affairs whereby a man can sue outside the Workmen's Compensation Act.

The Hon. R. J. RUDALL—I find it difficult to follow what is in Mr. Perry's mind. Mr. Cudmore's definition is correct. Workmen's compensation is cut right out by the Bill. Under the Wrongs Act, if a person is killed as a result of negligence his parent or spouse has right of action for payment of solatium, but if he has been negligent, the negligence will be taken into account in assessing the damage which the parent or spouse can obtain.

Clause 4 and title passed. Bill reported without amendment and Committee's report adopted. Read a third time and passed.

ADJOURNMENT.

At 3.40 p.m. the Council adjourned until Tuesday, November 13, at 2 p.m.