LEGISLATIVE COUNCIL.

Wednesday, August 15, 1956.

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

QUESTION.

MURRAY RIVER FLOODS.

The Hon. C. R. STORY—I ask leave to make a short statement with a view to asking a question.

Leave granted.

The Hon. C. R. STORY—In view of the flood situation at Renmark can the Minister of Railways inform me whether the railway bridge connecting Berri and Renmark and the embankment that carries the railway from Paringa to Renmark are in a safe condition? My reason for asking this question is that I feel that if an assurance cannot be given, the population of Renmark should be apprised of the fact in order that the emergency committee can take the necessary action to start an evacuation, perhaps, of the women and children of the district, because these two methods of communication will be the only ones left in operation if the road bridge goes out of action, which could be possible.

The Hon. N. L. JUDE—Regarding the Paringa rail bridge, I would say that the safety element is and will be the first consideration of the Government. I am having a further conference with railway experts this afternoon with regard to the increasing problem of that bridge. The honourable member can rest assured that we are having daily inspections of the rail position, both of the levee and of the bridge itself, and that the committee will be informed immediately if any action is foreseen by the department. It is possible that the shuttle service, and of course the main line service, will have to cease, but at the moment the railway authorities are merely closely concerned, and hope that the next few days will prove the worst and that the position may improve. If it does not, however, I can assure the honourable member that any information will be made immediately available to the committee. The road bridge, where the safety factor is not of similar gravity, is being shored up continually, the decking is being strengthened and every possible effort will be made to keep it in action. Beyond that, it is beyond me to estimate the future, which I know the honourable member would not ask me to do.

CITY OF MARION BY-LAW.

The Hon. E. ANTHONEY (Central No. 2)—I move—

That By-law No. 27 of the Corporation of the City of Marion relating to weight limit on streets made on September 5, 1955, and laid on the table of this Council on May 8, 1956, be disallowed.

The explanation of this motion is short and simple. The Subordinate Legislation Committee thoroughly considered this matter, and it was of the opinion that the action of the Marion District Council in making the by-law was improper, as it discriminated against one person only. The council passed the by-law in an attempt to protect some of its roads against the operation of a 25 ton truck used by Metal Industries Ltd. in Brighton. On behalf of my committee I interviewed the Town Clerk and the manager of the company. The latter agreed quite amicably to take the truck off the road, so the committee felt that the by-law was unnecessary.

The Hon. N. L. JUDE secured the adjournment of the debate.

HIDE AND LEATHER INDUSTRIES LEGISLATION REPEAL BILL.

The Hon. C. D. ROWE (Attorney General), having obtained leave, introduced a Bill for an Act to repeal the Hide and Leather Industries Act, 1948, and the Hide and Leather Industries Act Suspension Act, 1954. Read a first time.

The Hon. C. D. ROWE—I move—

That this Bill be now read a second time.

Its purpose is to repeal the Hide and Leather Industries Act, 1948, and the Hide and Leather Industries Act Suspension Act passed in 1954. The control of the sale of hides in the Commonwealth began during the war, and was conducted under National Security Regulations. In 1948 the scheme ceased to be conducted under those regulations, and was regulated instead by joint legislation passed by the Commonwealth and the States. The scheme continued in operation until August, 1954, when the Commonwealth Government found it desirable to bring the scheme to an end, and passed legislation suspending the operation of the Commonwealth Hide and Leather Industries Act, 1948, except to the extent necessary to enable the Australian Hide and Leather Industries Board to wind up its affairs.

In the circumstances, it became necessary for South Australia to pass similar legislation, and members will recall that this was done in 1954. The board has completed the winding

up of its affairs, and the Commonwealth Parliament has passed legislation repealing the Commonwealth legislation dealing with the marketing of hides. There is now no further purpose in retaining the South Australian legislation on the Statute Book, and this Bill effects the necessary repeals. Members may ask whether there were any surplus assets when the winding up of the board's affairs was completed. The answer is that when the board completed the winding up of its affairs, a sum of approximately £5,000 in cash was left over. The Commonwealth Act provides for this sum to be applied towards any claims outstanding against the board, the cost of any legal proceedings in respect of such claims, and subject to such payments, for the benefit of the hide and leather industries in such manner as the Minister of Commerce and Agriculture shall approve.

The Hon. C. S. BEVAN secured the adjournment of the debate.

LIMITATION OF ACTIONS AND WRONGS ACTS AMENDMENTS BILL.

The Hon. C. D. ROWE (Attorney-General), having obtained leave, introduced a Bill for an Act to amend the Limitation of Actions Act, 1936-1948, and the Wrongs Act, 1936-51. Read a first time.

The Hon. C. D. ROWE—I move—

That this Bill be now read a second time.

Its object is to make some alterations in the law respecting the time within which actions for certain torts must be brought. Honourable members are aware that under our law almost every kind of civil action must be brought within a prescribed period after the cause of action arises. If an action is not commenced within the time allowed the defendant may plead that it is statute-barred and the action cannot proceed. Most of the periods of limitation are fixed by the Limitation of Actions Act 1936, which is a consolidation of a number of old enactments. Under this Act there are three different periods of limitation for actions based on tort. The period for actions for slander is two years, and this Bill does not affect this period. The period for actions for assault, trespass to the person, menace, battery, wounding or imprisonment is three years. For all other forms of action in tort the period is six years.

In recent times there has been a difference of judicial opinion on the question whether actions for personal injuries caused by negligence must be brought within three years or six years. In order to explain how the doubt arose it is necessary to go back into history. From the early days of English law until about 1875 there were two forms of action for torts. One was called an action of trespass, and the other an action of trespass on the case or, more shortly, an action on the case. Trespass was the remedy for direct and forcible injuries. Case was the remedy for wrongs not amounting to trespass. Over the years there has been a judicial difference of opinion as to whether actions for negligently causing damage to persons and property were actions of trespass or actions of case. In 1936 Mr. Justice Cleland, after considering the English authorities, held that an action for negligence causing injuries to the person was an action of trespass and was governed by the three year limitation. The general trend, however, of judicial decisions is that all actions based on negligence are actions on the case and are therefore governed by the six year limitation. Mr. Justice Ligertwood in 1953 and, quite recently, Judge Sanderson have indicated that they hold this view of the law. It is therefore probable that the period of limitation for actions for personal injuries caused by negligence is six years and not three years, as was formerly thought. If the period is six years, the anomaly exists that an action for a wilful trespass to the person must be brought within three years, by reason of section 36 of the Limitation of Actions Act, whereas an action for a negligent trespass must by virtue of section 35 be brought within six years.

In these circumstances it is desirable to remove the doubt about the time for bringing actions for personal injury caused by negligence, and to adopt one rule for all actions based on personal injury whether caused wilfully or negligently. England and Victoria have recently passed laws providing that every action in which damages for personal injuries are claimed must be brought within three years. It is proposed in this Bill to adopt a similar rule. It is desirable to adopt the shorter period because a substantial proportion of the actions for personal injuries affect the liabilities of insurance companies and, indirectly, the premiums which have to be charged for insurance. The longer actions for damages are delayed, the more difficult it becomes for insurance companies to know the amount of their losses.

It might be thought that if the period of limitation for actions for personal injuries is to be three years then the period for all actions in tort should also be reduced to three

years. There is a good deal to be said in favour of consistency in this matter. However, as the general limitation of six years has been in the law a long while and is well known and understood the Government is not now proposing to alter it. In drafting these amendments the opportunity has been taken to delete from the principal Act references to actions of trespass and of trespass on the case, and to refer simply to actions founded on tort.

The other matter dealt with in the Bill is the time for commencing actions under the fatal accidents provisions of the Wrongs Act. By the common law of England no action lay for causing the death of a human being; but by legislation commonly known as Lord Campbell's Act the dependants of a person killed by the wrongful act of another were given a right of action against the wrongdoer. It was provided in Lord Campbell's Act that every such action must be brought within 12 months after the death. From time to time it has happened that through ignorance, poverty or some other cause persons who would be entitled to bring such actions do not commence them within 12 months, and in such cases considerable hardship and loss may result. It is anomalous that an action for injuring a person can be brought at any time within three years after the cause of action, whereas an action for causing the death of a person has to be brought within 12 months. There is no justification for such different rules, and it is proposed in this Bill to amend the fatal accidents provisions (which are now contained in Part II of the Wrongs Act) by substituting a limitation period of three years for the 12 months now prescribed.

The Hon. A. J. SHARD secured the adjournment of the debate.

LAW OF PROPERTY ACT AMENDMENT BILL.

The Hon. C. D. ROWE (Attorney-General), having obtained leave, introduced a Bill for an Act to amend the Law of Property Act, 1936-45. Read a first time.

The Hon. C. D. ROWE—I move—

That this Bill be now read a second time.

The object of this Bill is to cure an anomaly in the rules of equity relating to the exercise of powers of appointment. As some members may not be familiar with the subject of powers of appointment, some preliminary explanation is desirable. A power of appointment is a power to distribute property, and is most usually given by trusts or wills. Thus frequently a husband under his will gives his wife a life interest in his property, and authorizes her by deed or will to appoint the shares which their children will receive at her death. His wife will thus be able to adjust the distribution of his property among their children, having regard to events occurring after his death. The person authorized to exercise a power of appointment is commonly called the "appointor" or "donee of the power" and the persons among whom the property may be appointed are commonly called the "objects" of the power.

Originally, where a person was given power under a settlement to appoint property among several persons, the rules of equity required that, unless the context clearly authorized otherwise, each of the persons should receive a substantial share, or, in other words, should not receive a purely nominal share or be excluded altogether. This rule did not operate satisfactorily, largely because of the difficulty of ascertaining what was a substantial share, and in 1830 an Act, known as Lord St. Leonard's Act, was passed in England, providing that an appointment should be valid, notwithstanding that a purely nominal or illusory share was appointed.

This Act did not go far enough, since it did not provide that an appointment should be valid notwithstanding that any object of the power was altogether excluded. This means that, if the appointor neglected to appoint some amount, however small, to any object of the power, the appointment failed. Accordingly, in 1874 a further Act, Lord Selborne's Act, was passed to enable an object of a power to be altogether excluded except where the instrument creating the power declared the minimum amount which the object was to receive. Lord St. Leonard's Act of 1830 applies in South Australia, but the subsequent Act does not, so that South Australian law is still in the same unsatisfactory state as English law between 1830 and 1874. Thus at present in South Australia, so long as the appointor appoints at least a farthing to every object of the power, the appointment is valid, but if he neglects to appoint at least a farthing to any object, the appointment fails altogether.

From time to time appointments fail in South Australia because an appointor fails to realize that he must appoint at least a nominal share to each object of a power. The present law cannot be justified, and accordingly

the Government has decided to adopt the Act of 1874, thus bringing South Australian law into line with English law on the subject. The Government accordingly is introducing this Bill which, with minor modifications, reproduces the English legislation. The Bill applies to all future appointments and to appointments made by will before the passing of the Bill if the testator dies after the passing of the Bill.

The Hon. K. E. J. BARDOLPH secured the adjournment of the debate.

ROYAL STYLE AND TITLES BILL.

The Hon. C. D. ROWE (Attorney-General), having obtained leave, introduced a Bill for an Act relating to the Style and Titles of Her Majesty Queen Elizabeth the Second. Read a first time.

The Hon. C. D. ROWE—I move—

That this Bill be now read a second time.

Since 1953 there has been some doubt as to the correct method of describing Her Majesty Queen Elizabeth in forms and other legal documents taking effect by virtue of the law of South Australia. The present Bill has been introduced with the object of settling this question. In England the Royal titles are declared by proclamations authorized by Acts of Parliament. Such Acts have been passed from time to time as changes have occurred in the territories under the rule of the Sovereign. For example, alterations in the titles were made in 1927 when Southern Ireland ceased to form part of the United Kingdom, and in 1947 after India had become independent.

Prior to the passing of the Statute of Westminster in 1931 an alteration in the Royal titles operated throughout the whole of the Sovereign's Dominions. This Statute, however, contained a recital the effect of which as regards Australia was that any alteration in the law touching the Royal titles, must receive the assent of the Commonwealth Parliament. In accordance with this principle the Commonwealth Parliament has passed two Acts dealing with the Royal titles, one in 1947 and the other in 1953. The Act of 1947 authorized the omission of the words "Emperor of India" from the Royal titles. By the Act of 1953 the Commonwealth Parliament gave its assent to the adoption by Her Majesty for use in relation to the Commonwealth of Australia of new titles which had been previously agreed on between the Prime Ministers of the British Dominions. Pursuant to this Act the Queen made a proclamation on the advice of the Commonwealth Ministry assuming the title "Elizabeth the Second by the Grace of God of the United Kingdom, Australia and her other realms and territories, Queen, Head of the Commonwealth, Defender of the Faith."

This proclamation is the only indication which we have of the titles by which Her Majesty desires to be know in Australia. It does not seem likely that any proclamations will or can be made declaring a special title for use in each Australian State. The question, however, has been asked whether the title assumed by the Queen on the advice of the Commonwealth Ministry is for use only in connection with Federal matters or whether it should be used in both State and Federal documents.

The new title is substantially different from that which had previously been used in State documents. In the Constitution Act and in other statutory forms and documents the Sovereign has been described by old titles not applicable to modern conditions. It would be unreasonable to continue to describe Her Majesty by these obsolete titles, and the only satisfactory alternative is to adopt the new titles which Her Majesty has proclaimed for use in Australia. However, where forms are prescribed in an Act of Parliament there is always some doubt as to whether they can be altered by administrative or executive action and it is desirable that the South Australian Parliament should now give authority for the use of the new Royal titles in forms and documents prescribed by or used under South Australian Acts of Parliament. It is therefore proposed by this Bill to declare that the titles proclaimed by Her Majesty under the Commonwealth Act in 1953 shall be a sufficient description of Her Majesty in any document operating under or by virtue of South Australian law.

The Hon. K. E. J. BARDOLPH secured the adjournment of the debate.

ADJOURNMENT.

At 2.33 p.m. the Council adjourned until Tuesday, August 21, at 2 p.m.