LEGISLATIVE COUNCIL.

Wednesday, August 17, 1960.

The PRESIDENT (Hon. Sir Walter Duncan) took the Chair at 2.15 p.m. and read prayers.

QUESTION.

VERMIN CONTROL.

The Hon. G. O'H. GILES—I ask leave to explain a question that I asked in a previous session.

Leave granted.

The Hon. G. O'H. GILES—On May 12 last I asked the Attorney-General, representing the Minister of Lands, a question with reference to the appointment of an advisory inspector of vermin to advise and work in with district councils to amalgamate action, particularly in rabbit control. This question was asked in pointing out the wide disparity in the amounts spent on vermin control by various councils and whether the responsibilities under the Vermin Act are being carried out by some councils. Has the Minister an answer today?

The Hon. C. D. ROWE—The question relates to the appointment of a research officer and, I think, an advisory officer for vermin control. It is understood that it would be the duty of the advisory officer, if appointed, to transmit information on the best control measures to district councils and to the Department of Lands, and it would be left to councils to take appropriate action. Applications were called for these two positions in 1958 and although several satisfactory applications were received for the position of Advisory Officer no suitable applications were received for that of Research Officer. In view of this it was decided to make no appointments until the position of Research Officer could be satisfactorily filled. The position of Research Officer (Vermin Control) was again advertised in 1960, but no applications were received. Subject to funds being available during the financial year 1960-61 steps will be taken to re-advertise both these positions.

The Hon. G. O'H. GILES—Would the Advisory Officer—not the Research Officer—be empowered to enforce action at district council level if it is not being taken?

The Hon. C. D. ROWE—I have not before me a statement of what the exact duties and powers of the Advisory Officer would be and I will have to look into the matter further before giving a reply.

MARGARINE ACT AMENDMENT BILL.

The Hon. F. J. CONDON (Leader of the Opposition) obtained leave and introduced a Bill for an Act to amend the Margarine Act, 1939-1956. Read a first time.

MONEY-LENDERS ACT AMENDMENT BILL.

The Hon. Sir LYELL McEWIN (Chief Secretary) obtained leave and introduced a Bill for an Act to amend the Money-lenders Act, 1940. Read a first time.

TRAVELLING STOCK WAYBILLS ACT AMENDMENT BILL.

Read a third time and passed.

COMPULSORY ACQUISITION OF LAND ACT AMENDMENT BILL.

In Committee.

(Continued from August 16. Page 585.)

Clause 3—"Promoters to pay interest in event of delay."

The Hon. C. D. ROWE (Attorney-General)—When we were in Committee yesterday I indicated that I was anxious to get some further information for members and I regret that I have not had an opportunity to do that. Consequently, I ask the Committee to report progress.

Progress reported; Committee to sit again.

EVIDENCE ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from August 16. Page 585.)

The Hon. F. J. CONDON (Leader of the Opposition)—This is a small Bill of a legal character, clause 3 of which amends section 67 of the principal Act and refers to an approach by the Indian Government for some action on the part of the South Australian Government. The Notaries Act of 1952 of India confers on the Government of that country power by administrative act to recognize within India notarial acts lawfully done outside of India if the Government is satisfied that the Indian law or practice in respect of notarial acts is recognized in the other countries. I ask the Attorney-General whether this legislation is to be uniform throughout Australia or whether different State arrangements have been made.

The Hon. C. D. Rowe—I shall supply the honourable member with some information on that point.

The Hon. F. J. CONDON—Certain amendments that are outside the scope of this Bill could well be considered, but that would necessitate an instruction to the Committee. Provision should be made to suppress from publication the names of defendants until such time as they were convicted. Provision should also be made to suppress evidence given on a preliminary hearing when a person was committed for trial or sentence. I am pointing out to the Attorney-General matters that should be in this Bill, but I point out also that it would be necessary to have an instruction to the Committee to do that. I have, on previous occasions when amendments to the Justices Act were being considered, stated that further legislation could be considered. I ask honourable members to consider the case of a defendant who appears in court and reserves his defence. It is reasonable that that person's name should not be published because in many cases the defendant is acquitted when he appears before the Supreme Court. Under the existing legislation his name is published and that point needs consideration.

I know of several cases, and of one in particular, where a man was charged in a sister State with a very minor offence. The press gave full blast to his name and stated that he was charged at Mount Gambier when in fact nothing of the sort had happened. Under ordinary circumstances that defendant's name could not have been published, but the press changed the situation from another State to Mount Gambier. I would like to see legislation passed to protect a person such as that. The Bill seems to have the blessing of those who are in the best position to judge what is right, and I support the second reading.

The Hon. F. J. POTTER (Central No. 2)—I support the second reading of this Bill which I think can have the support, without further question, of all honourable members in this House. It can be described as a fairly innocuous measure dealing with notarial seals and signatures and it has been brought down for a specific purpose, particularly in connection with notarial acts in India. It is a necessary provision and any provision of this nature, which saves a good deal of complicated legal proof in any particular instance, is a good thing. I think we sometimes hedge around this question of proof with too many formalities altogether. Much difficulty is often experienced by practitioners who want to get a document signed in another country and it is difficult enough to get a document signed at all, let alone get it signed correctly and in a form that will be acceptable without further question by our courts in South Australia.

The Bill contains an amendment that will make it easier to facilitate proof of documents which are executed in India and I think it should have the support of every honourable member. If anything I think it is a little limited in its application because the amendment refers to countries which are declared by proclamation to be a place within the Commonwealth of Nations to which this new subsection applies. I am not aware of any legal definition of this phrase "Commonwealth of Nations." I take it that it refers to the British Commonwealth of Nations and, if anything, I think the amendment should have been drawn in a wider form so that it would be possible to make this exemption of proof apply to any country, State or territory declared by proclamation to be a place to which this provision applies, thus deleting the limitation regarding the "Commonwealth of Nations."

The Hon. Sir Frank Perry—Would all countries be reliable?

The Hon. F. J. POTTER—Of course, in law a notarial seal and signature is the internationally recognized method of proof of the due execution of documents. The notary has a seal which he impresses and the seal bears his name and his title, and that is accepted internationally as sufficient proof of the due execution of the document. In this State, of course, documents may be executed by a justice of the peace, by a commissioner for taking affidavits or by a duly authorized person under other special Acts, but once outside South Australia a limited field of official people exists whose signature or whose authority will be accepted without question by our courts. If honourable members look at section 66 of the Evidence Act they will see that in a foreign country such documents may be executed before a British diplomatic consular agent or by any person having authority to administer an oath in that place, and judicial official notice is then taken of the signature and seal of any person having authority in that place.

This is purely a technical matter to make sure that notarial acts in India are accepted by means of this provision without further question. The only query I raise is whether or not the amendment is a little too limited in scope. I support the Bill.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—"Amendment of section 67 of principal Act."

The Hon. C. D. ROWE (Attorney-General)—The honourables Mr. Condon and Sir Frank Perry asked me if similar action would be taken in the other States of the Commonwealth. As I mentioned in my speech on the second reading, the request for this Bill was the result of an approach to the Commonwealth Government by the Government of India. The Commonwealth Government has been in touch with all State Governments and recommended that similar legislation to this should be passed. The desirability for this legislation in South Australia has received the consideration of the Chief Justice, the other judges of the Supreme Court and the Crown Solicitor, and all recommended that it should be proceeded with in this State. I assume that the other States have come to the same conclusion and that they will submit similar legislation.

Clause passed; title passed.

Bill reported without amendment and Committee's report adopted.

MOTOR VEHICLES ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from August 16. Page 585.)

The Hon. S. C. BEVAN (Central No. 1)—Certain sections of the principal Act which was passed last year came into operation on December 22, 1959, and the remainder on April 14 last. This Bill will remove certain anomalies that have appeared in the Act. Clause 4, which amends sections 104, 112, and 130, is worthy of enactment. Section 104 (1) provides that the owner of a motor vehicle shall be insured in respect of all liability as a result of causing the death or the bodily injury of a person. Subsection (2) applies a limitation of £4,000 in respect of any claim made in respect of any passenger carried in a vehicle. Section 104 reads:—

(1) In order to comply with this Part, a policy of insurance shall—

(*a*) be issued by an approved insurer; and

(*b*) except as provided in this section, insure the owner of the motor vehicle mentioned in the policy and any other person who at any time drives that vehicle, whether with or without the consent of the owner, in respect of all liability for negligence which may be incurred by that owner or other person in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle in any part of the Commonwealth.

It will be noticed that the phrase "all liability" is used. Subsection (2) provides:—

A policy of insurance in relation to a motor vehicle shall be deemed to comply with this Part notwithstanding that the liability of the insurer under the policy is limited to £4,000 (including costs) in respect of any claim made by or in respect of any one passenger carried in that vehicle.

Therefore, the insured person is not insured against all liability. This limitation contradicts the provision in subsection (1) (*b*) and does not indemnify the insured person for all liability. The amendment will remove the limitation of £4,000 and give a full cover to the insured for any amount awarded for damages to a passenger. Often damages that are awarded far exceed £4,000. At present, if the owner of the vehicle or the driver fails to meet the additional amount of damages awarded, the person injured in an accident would, under the third party policy, certainly receive the £4,000, but nothing above it. In the event of an amount of £6,000 or even £10,000 damages being awarded, the injured person would be unable to recover any more than the £4,000 and would have to be satisfied with that amount. Under the amendment there will be no limitation in payments and whatever damages are awarded the insurance company under the third party policy will be liable to meet the full amount. Sections 112 and 113 also place a limitation upon the amount payable. The words "subject to any limitations prescribed by the policy of insurance as to the amount in respect of which the insured is indemnified" are used. That would be the liability of the insurance company. These are consequential amendments.

The other amendment relates to section 118, which is amended by inserting after "Where," the first word in subsection (1), the words "after the coming into operation of this section." If we accept the amendment the section will then begin:—

Where, after the coming into operation of this section, an insured person has . . .

The Chief Secretary said that there is a doubt as to whether the provision in the Act has retrospectivity, and I feel that there is a doubt about it. It could perhaps be argued by legal men that there is retrospectivity, but on the other hand they could argue that there is none. The Bill makes it clear that there is none in connection with a claim by a spouse. This matter was discussed at considerable length last year when the Hon. Mrs. Cooper

moved to provide a full coverage for the spouse. The Bill makes it clear that a claim by a spouse can be considered by an insurance company only after the Act begins to operate. As the Bill removes anomalies I support the second reading.

The Hon. F. J. POTTER (Central No. 2)—I support the second reading because both amendments are necessary. Section 118 was included in the legislation last year after much discussion, but there is some doubt about its retrospectivity. I think there would be retrospectivity, but under the Limitation of Actions Act there could not be retrospectivity for more than three years before the legislation operated. When alterations of this kind are made to the law it is not usual to make them retrospective. I do not think the Hon. Mrs. Cooper intended to provide for retrospectivity when she moved her amendment last year, and I do not think any member of this place thought of it. The amendment to Section 118 is a good one.

The other amendment is a good one, too. In these days the many motor vehicles using our roads have caused an increased road toll. Some of the injuries to passengers as a result of collisions on the highways are serious. It may be said that a person had to be very badly hurt before he or she got compensation amounting to £4,000, but in these days the tendency in the courts is for verdicts to be given for increased damages. The verdicts always take into account the change in the value of money. Wages have increased in recent years, and now the wages lost as the result of a motor accident form an important component in the damages awarded. South Australian insurance companies that deal in this sort of insurance are fortunate because damages are not fixed by a jury as they are in the eastern States where the amounts awarded have always indicated great sympathy for the injured person and the jury's knowledge that the person responsible for the accident does not pay the damages from his own pocket.

We would have a ridiculous state of affairs if we had no legislation providing for compulsory third party insurance. We have had it for a long time. The premiums to be paid under compulsory third party insurance are fixed by a statutory committee after examination of the position from time to time. Motorists have to pay the rates approved by the committee, which has done a good job. The committee does not agree automatically to the demands of the insurance companies about premiums but makes a thorough investigation before fixing them. If we want this sort of protection we must pay for it. Insurance, particularly comprehensive motor vehicle insurance, is becoming costly, and by comparison the amounts payable under third party provisions are reasonable indeed. Very many people who are badly hurt can get good verdicts, sometimes approaching £10,000 or even more. There was a recent verdict here of £15,000, and it would be a tragedy if, in these circumstances, nothing more than £4,000, the present limit under the Act, could be recovered. Accordingly, I support the Bill and I can see no danger, indeed only advantage, to people generally in both the proposed amendments.

The Hon. JESSIE COOPER secured the adjournment of the debate.

HIRE-PURCHASE AGREEMENTS BILL.

Adjourned debate on second reading.

(Continued from August 16. Page 588.)

The Hon. C. R. STORY (Midland)—At the outset let me say that I approach this subject with a good deal of mixed feeling. I have spoken previously on the Bill and I want to go on discussing it as impartially as I can, at the same time agreeing with many of the things that have been said both by members and by the Minister when explaining the measure. Before casting a vote on a Bill such as this we must take all the implications into consideration, and have regard to the effects it will have upon the people most concerned, in this case the public who find it necessary to enter into hire-purchase transactions as well as the vendors of the goods involved. It goes quite against my grain to support legislation which interferes with the ordinary rights of the individual. Nevertheless I am old enough to know that it is necessary to provide certain safeguards against exploitation of the people —in this case the people on both sides.

Human nature being what it is I feel that people will always be exploited unless some brake is applied by way of legislation. On the other hand I do not think it possible to protect fools by legislation, and this we should not attempt to do. We should endeavour to give people the opportunity to protect themselves without going to stupid lengths by making it difficult to work with highly restrictive provisions. In normal transactions certain rules are laid down to which we must conform and I believe that we must have legislation dealing with hire-purchase. In the last

10 years it has grown to fantastic proportions. I suppose that if it were discontinued today we would be in complete chaos, not only in industry but in our finances and almost every sphere of activity. It is a way of life that has come upon us. It may have been insidious and come upon us slowly, but it is here and we must learn to live with it.

I have been very fortunate in having the benefit of hearing the speeches already delivered; that of the Minister when explaining the Bill in the first place particularly, and I would like to compliment him and the draftsman upon the manner in which the explanations were given. It is much easier for members to understand the clauses when such care is taken to give them adequate explanations. The Hon. Mr. Potter's speech was very well thought out and he must have put an immense amount of time into marshalling his facts and framing his amendments. Likewise the speeches of the Hon. Mrs. Cooper and the Hon. Mr. Bardolph and yesterday's speech by Sir Arthur Rymill were all of a thoughtful and helpful character. There are two aspects of this Bill on which I am still slightly confused, however. An opportunity will be given for a good deal of debate on this measure and I must confess now that I am not prepared to cast a vote yet, and I will need to hear a good deal more on some of these subjects before I will be prepared to do so.

My first difficulty arises in the provisions contained in the amendment which was introduced in another place requiring both husband and wife to sign any agreement for hire purchase, and my second is in the matter of deposits. In the original Bill as introduced in another place neither of those provisions was made. They were both inserted there and have now come to us for our consideration and we must examine them very carefully because I think they both infringe the rights of the individual, or get very close to doing so. It seems to me that a most important principle is involved in the clause that requires both husband and wife to sign the agreement. I do not know whether it was introduced in another place as a result of the modern trend of thought on the equality of the sexes, equality of wages and so forth, but it would appear to me that this legislation does away with much of the equality we hear so much about. With the normal happy relationship between husband and wife it appears to be absolutely unnecessary to legislate on how they are to conduct their own business in their own home: that is not the province of Parliament but the province of two people living and working together, and I would regard it as a retrograde step to require both to sign an agreement such as this.

I understand that the majority of hire-purchase transactions are contracted between the vendor company and the wife, and this amendment is designed mainly to protect the husband. I do not know how other people run their affairs, but surely the wage-earner has some arrangement with his wife, either on a housekeeping allowance basis or a 50/50 basis on his earnings. A woman who goes out to work, as many do these days, brings something into the house on her own account. She has full access to any child endowment, and may have some private means which she wants to use for the benefit of herself or her children by buying a "Mixmaster" or a polishing machine. She should not have to go cap in hand to her husband, and catch him in the right mood if he is a difficult type, in order to get that appliance for which she has the money. I am still open to conviction if sufficiently good arguments can be put up and sufficient cases of hardship can be shown, but on the moral and spiritual side I do not think it is our province to enter into this field.

The Hon. S. C. Bevan—Who is responsible for paying?

The Hon. C. R. STORY—Under the present law the wife if she has entered into a transaction and signed a contract with a company. The husband is not implicated in any way.

The Hon. A. J. Shard—You had better have another look at that.

The Hon. C. R. STORY—I have had a good look at it and I suggest that the honourable member should take a little legal advice on the matter before he makes his speech. The responsibility rests with the person who enters into the contract and the husband is not, as is sometimes assumed, responsible for the debts of his wife. He may be responsible for paying for such things as groceries, but in the luxury category it will be found that it does not apply. I have never had the colossal ego to be completely right on everything, but I am giving the honourable member the opportunity to study this point before making his speech, for I am sure he will make one as he has been promising us a militant speech for quite a while.

The other clause on which I find some difficulty is in Part VII dealing with deposits. That amendment came to us in a most unusual form last year. It was not even printed and

was waved about with the name of a member in another place on it. However, it is in the Bill now and 10 per cent is the suggested minimum for deposits on hire-purchase transactions. I do not know why the figure of 10 per cent was selected for a deposit but probably it was thought that that was the maximum deposit Parliament would be prepared to stipulate. I might support the principle of a deposit if the figure were high enough. All honourable members know that there are many items which demand a deposit higher than 10 per cent and I think that is a wise provision.

It is easy to talk many farmers into trading in certain machinery, which is still in a reasonable working condition, as a deposit on a much better and brighter implement. The old implement may represent 10 per cent of the purchase price of the new machine. In that case the farmer hands in the old machine and it is used as a deposit and, in due course, is sold by the person from whom the farmer purchased the new implement. That farmer may face two bad years and may not be able to maintain the payments on the machine, though he may have managed quite easily with the old machine without surrendering anything. What happens? His new implement is repossessed and he runs the risk of being sued for the balance outstanding. That man has lost his old machine and eventually has neither a new machine nor an old one.

It is well known that when a minimum deposit is provided on any article that amount, in fact, becomes the maximum deposit. All honourable members know that when coupons were used people bought all that they could buy and used every coupon, but normally they may have managed on much less. Restrictions often cause the demand for goods to increase.

I recently became aware that, in anticipation of Parliament fixing a 10 per cent deposit as the minimum, some smart secondhand motor traders had printed signs ready to meet that situation when it became law. I am not in favour of the principle of 10 per cent deposit and I shall not support that, but I shall listen very carefully to honourable members who have suggestions to make about the previous clause I referred to. I was impressed by some of the Hon. Mr. Potter's amendments, and some amendments proposed by the Government should be fully considered. I hope that I have made clear my thoughts about this Bill. I support the second reading.

The Hon. L. H. DENSLEY secured the adjournment of the debate.

ADJOURNMENT.

At 3.15 p.m. the Council adjourned until Tuesday, August 23, at 2.15 p.m.