

LEGISLATIVE COUNCIL.

Tuesday, August 23, 1960.

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

LAW OF PROPERTY ACT AMENDMENT ACT.

His Excellency the Lieutenant-Governor, by message, intimated his assent to the Act.

QUESTIONS.**BROWN COAL RESOURCES.**

The Hon. F. J. CONDON—On December 15, 1927, a Royal Commission on Manufacturing and Secondary Industries made certain recommendations dealing with brown coal resources and referred to deposits at Inkerman and Clinton. I noticed a press report this morning concerning this matter. Can the Minister of Mines give any further information as to the Government's proposals for developing further coal deposits?

The Hon. Sir LYELL McEWIN—The exploration branch of the Mines Department is continually in search of all minerals and, because of the importance of coal, considerable attention has been given to that commodity. Some boring has been done on the Balaklava deposits and the other two mentioned, and this has been referred to in the latest report of the Mines Department published, I think, in June 1959. The information up to that time was that there were deposits at depth, but they contained considerable moisture and, I think, had a sulphur content which did not make them attractive. However, one of the geologists, Mr. Johnson, did recommend that further work be done in the areas contiguous to those which had been explored in the hope that coal might be obtained at shallower depths. The whole programme of exploration has to be worked within the programme of expenditure and it is the degree of urgency, and perhaps other circumstances, which determine the momentum which is applied in each given direction. That report will be kept in mind and the search will continue just as it does in association with other essential and valuable minerals required for the development of industry.

TORRENS ROAD.

The Hon. F. J. CONDON—One of the busiest roads in the metropolitan area is Torrens Road, which is in a very bad state of repair. Will the Minister representing the

Minister of Roads have the matter taken up with the Highways Commissioner with a view to action being taken immediately to effect repairs?

The Hon. Sir LYELL McEWIN—I will bring the honourable member's question under the notice of the acting Minister of Roads with a view to getting the information he desires.

EVIDENCE ACT AMENDMENT BILL.

Read a third time and passed.

MONEY-LENDERS ACT AMENDMENT BILL.

Second reading.

The Hon. Sir LYELL McEWIN (Chief Secretary)—I move—

That this Bill be now read a second time.

It effects two simple amendments to the Money-lenders Act. Clause 3 amends section 7 which requires a company making an application for a licence to forward a statement showing the names of all the shareholders and their holdings. In the case of a large Australia-wide company such a list compiled at great expense appears to serve no useful purpose. In the first place, by the time it is completed it is no longer correct because the shareholding is changing from day to day, and secondly the document is a very large one and is of no real use to the court hearing the application. When the principal Act was enacted such large Australia-wide companies were not in contemplation and the requirement of section 7 gave rise to no great difficulty. In the New South Wales legislation the requirement is limited to cases where the company has fifty shareholders or less and it is proposed to amend our own Act so to provide.

The second amendment effected by clause 4 is of a technical character. Section 7 of the principal Act provides that a licence is to be obtained from the local court nearest to the place of business or principal place of business of the applicant. There is some doubt concerning the position of a large company formed outside the State but registered in South Australia as a foreign company. Such a company has, of course, a "place of business" in South Australia but in some cases it may have several places of business. It is questionable whether any, and, if so, which, of several places of business is the company's principal place of business. One view is that such a company requires a licence in respect of each place of business. Another is that such

a company requires only one licence, several additional addresses being added to that licence.

Section 10 of the principal Act empowers a local court to approve of such additional authorized addresses on an original licence and the argument is that the local court which issues the original licence may itself approve of additional addresses whether they are within its ordinary jurisdiction or not. This argument leads to the view that only one licence is required however many places of business a company has.

Clause 4 is designed to get over the doubts and difficulties to which I have referred. It will amend section 10 by limiting the power of a local court to approve additional addresses to addresses within that local court's district. The effect of the amendment will be to make it clear that where a company has a number of places of business within the State, some of which are in one local court district and others in other local court districts, the company will be able to obtain licences from all the local courts concerned covering the respective places of business. This would obviate the doubts which have been based on the question whether a foreign company has a "principal" place of business within the State. As I have said, this amendment is purely technical.

The Hon. F. J. CONDON secured the adjournment of the debate.

MOTOR VEHICLES ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from August 17. Page 637.)

The Hon. JESSIE COOPER (Central No. 2)—I support the second reading of this Bill. In particular, I wish to comment briefly on the amendment to section 118 of the principal Act. Honourable members have already heard more detailed explanations given by the Hon. Mr. Potter and the Hon. Mr. Bevan. I will content myself by saying that it has become evident that the way in which the original amendment was worded might have introduced some hardships. Insurance companies could have been sued for moneys for which they could have been unjustly liable. The amendment in the Bill will put the finishing touch to the earlier amendment which has received great commendation since it was agreed to in December of last year.

The following is an extract from the *Australian Law Journal*, dated June 23, 1960,

under *Current Topics* and is headed "An Insurance Gap Closed":—

We note with satisfaction that the first move has been made to fill the gap in motor vehicle third party insurance legislation pointed out in a note at 32 A.L.J. 238, namely, that caused by the doctrine that one spouse is not liable to another for conduct which in ordinary circumstances would create a liability in tort. The prevailing mood of dissatisfaction with this doctrine has been voiced by the Victorian Full Court in *McKinnon v. McKinnon* ((1955) V.L.R. 81, at p. 85): "If a husband or wife is injured as a result of the negligent driving of the other, the injured spouse can recover no damages against the negligent one. A male driver's mother or daughter, or friend or even his mistress can recover damages from him in respect of his negligence, but his wife alone cannot . . . In these days when third party insurance is compulsory, only insurance companies benefit from this extraordinary situation."

South Australia now leads the way with a new s. 118 to the Motor Vehicles Act of that State which came into force on 14th April last. The way in which the problem has been tackled is of sufficient interest to warrant a quotation in full of two of the subsections: "(1) Where an insured person has caused bodily injury by negligence in the use of a motor vehicle to the spouse of such insured person such spouse shall, notwithstanding anything contained in s. 101 of the Law of Property Act 1936 or any rule of the common law relating to the unity of the spouses during marriage, be entitled to obtain by action against the insurer such judgment for damages for such bodily injury as such spouse could have obtained against the insured person if he or she were not married to such insured person. (2) Nothing in this section shall derogate from or limit any right which any spouse would have had at common law or pursuant to s. 101 of the Law of Property Act 1936 if this section had not been enacted." There are also provisions deeming the insurer sued under this section to be a tortfeasor and making the giving of prompt notice to the insurer of particulars of the occurrence and the injury a condition of any such claim.

I feel sure that honourable members must feel very gratified by these words when they remember the support which they gave to the amendment. I have much pleasure in supporting those further amendments.

The Hon. Sir ARTHUR RYMILL secured the adjournment of the debate.

HIRE-PURCHASE AGREEMENTS BILL.

Adjourned debate on second reading.

(Continued from August 17. Page 639.)

The Hon. L. H. DENSLEY (Southern)—The business transacted under hire-purchase over the years has been considerable and as far back as I can remember farmers have

used this system of purchase to a very large degree in securing farm implements and machinery. I have little doubt that it has contributed greatly to better farming and more production. For a long time hire-purchase has served a good purpose. I am sure that many farmers would not have been able to purchase implements and machinery and improve their methods as nearly as rapidly if they had not had access to hire-purchase. It may be said that because farmers have used hire-purchase to such an extent the farming community generally is considered to be in a difficult financial position. Today there is a broader field of hire-purchase and whether it will be of the same great advantage to the community at large as it has been to the farming industry is difficult to forecast.

In recent years, particularly since hire-purchase has come so much into the field, we have had great industrial expansion which has enabled this State, and no doubt other States, to absorb a great number of migrants and find useful employment for them. Without a system of hire-purchase in the sale of their products industries would not have been able to provide the migrants with work. The migrants absorbed by this State have created a growing demand that I hope will continue. It can be said quite unequivocally that the greater demand has resulted in mass production to an extent through hire-purchase never before experienced in this State and that trend has in turn resulted in cheaper commodities. I believe that mass production has largely offset the increased costs of buying under hire-purchase. We know that if we purchase goods under hire-purchase we must pay more for them, but the great advantage of the system is that our standard of living is being lifted during our lifetime. Had it not been for the hire-purchase system we might have gone on saving and perhaps a future generation might have enjoyed our savings but, because the system is now in common use, the present generation is enjoying the result of its work. I think that the hire-purchase system may be accepted as a useful system within our democracy.

The extent to which hire-purchase may be safely used is a matter that has exercised everybody's mind, but it is interesting to note that Savings Bank deposits in this State have substantially grown during the period in which hire-purchase expenditure has been largely increased. It would appear, therefore, that the people have continued to nurse their Savings Bank deposits and even increased them,

at the same time using some of their increased earnings for hire-purchase transactions. While that state of affairs continues I believe that hire-purchase may largely be left to follow the direction in which it is going without much interference.

Hire-purchase naturally increases the cost of goods, but many people, particularly small investors, have found it profitable to invest a portion of their savings in hire-purchase companies which often pay dividends of 7 per cent to 8 per cent. Those investors have in this way been able to enjoy an increased return that they would not have had if their money had all been put into the Savings Banks.

The section of the Bill dealing with agreements is highly desirable. I believe that everybody knew of the extremely small printing that was to be found on old hire-purchase agreements. That printing was so small that few people attempted to read it because it was so difficult to read. It is essential today, when so many people indulge in hire-purchase, that the purchasers should understand fully the nature of the contract into which they are entering. I am pleased that the Government is providing that larger print shall be used on the agreements. I have always believed it is desirable that people buying under hire-purchase should have full knowledge of the contract into which they are entering and I think this Bill provides for that. The contract will show the cash price of the item and the full cost under hire-purchase. It will list the various components of the price, which the purchaser must sign to indicate that he has read the contract before completing it, and this provision, too, is desirable. The statement about insurance and other outgoings that make up the total hire-purchase price should be instructive to hirers, who will see that, in the long run, it is better for them to pay cash if possible. They will be able to see exactly how much more they have to pay if they are not in a position or are not prepared to pay cash. I believe that for these reasons, if for no other, the Bill will be worthwhile.

I am not so happy about the provision that requires both the husband and the wife to sign a hire-purchase agreement because that is a domestic matter. I have recently asked certain people their views on this point and invariably the husbands at first expressed the view that it would be a good idea but, on being asked what their view would be in the case of a husband making a hire-purchase agreement and being obliged to have his wife's signature,

they were not quite so sure that it would be a good idea. It is not hard to persuade people that it is a domestic matter in which Parliament should not interfere. This provision could easily lead to bargaining between the spouses and it could jeopardize the good relationship that exists in many homes. Married couples have many problems to solve that are of much greater importance than what the husband or the wife shall buy and I believe this matter could be left to the husband and wife to solve without interference by Parliament.

I said that this provision could result in bargaining between the husband and wife and this alone could cause an increase in spending that may be undesirable. Many people buy machinery for a business but if they had to consult their wives first they might find that their wives also wished to purchase something and the result under this provision might be that each would make a purchase. I shall be happy if that clause is deleted from the Bill.

Whether or not a minimum deposit of 10 per cent should be provided is a matter that should be determined by the trader and the purchaser. It may be more desirable for a person short of funds to be able to purchase goods without a deposit than for a person with more money. In the final analysis the owner of the goods will protect his own interests under the agreement and the purchaser will sign the agreement having full knowledge of the contract and that should enable them to conclude the matter satisfactorily. I feel that we do not want everyone to pay 10 per cent deposit and nothing different, which could easily be the result of this legislation. Otherwise, everyone would want his implement, car or whatever it may be on hire-purchase for a deposit of 10 per cent. Such an arrangement may not be desirable in financing not only the farm, but also the home. We could quite easily do away with any statutory minimum deposit on hire-purchase. We could safely leave that, and the other matter to which I have referred, for discussion between the seller and the purchaser. That would give greater satisfaction and do away with unnecessary control. Honourable members will have the opportunity to discuss the numerous amendments on the files in Committee. I support the second reading.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—“Summary of proposed hire-purchase transaction to be given to prospective hirer.”

The Hon. F. J. POTTER—I move—

After “signed” at the end of subclause (1) to insert:—“Provided further that if there be more than one prospective hirer it shall be sufficient if the written statement be given to one of such prospective hirers.”

The amendment refers to the notice that has to be given to hirers before a hire-purchase agreement is signed. If there are two or more hirers each, in terms of the clause, must be given—and I emphasize the word “given”—a notice before the hiring takes place. This means that the notice must be served on or handed personally to the proposed hirers. It is not possible under the statute to post that notice. This seems an unnecessary restriction on normal business, where there are two or more prospective hirers, because all would have to be given notice. One such person could sign the hire-purchase agreement on behalf of the others. It is obvious that in the first place the clause was intended to protect the husband or wife from the act of the other party, but in its train it has caught business partnerships. There are many partnerships of two, three or four people, and many farmers have their wives, sons and daughters in partnership. Under the clause as originally drafted all these parties must personally receive a notice under the first schedule before any one of them could sign the hire-purchase agreement. My amendment provides that the notice shall be required to be given to only one of a number of parties who are contemplating entering into a hire-purchase transaction. This means that a senior partner who wants to buy a piece of plant or equipment for his partnership business will be the only one required to get the notice. Taking my own case, if members of my own partnership firm wanted to buy a typewriter on hire-purchase, it would not be necessary for everyone in the firm to be personally served with a notice. One notice would be sufficient. One partner could sign the agreement on behalf of the others, which seems sensible and more in line with business practice.

The Hon. Sir LYELL McEWIN (Chief Secretary)—As I desire further to study the amendment I ask that progress be reported.

Progress reported; Committee to sit again.

ADJOURNMENT.

At 2.55 p.m. the Council adjourned until Wednesday, August 24, at 2.15 p.m.