LEGISLATIVE COUNCIL.

Tuesday, August 28, 1962.

The PRESIDENT (Hon. L. H. Densley) took the Chair at 2.15 p.m. and read prayers.

QUESTIONS.

TEACHING OF CIVICS.

The Hon. K. E. J. BARDOLPH: I ask leave to make a brief statement prior to asking a question.

Leave granted.

The Hon. K. E. J. BARDOLPH: According to recent press reports, a controversy exists regarding the remodelling of our education system to include the subject of civics in the curriculum. A report in yesterday's *Advertiser* indicated that the Minister of Education (Sir Baden Pattinson) favoured civics becoming part of the curriculum of the State education system up to and including Leaving Honours classes. It has been further stated that the Public Examinations Board merely determines the subjects to be undertaken and included in the respective examinations at the request of the schools and the university. Will the Minister, representing the Minister of Education, ask the Government to consider taking up this question of teaching civics up to and including Leaving Honours classes with the Public Examinations Board, the Education Department and the University of Adelaide for the purpose I have mentioned?

The Hon. C. D. ROWE: I shall be pleased to refer that question to my colleague the Minister of Education and suggest that he bring it forward for consideration by the Government.

BOOK SALES.

The Hon. Sir ARTHUR RYMILL: I ask leave to make a brief statement prior to asking a question.

Leave granted.

The Hon. Sir ARTHUR RYMILL: Some two months or so ago I received through the post a book that I had not ordered, but since then I have received several dunning letters asking me for payment for the book. I imagine a number of other people have had a similar experience and although I think I am able to look after myself in relation to the legal aspects of the matter it may well be that other people cannot. A day or two ago I received a letter saying:

We have fulfilled our part of the bargain for the book you ordered by sending you this special publication at a very modest cost. Now we expect you to do your part by sending your payment by return mail.

Of course, I did not send any order for the book at all. As a member of Parliament I receive many books, as we all do, and I did not take much interest in the matter until I received these letters. Can the Attorney-General say whether there is any protection for people against this sort of thing, or can any protection be given to them, because in these days if we send books back or write letters it costs much money? It is not a good principle that people should be imposed upon through the post in this manner.

The Hon. C. D. ROWE: I think I can say that I have received matter of that kind that has been sent to me without request in any shape or form by me. The person who sent it has adopted some means by which he hopes to impose a liability on the receiver by saying that, unless the goods are returned or some reply is sent indicating that it is not proposed to accept the goods, the mere fact that there is no reply implies some legal obligation. From my understanding of the law I do not think any legal obligation has been incurred. I do not think anyone can impose voluntarily an obligation of that sort. I realize, as does the honourable member, the seriousness of people trying to sell their goods on this particular basis. If the honourable member will be good enough to let me have the correspondence he has received I shall be pleased to refer it to the Crown Solicitor to obtain a detailed report on the matter, and then give further information to the Council regarding it. In the meantime, I strongly advise people receiving literature of that kind, in which they are not interested and which they do not desire to keep or purchase, in the first instance to reply indicating that they will have nothing to do with the matter, and, secondly, to do nothing that will in any way involve them in legal obligations.

MINES AND WORKS INSPECTION ACT AMENDMENT BILL.

The Hon. Sir LYELL McEWIN (Minister of Mines) obtained leave and introduced a Bill for an Act to amend the Mines and Works Inspection Act, 1920-1955. Read a first time.

HOSPITALS ACT AMENDMENT BILL.

Read a third time and passed.

REGISTRATION OF DEEDS ACT AMENDMENT BILL.

Read a third time and passed.

SALE OF HUMAN BLOOD BILL.

Read a third time and passed.

MOTOR VEHICLES ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from August 22. Page 625.)

The Hon. S. C. BEVAN (Central No. 1): This Bill amends the Motor Vehicles Act which was first introduced in 1959 and amended in 1961. Certain anomalies in the present legislation require removing, and that is the object of this Bill. Clause 3 amends section 26 of the principal Act by removing subsection (2) and inserting a new subsection. Subsection (1) of section 26 of the Act reads as follows:

Every registration of a motor vehicle shall, unless sooner cancelled, expire at the end of a period of six or twelve months (according to the fee paid), commencing on the date on which it was effected or on the day after the expiration of the previous registration if the same was in the name of the applicant and the application for registration is made not more than 10 days (or with the applicant's consent a longer period) after the expiration of the previous registration.

The first subclause makes provision for the registration to operate from the day of the application or the day following the expiration of the previous registration, provided that the application is in the same name as is the previous registration. Subsection (2) provides:

The Registrar may reduce the duration of registration by not more than 10 days (or with the consent of the applicant for a longer period for registration) without adjusting the registration fee where the date of expiration thereof would otherwise be a date subsequent to 14 days after the date of expiration stated on a Certificate of Insurance lodged with the application for registration pursuant to section 21 of this Act.

One would have to be a Philadelphia lawyer to interpret what that subsection does. To clarify the position, I refer members to section 21, which reads as follows:

The Registrar shall not register a motor vehicle unless when the application for registration is made there is lodged with him a certificate in the prescribed form given by or on behalf of an insurer approved under Part IV of this Act certifying that one or more policies of insurance complying with that Part have been issued by that insurer in relation to the said motor vehicle, and that the insurance provided by those policies will remain in force throughout the period for which registration is applied for and for 14 days after the end of that period.

The purpose of section 21 is to ensure that no vehicle is on the road which is not covered by a current third party insurance policy for the duration of the registration (whether it is six or 12 months) and for 14 days after the last day of the registration of the vehicle. In 1961 the Act was amended to provide for day-to-day registration in place of the previous provision, which was on a monthly basis. If one applied for registration of a vehicle either in the middle or toward the end of a month, the registration would date from the commencement of that month. Today, the registration applies from the date of application. However, the present provision in section 26 (2) does not comply with the intentions of Parliament, and therefore we have this amending legislation.

A person may fail to re-register his vehicle on the date of expiration, but may take out a third party policy on that particular date. If he some days afterwards applied for registration, and it became effective from that date, the third party policy would not be in accordance with the Act, because it would not remain in operation for 14 days after the expiration. Although the Registrar has ensured that no vehicle shall be on the road unless it is covered by a third party policy, in practice it has been found not to comply with Parliament's intention. Hence, we have this amending legislation, which I consider gives effect to the original intention. Subsection (2) of section 26 of the principal Act is amended so as to read as follows:

The Registrar may reduce the duration of registration by not more than 10 days (or with the consent of the applicant for a longer period) without adjusting the fee where the Certificate of Insurance lodged with the application for registration by the applicant would not otherwise be in accordance with the requirements of section 21 of this Act.

As I have already quoted section 21, it seems to me that this clause will give effect to the intention of Parliament and will enable the Registrar to give full effect to it also. Should a person not apply for re-registration in the manner set out, the Registrar may suggest to the applicant that he have the operating date of his third party policy amended so that the policy would apply for the necessary 14 days. A wise provision makes this amendment retrospective to 1961, for this will enable the original intention of Parliament to be carried out.

The next amendment deals with the cancellation of a registration and the destruction of the registration disc. The onus is on the motorist to have the registration disc destroyed by an authorized person who normally is a police officer. This amending legislation enables the owner of the vehicle, after the cancellation of the registration, to drive the vehicle to the place where it is to be kept, stored or shipped, after the disc has been destroyed. It provides a defence to a charge of driving without a label under certain circumstances.

Subsection (1) of section 98a deals with instructors' licences, which are special licences issued to persons with the necessary qualifications to teach others to drive in a correct manner and in accordance with the road traffic laws. Apparently an anomaly has been found in the present legislation regarding police officers who are driving instructors and who, in the course of their duty, give driving instructions to other members of the Police Force. It is considered unnecessary for police instructors under these circumstances to obtain an instructor's licence, and this amendment makes the position clear.

I agree with the Attorney-General that the amendment of section 113 is of the utmost importance. It deals with the right of action against an insurer where the wrongdoer is dead or cannot be served with regard to a third party claim. As I understood the section, it was the intention of Parliament that action against an insurer could be taken where the insured person was dead and was not restricted as to the time of taking that action in accordance with any other Act, except perhaps the Limitation of Actions Act. This provision was enacted in 1934 and embodied in the Road Traffic Act, but in 1959 it was taken out of that Act and inserted in the Motor Vehicles Act. Because of a recent judgment of the High Court regarding similar legislation operating in New South Wales, there is now some doubt whether the Survival of Causes of Action Act, 1940, over-rides section 113 of the Motor Vehicles Act, so that a claim against a deceased person's estate had to be made within six months. If this were the case, considerable hardship would occur because of claims pending, claims not yet heard, and even claims that have been lodged and settled by insurance companies acting on their interpretation of the legislation. It is important to understand the ramifications of the decision of the High Court. I quote from section 4 of the Survival of Causes of Action Act:

> No proceedings shall be maintainable in respect of a cause of action in tort, which by virtue of this Act has survived against the estate of a deceased person unless either—
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> (*a*) proceedings against him in respect of that cause of action were pending at the date of his death; or
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> (*b*) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his executor or administrator took out probate or letters of administration.

This seems to indicate a limitation of time of six months for the commencement of action. If that Act has the effect of doing what the recent High Court judgment in the New South Wales case says it has, then there are a considerable number of claims that could not be heard because of the time limitation, and perhaps many claims which have been met by insurance companies but which did not comply with that Act.

The Hon. F. J. Potter: We do not have to worry about anything that has been settled.

The Hon. S. C. BEVAN: That is the point, but if we know that something has been settled illegally, what do we do then? I do not know. I am not unduly worried about that because I believe this amending legislation will be passed, but the question exercised my mind, because if some action had been taken illegally, some right of redress should be given. I was worried about the likely effect of the ramifications of the Survival of Causes of Action Act. As a layman I do not know the actual position at law, but I would not like to find myself involved where some course of action had been declared illegal. This amending legislation is designed to make the position clear. Considerable argument could be addressed to the question of whether the Survival of Causes of Action Act applied, in these circumstances, to our State legislation but, as the New South Wales legislation dealing with road traffic and motor vehicle registrations is similar to our South Australian laws, it may be held that the same argument applies here and we could find ourselves in a difficult position. People who have cases pending and people who contemplate taking action could be affected. A period of six months may have elapsed from the date of the cause of action, and the right to claim may no longer exist. In addition, a person involved may die—he might be the negligent party—and in that case a widow may suffer if it were held that the position applying here is

similar to the New South Wales position. As I understand the New South Wales decision, the judges of the High Court held that the enactment of the Survival of Causes of Action Act in 1940 enabled a claim to be lodged against an estate, and the section contained in the Road Traffic Act, 1934, had no application. Also, there was no desire to continue the operation of the latter provision, because the 1940 Act adequately provided for claims against estates.

However, this could lead to complications, because the estate may have no assets and, therefore, considerable hardship may be inflicted. I believe that the clause makes the intention plain that the provisions apply retrospectively to 1940. If the defending party had died or could not be found for the service of a claim, the insurer would be liable for damages awarded. The only doubt in my mind concerned the reference to section 70 (*d*) of the Road Traffic Act but, obviously, the position has been investigated and must have been accepted. That Act was superseded in 1959 by the Motor Vehicles Act.

The Hon. F. J. Potter: This clause is partly retrospective.

The Hon. S. C. BEVAN: Yes, and it will operate retrospectively to the time when the relevant sections were written into the Act. I believe that the right of action would be limited to six years. It is possible that claims may have been commenced but not finalized, and they could date back to the commencement of that period. Therefore, it is necessary to have retrospective legislation. That was my only query—whether it was intended that this provision should apply to an Act that had been repealed. I believe that a full investigation has been made into the question and that this amendment is necessary. I have pleasure in supporting the second reading.

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

UNCLAIMED MONEYS ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from August 22. Page 626.)

The Hon. A. J. SHARD (Leader of the Opposition): I support the second reading of this Bill. The amendment may make it easier for companies that are obliged under the Act to pay unclaimed moneys on a given date each year to the Savings Bank of South Australia to the credit of the Treasurer. Clause 3 deletes from section 6 the words "the Savings Bank of S.A. to the credit of", and this will enable the payment of such moneys to be made direct to the Treasurer. Clause 4 brings forward a new aspect. It has been found that, in addition to companies, some people hold unclaimed moneys that should be paid into the Treasury. The clause gives these people the right to pay the moneys direct to the Treasury and for the Treasurer's receipt to be a sufficient discharge to the person paying in the money. The Bill clarifies the position and will overcome the difficulty of the moneys having to go through the Savings Bank, which must necessitate some book work.

The Hon. C. R. STORY secured the adjournment of the debate.

LOCAL COURTS ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from August 22. Page 629.)

The Hon. R. R. WILSON (Northern): The object of this Bill is to increase the limited jurisdiction of local courts from £30 to £100, which has my full support. The legislation is necessary due to the change in money values. The amendments will be greatly appreciated in the country and will relieve magistrates of much travelling and inconvenience. The Hon. Mr. Potter made an interesting speech last week on this Bill. Being a lawyer he spoke mainly on the legal side of the matter, and it was a good contribution. The Hon. Mr. Shard said he proposed to amend clause 4 by deleting "58" and "196". I understand now that he will endeavour to delete only "58", so as to provide a right of appeal now that the limit has been increased to £100. I think his proposal has much merit, and I shall be interested to learn more about it. Mr. Shard referred to country justices of the peace and said:

It is possible for some miscarriage of justice to occur under section 21 of the Act, because, under that section, two justices of the peace are permitted to hear cases and, under the amendments, they will be committed to hear cases involving £100 or less. It is possible in remote country townships, with justices on the bench and with no solicitors concerned, for a decision to be made that could be slightly prejudicial to a defendant, notwithstanding that the justices dealt with the case quite fairly.

I want now to refer to the work done by justices of the peace. According to Webster's *New Twentieth Century Dictionary* "justice of the peace" means an inferior magistrate, subordinate and lower in rank, with the power

to try minor cases and discharge other legal functions. At present South Australia has 4,851 male justices and 216 female, a total of 5,067. Justices preside in 159 suburban and country courts. Of this number stipendiary magistrates visit 63, leaving 96, in general terms, presided over by justices. Excluding Adelaide and Port Adelaide, where justices are not allowed to sit on the bench, there are 91 local courts, 28 of which are presided over by justices. Some courts under the jurisdiction of magistrates are often presided over by justices. Far West Coast courts are visited by a magistrate only when his presence is considered necessary. Ceduna is 494 miles from Adelaide and Streaky Bay 445. The work of justices there saves much travelling and inconvenience for a magistrate.

The Justices Association is setting down cases in 700 to 800 courts a year. The number of cases ranges from 20 to 120 at a sitting. There was an average of 25 cases over 750 courts. In the metropolitan area justices hear 17,500 cases a year. The country, with 130 courts, averages eight cases a month, making 12,500 cases a year. The total of both metropolitan and country cases is about 30,000 a year. In 1961 there were no more than 20 appeals against judgments by justices, and surely this is the best answer to any criticism of them. Forty justices have just completed a course of lectures given by magistrates. Another course commences on September 3. Material from these lectures will be published in a booklet to be available to all justices regardless of where they live. Group lectures in the country will be given by country circuit magistrates at suitable times to be arranged. Further, each of these groups will be provided by the Justices Association with a free copy of Hannan's *Summary Procedure of Justices.* This surely indicates the competence of justices in relation to court duties, and the booklet should further improve their knowledge. The Bill will be of great benefit, and if Mr. Shard's proposed amendment is carried it will provide an adequate right of appeal, because £100 is a considerable sum to many people. I support the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

New clause 3a.

The Hon. F. J. POTTER: I move to insert the following new clause:

3a. Subsection (3) of section 21 of the principal Act is amended by inserting after the word "jurisdiction" second occurring therein, the words "constituted of two justices".

The effect is to retain up to the amount of only £30 the right of the court to be constituted of two justices of the peace. In my speech on the second reading I explained fully the effect of the amendment, which has been submitted to the Parliamentary Draftsman, who is happy with its wording. I have since been spoken to by 10 or 11 people, including two magistrates, and they appear to be in favour of my suggestion.

The Hon. C. D. ROWE (Attorney-General): There appears to be considerable merit in the amendment, but I want to have a look at it from an administrative point of view. Previously the limit in a court of limited jurisdiction was £30 and in any process involving an amount exceeding £30 the case had to be heard in a court of full jurisdiction, over which magistrates normally preside. The amendment will mean that where the amount claimed is between £30 and £100, a magistrate may have to preside. I am not sure how that will fit in with our present number of magistrates and what additional work will be involved. I should like to make further inquiries and therefore ask that the Committee report progress.

Progress reported; Committee to sit again.

ADJOURNMENT.

At 3.11 p.m. the Council adjourned until Wednesday, August 29, at 2.15 p.m.