LEGISLATIVE COUNCIL

Thursday, November 11, 1965.

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

QUESTIONS

TRANSPORT LEGISLATION.

The Hon. R. C. DeGARIS: I ask leave to make a statement prior to asking a question.

Leave granted.

The Hon. R. C. DeGARIS: On Tuesday last, in replying to the second reading debate on the Country Factories Act Amendment Bill, the Minister of Transport said:

I hope that I, together with my Cabinet colleagues, will have the intestinal fortitude to stand up to our Ministerial responsibilities.

Does the Minister of Transport intend going to a meeting in Mount Gambier to explain the ramifications of the new transport Bill to interested people in the South-East?

The Hon. A. F. KNEEBONE: The answer is "No."

LOTTERY.

The Hon. M. B. DAWKINS (on notice): In view of the possibility of the establishment of a State lottery, to be promoted by the State Government "for the benefit of the State;" will the Minister inform the Council—

(1) The estimated cost of establishing the lottery?

(2) How much money is expected to have to be diverted from General Revenue for the continued promotion of the lottery?

(3) If there is any prospect of such a lottery eventually becoming profitable in a small State such as South Australia, or will it be run at the expense of the taxpayers for an indefinite period?

The Hon. A. J. SHARD: Until the referendum is held and it is clear that a majority of the electors desire the establishment of a State lottery, the Government does not propose to undertake any detailed examination of necessary financial proposals to effect its establishment and operation. Accordingly, no answer can be given at present to the question asked.

HOUSING IMPROVEMENT ACT AMENDMENT BILL.

Second reading.

The Hon. A. J. SHARD (Chief Secretary): I move:

That this Bill be now read a second time.

Its purpose is to amend the Housing Improvement Act, 1940-1961, by giving effect to recommendations made by the Chairman of the South Australian Housing Trust. These recommendations have been accepted by the Government as being necessary and desirable for the protection of the tenants of substandard houses. The principal objects of these amendments are—

(*a*) to confer upon the housing authority power to purchase land;

(*b*) to oblige any landlord or his agent who receives rent in respect of a house to which Part VII of the Act applies to give a receipt for such rent;

(*c*) to make it an offence for any person to interfere with the use or enjoyment of the premises by the tenant;

(*d*) to confer power upon the housing authority to direct the landlord to display on a notice or placard in the house the amount of rental fixed by notice issued under Part VII;

(*e*) to give protection to a tenant from eviction when the landlord learns that it is intended to declare the house to be substandard; and

(*f*) to impose a duty on the vendor of a substandard house to disclose that the house is substandard etc. to a prospective purchaser.

I shall now deal with each clause in detail. Clause 3 enacts a new section 16b, which confers upon the housing authority the power to acquire land. The housing authority has no power to acquire land compulsorily. Clause 4 inserts new sections 56c and 56d in the principal Act. New section 56c imposes on the landlord a duty to give receipts for rent. This section corresponds with section 11 of the Excessive Rents Act, 1962. New section 56d makes it an offence to interfere with the tenant's use and enjoyment of the premises, and subclause (2) thereof enables the court to make such order against the landlord as may be necessary to enable the tenant to resume the ordinary use or enjoyment of the premises. This section is modelled on a provision of the Landlord and Tenant (Control of Rents) Act, 1942-1955, which has now expired.

Clause 5 inserts new section 58a in the principal Act, which enables the housing

authority where the rent of part of a house is fixed to require the landlord to display a notice stating the amount of the maximum rent. Subsection (2) of the new section provides for a penalty of £20. Again this section corresponds with a provision of the expired Landlord and Tenant (Control of Rents) Act.

Clause 6 introduces a new section 60a and is designed to protect tenants from being evicted when the landlord learns of the intention of the housing authority to declare a house to be substandard, but before a notice fixing the maximum rental of the house under the Act has come into force. The tenant will not, however, be protected if he fails to pay his rent under the agreement or if the court confirms that a notice to quit is appropriate.

Clause 7 inserts new sections 61a and 61b in the principal Act. New section 61a imposes a duty upon the vendor of giving a notice in writing to the purchaser of a declaration or a notice to declare the house, the subject of the sale, substandard, and if he fails to give such notice the agreement for sale will be voidable at the option of the purchaser.

New section 61b provides for an offence where a house declared to be substandard or about to be so declared is advertised for sale if the advertisement does not make full disclosure of the relevant declaration or service of notice, as the case may be, the maximum penalty being £250. The new section is modelled on an amendment of the Victorian Housing Act inserted in 1961. Clause 8 provides for the repeal of section 62 of the principal Act. This section refers to an Act that has expired.

Clause 8a inserts a new section 70a in the principal Act, and arises from an injustice in the operation of the principal Act to which the attention of the Government has been drawn by the honourable member for Adelaide since the preparation of this Bill. Where the Housing Trust proposes to declare a house to be substandard it will, if so requested by the owner, supply a list of deficiencies making the house substandard. The owner may often, pursuant to the tenancy agreement, require the tenant to remedy the deficiencies. If this is done, any declaration by the trust will be revoked, but there is nothing to prevent the owner from thereupon evicting the tenant. New section 70a is designed to afford some protection to the tenant in this situation by providing that the owner shall not be able to require the tenant to remedy the deficiencies or to pay the cost thereof notwithstanding the terms of any agreement between them. By subsection (2) of this section, an offence is created for any person whether as principal or agent or in any other capacity to make it a condition of the grant, renewal or continuance of a tenancy that the tenant of the house shall do any act or execute any such works. The penalty is laid down in the general penalty provision of the Act, that is, section 73.

Clause 9 amends section 73, which is the general penalty provision, by increasing the maximum penalties therein provided from £20 to £2 a day in the case of a continuing offence to £50 and £5, respectively. The present penalties were fixed in 1940 and are now considered inadequate. Clause 10 enacts a new section 84a, which provides that any contract or arrangement to evade the Act should be void. The new section is modelled on section 14 of the Excessive Rents Act. I commend this Bill for consideration by honourable members.

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

DISTINGUISHED VISITORS.

The PRESIDENT: I notice in the gallery two distinguished visitors from the Mauritius Legislative Council, the Hon. J. H. Ythier (a Member), and Mr. G. T. d'Espaignet (the Clerk). I know it will be the unanimous wish of honourable members that they be accommodated in seats on the floor of the Council. I would ask the Chief Secretary and the Leader of the Opposition to escort our visitors to seats on the floor of the Council.

The Hon. J. H. Ythier and Mr. G. T. d'Espaignet were escorted by the Chief Secretary and the Leader of the Opposition to seats on the floor of the Council.

INHERITANCE (FAMILY PROVISION) BILL.

Adjourned debate on second reading.

(Continued from November 10. Page 2699.)

The Hon. H. K. KEMP (Southern): I speak to this Bill with some apprehension. I should like to support it but feel it cannot have my support because it confronts us with one of the really difficult problems in agriculture—the maintaining of an agricultural unit in production when the death of the farmer has occurred. Necessarily, this is a difficult period, because farming is essentially a personal business and so much rests on the man himself. After his death, it is most important that the farm should be restored to stability as quickly as possible. Even under our present legislation there is often a long delay of a year or two, or even more,

before all the business of the estate that belonged to the farmer can be finally settled. I am afraid that this Bill will inevitably increase that length of time. I do not wish to cover ground that has been so ably covered by previous speakers here but I do not think this aspect of the Bill has been put before the Council. I think it should be underlined, because the inevitable effect of the Bill must be to delay the clearance of estates and complicate the clearance of them, which, in agriculture is indeed a serious matter.

There is another disadvantage that can be seen in many of our older agricultural areas. It is beginning to be seen in the Adelaide Hills area, with which I am familiar. I refer to the schism of estates, the separation of a production unit that was originally sufficient to maintain an economic unit. There is the breaking of such a unit into sub-economic units by parcelling it out amongst inheritors.

Such action is seen in France under the liberal legislation existing there. The inheritance of the children has led to estates being cut and cut again until a tremendous amount of the French population is in possession of sub-economic living areas. Such a thing can be seen in parts of the Adelaide Hills today where sons are trying to subdivide the areas on which their parents existed. Instead of having larger and larger units to offset increased labour and other costs in agriculture, we are beginning to see smaller and smaller units with lower and lower standards of income.

This is a serious matter, and the widening of the rights of inheritance, covered by clause 8, must make the position more difficult. I do not think there is any need for me to say more about the extremely wide inheritances permitted by relationships that are beyond normal consideration. I have not heard of an injustice being done under our present legislation that could not be corrected by the court, which today is given wide discretionary powers to allow a surprising amount of latitude in the distribution of estates brought before it.

While this Bill has been before us we have been making stringent inquiries into the matter. Not one instance of injustice that has not been corrected has been brought to our notice, and in this regard many people have been making inquiries. Clause 7 increases the time for claims from six to 12 months, and I ask the Chief Secretary whether this is really necessary. Apart from the complication that arises under clause 5, the increase in the period for claims doubles the delay that could well occur. There is no need to emphasize to honourable members the urgent need to have estates cleared as quickly as possible, particularly in agriculture. Clause 11 is not clear to me. It says:

> Where the court has ordered periodic payments, or has ordered a lump sum to be invested for the benefit of any person, it shall have power to inquire whether at any subsequent date the party benefited by the order has otherwise become possessed of or entitled to provisions for his proper maintenance, education, and advancement, and into the adequacy of such provision, and may discharge, vary, or suspend the order, or make such other order as is just in the circumstances.

As I understand it, once probate has been granted and the estate has been discharged, while the party benefited is still a minor the court will have the right to inquire to see that everything is being done properly. In other words, an estate may be open for 19 years until the person attains the age of 21. That seems to go beyond a fair thing. If an estate has been closed and people are farming the property, for example, a provision such as this would be unworkable, as I understand farming.

I do not know what clause 14 (*b*) means. The clause provides that, for the purpose of apportioning the duty payable on the estate of a deceased person, any provision made under the legislation by an order of the court shall be deemed to be a bequest made by the deceased person. Paragraph (*b*) reads:

> if he died intestate, by a will executed immediately before his death,

I have always understood that to die intestate is to die without having made a will. It is certain that I shall be able to support the Bill only if clear answers are given to my inquiries.

The Hon. M. B. DAWKINS secured the adjournment of the debate.

COMPANIES ACT AMENDMENT BILL.

(Second reading debate adjourned on November 10. Page 2711.)

Bill read a second time and taken through its remaining stages.

CATTLE COMPENSATION ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from November 10. Page 2704.)

The Hon. L. R. HART (Midland): The Cattle Compensation Act came into being in 1939 but before that time vendors paid a levy of 10s. a head to compensate purchasers in

the event of carcasses being condemned on account of their having disease. However, this fund did not provide for compensation for owners who had animals condemned as diseased under the Stock and Poultry Diseases Act. In 1939 the Cattle Compensation Act provided for compensation to be paid, both in the case of carcasses condemned after slaughter and in the case of animals condemned and ordered to be destroyed at any time because they had or were suspected of having one of the proclaimed diseases. The fund is financed by way of a stamp duty collected on sales of all cattle. It has gradually accumulated over the years and the last Auditor-General's Report shows that it stood at £127,610. For the year 1964-65, £15,802 was collected and credited to it, and that £7,539 was paid out on 228 condemned cattle, the main reason for their being condemned being that they had tuberculosis. It is readily seen that the fund is gradually accumulating and, as a substantial amount is already in hand and as the incidence of disease has been reduced, there is little need continually to add to it at the present rate. Clause 5 sets out to reduce the amount of staup duty payable on cattle sold, and in doing so it also facilitates the introduction of decimal currency in relation to the fees payable under the Act.

Possibly one of the main reasons why the incidence of disease is being steadily, or one may even say substantially, reduced is the success of the scheme introduced by officers of the Agriculture Department of isolating cattle from areas where disease is known to exist. In 1934-35 a scheme was brought into operation controlling the movement of all cattle entering that part of South Australia below Quorn, and in 1955-56 agreement was reached with the Northern Territory Administration on the control of all cattle from Central Australia entering South Australia from a line somewhere below Tennant Creek and from west of a line running north of Port Augusta. Cattle from the controlled area could be brought to Adelaide but could be sold only in special isolation yards provided at the Gepps Cross abattoirs.

A national committee on pleuro-pneumonia has been set up with a fund to control this disease in northern Australia, and it has achieved such success that pleuro-pneumonia has been practically eliminated, except in isolated areas in the north-west of Western Australia. At present any cattle entering from declared areas is, after a negative blood test, allowed free movement in South Australia. This has been of particular benefit, as it has permitted cattle from the drought-stricken areas to enter South Australia and be taken to those areas where there is sufficient pasture to carry them on. In fact, in the last 12 months 9,640 cattle have entered South Australia from Queensland alone. These cattle probably went to the South-East or other areas in this State where there was sufficient feed for them to be fattened. Although the owners of cattle slaughtered for sale and condemned for compensable diseases are entitled to compensation, they do not pay any stamp duty, and clauses 3 and 4 set out to make the necessary provisions requiring the payment of stamp duty on carcasses offered for sale, thus bringing this Act into line with the Swine Compensation Act. The reason why this has become necessary is that a producer-owned meat market known as Nelsons and Producers Meat Markets (S.A.) Ltd. has been set up. This market offers carcasses for sale on the hook and producers who supply cattle to it do not, under the principal Act, pay stamp duty. Clauses 3 and 4, however, provide that they shall pay.

Over the years amendments to the principal Act have tended to bring it into line with the Swine Compensation Act and, in fact, there is very little difference between the two Acts at present, except, I understand, that in the Swine Compensation Act provision is made for certain of the funds to be used for research into the prevention and control of disease. It may be said that this should apply also to the Cattle Compensation Act, but when one looks into this matter one finds that research into the cattle industry is financed by a levy on all cattle slaughtered for human consumption. This levy, which is known as the cattle and beef research levy, is controlled by the Cattle and Beef Research Committee, and is 2s. for every beast weighing over 200 lb. slaughtered for human consumption. This State is fortunate in having Mr. John Kerin as its representative on the committee.

The money in the cattle compensation fund is held by the Treasurer in a trust account. It is listed with several other accounts in section B of statement H in the Auditor-General's Report, in which appears the following statement:

The balances listed below represent amounts held by the Treasurer on behalf of the Commonwealth Government and other bodies and upon which no interest is paid.

However, the Swine Compensation Act fund is held by the Treasurer in another trust account on behalf of various bodies, and interest is paid on that money. I believe honourable members are entitled to an explanation by the Minister on why one fund earns interest and the other does not. I appreciate that this has been going on for several years and is not a new matter, but a very good reason should be given why the two funds are not in the same account. After all, the cattle compensation fund has over £127,000 in credit, and it is being held in a trust account that bears no interest, so the Treasurer is having the benefit of this money free of interest. I believe the Minister should indicate why this is so, and give a good reason why it should continue. .

The Hon. S. C. Bevan: You should ask the previous Minister: he should be able to tell you.

The Hon. L. R. HART: I would have done so if I had realized that this was the position. However, it has come to light only since I have made investigations.

The Hon. C. R. Story: I do not think the Act has been opened up for some years.

The Hon. L. R. HART: There might have been a reason for this when the Act was put into operation, but attempts have been made over the years to bring the Act into line with the Swine Compensation Act, and there is little difference between the functions of the two Acts at present. The question whether the Cattle Compensation Fund should not be in a trust account bearing interest should be looked into. After all, as I understand it, the Government has never provided any funds for it; they have been provided by the cattle producers. Therefore, an explanation is owing to this Council. However, the Bill in itself is fairly straightforward and I have much pleasure in supporting the second reading.

The Hon. M. B. DAWKINS secured the adjournment of the debate.

ARCHITECTS ACT AMENDMENT BILL.

Returned from the House of Assembly without amendment.

JURIES ACT AMENDMENT BILL.

The House of Assembly intimated that it had agreed to the recommendations of the conference.

AGED AND INFIRM PERSONS' PROPERTY ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from November 10. Page 2708.)

The Hon. F. J. POTTER (Central No. 2): I support the second reading of this Bill, which makes a valuable procedural amendment to the principal Act, which has worked well for a number of years and provides opportunity for the appointment of a manager of a person's estate where that person is so aged or infirm as to be incapable of managing his or her own affairs. The Act provides machinery making it possible for the Public Trustee to be appointed the manager of such a person's estate; or, indeed, an outside person, if so requested, may be made a trustee, although it is rare for this to happen because of the amount of trouble that has to be taken by an outside trustee in furnishing returns from time to time. As a result of this, in practice it is quite common that, if a manager of a person's estate is to be appointed, the Public Trustee is asked to act.

There are, of course, in our community a number of aged and infirm people incapable of managing their own affairs; there are, too, a number of people in this category who are got at by other people in various direct or subtle ways. Every legal practitioner in the course of his experience would have run into one or more of these problems from time to time; they are difficult to deal with. Often, relatives are reluctant to interfere in cases where it means that somebody else will step in and take over the property affairs of an elderly person. Of course, there are many people in this State who have no relatives anyway, so they are subject to all sorts of pressures by strangers.

As a matter of practice, it has been found (and I have experienced this difficulty myself) that, when any applications are made to the court to have a manager appointed to manage the affairs of an elderly person, sometimes the court has difficulty in deciding whether or not the order should be made. Obviously, one of the first things that a judge requires is some sort of medical certificate. This has to be obtained. Largely, that and other extraneous facts set out in affidavits supporting the application by an interested party (a relative or otherwise) have to be prepared and, to some extent, the court is in many cases left in doubt whether the order should or should not be made. Now, under this Bill, some procedure will be set up that

will greatly assist the court in determining whether or not a certain case is an appropriate one in which to make an order. It is provided in this Bill that the court may refer the matter to the Director of Social Welfare for a report. That report may be furnished to the Minister and to the court, and the court may consider it in making up its mind about an application in any case.

The Hon. Sir Lyell McEwin: It would also be of help to the person concerned.

The Hon. F. J. POTTER: It could be of assistance to the person and to the relative asking the court to make such an order. Often, there are many extraneous circumstances that could be effectively put down in such a report that are not capable of easy proof in an affidavit. As the Minister has said, this amendment to the principal Act is complementary to provisions that have been inserted in the Maintenance Act Amendment Bill currently before this Council. In other words, this amendment provides for the court to refer the matter to the Director of Social Welfare for a report. The Maintenance Act Amendment Bill gives power to the Director of Social Welfare actually to undertake the work. So, in a real sense, these two Bills are complementary. All in all, it is a good amending Bill, which will assist the administration of the Act. To a large extent, it fills a gap in the present legislation. I support the second reading.

Bill read a second time and taken through Committee without amendment. Committee's report adopted.

ADJOURNMENT.

At 3.5 p.m. the Council adjourned until Tuesday, November 16, at 2.15 p.m.