

## LEGISLATIVE COUNCIL

Wednesday, August 21, 1968

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

### PETITION: CIVIL RIGHTS

The Hon. Sir ARTHUR RYMILL presented a petition from Hinton Demolitions Proprietary Limited, of Enfield, alleging (1) that the Motor Vehicles Act Amendment Bill, the Road Maintenance (Contribution) Act Amendment Bill and the Acts Interpretation Act Amendment Bill would affect the rights of the petitioner heretofore established by a decision of the Full Court of the Supreme Court of South Australia inasmuch as a portion of the projected legislation was retrospective; and (2) that the effect of such projected legislation was to reverse by Statute the decision of the Full Court of the Supreme Court of South Australia and to deny the right of a subject's civil remedy for the recovery of moneys unlawfully paid, which moneys had been claimed in a number of actions instituted in the said Supreme Court.

Received and read.

### QUESTIONS

#### SHOW WEEK

The Hon. A. J. SHARD: I understand that the Government intends having a recess for show week. Some honourable members have told me that they are not sure of the exact days when it is proposed we shall go into recess and when we shall return. To assist them, can the Chief Secretary tell the Council the relevant dates?

The Hon. R. C. DeGARIS: I am not quite sure of the dates, but I shall ascertain them for the honourable member.

#### TRIMARAN VOYAGE

The Hon. L. R. HART: I ask leave to make a short statement prior to asking a question of the Minister of Local Government representing the Attorney-General.

Leave granted.

The Hon. L. R. HART: On page 30 of the *Advertiser* of July 24 there appeared the following advertisement:

Crew wanted, trimaran under construction, 53ft. x 27ft. beam. Master built, sleeps 14, large saloon and galley. Complete covered-in wheelhouse, two showers, two toilets. Must be seen to be appreciated. Wants proposition for completing in partnership or will sell. Will

take individuals as part owners. Have in mind charter work in West Indies and South Seas. Ring 49 8872. Principals only.

In answer to this advertisement, a friend of mine interviewed the person responsible for it, who informed my friend that he was an opal miner and wanted a crew of 14 to sail around the world. Each crew member was to pay \$3,000 and, in addition, to work his way with the vessel. The opal miner said he had a friend in the West Indies and that he could obtain charter work there and, consequently, could guarantee a profit of \$100,000, which would be divided among the crew. As several unsatisfactory features appear to be involved in this proposition, particularly regarding the crew's safety during the voyage around the world in this 12½-ton trimaran and regarding protection in respect of the guaranteed profit, will the Minister ask the Attorney-General whether the guarantee of profit is valid for any person attracted by the advertisement who seeks to enter into this partnership?

The Hon. C. M. HILL: I shall be pleased to confer with my colleague, and I shall be particularly pleased to give him the task of following up this matter.

#### CLARENDON RATES

The Hon. H. K. KEMP: My question relates to the road moiety charges being levied by the Meadows District Council on Clarendon ratepayers. The accounts for these charges, after 12 months or more, have been placed in a collector's hands. It has been brought to my attention that at least in some cases the charges cannot be met by the ratepayers without their selling the holdings from which they derive their income. In one case a pensioner widow is faced with a charge of \$850, which has to be met from her total annual income of less than \$700. The owner of a small farm purchased about four years ago for \$4,000 faces a charge of \$1,600.

The PRESIDENT: The honourable member is making an explanation; he should seek leave before he does this.

The Hon. H. K. KEMP: I have asked portion of the question and I am now explaining the second part.

The Hon. C. M. HILL: I shall obtain a full report on the matter raised by the honourable member as soon as possible.

The Hon. H. K. KEMP: Mr. President, I take it that I may continue my question to the Minister of Local Government. Will the Minister go into this position and determine

whether it is the case that there is no other course open to the council that will not endanger its finances, and can he do so before this matter goes any further?

The Hon. C. M. HILL: I said I would get a full reply, and I intended that that reply would include the matter the honourable member has now raised. As regards giving any assurance on time, I can only say that I will treat the matter as urgent and obtain this report as quickly as possible.

#### FROZEN CHICKENS

The Hon. JESSIE COOPER: Can the Minister of Agriculture say whether the Government has considered introducing legislation to regulate the water content of frozen chickens?

The Hon. C. R. STORY: This very important matter concerns not only South Australian housewives but the whole poultry industry. Actually, I think that at this stage all sections of the industry genuinely desire to do something about the water content of frozen chickens. I attended a meeting in Sydney last Friday, at which this and a number of other matters dealing with the chicken meat industry were discussed. At the moment South Australia has prepared draft legislation, and it is hoped that the other States will join with us in this respect so that there can be uniform legislation throughout the Commonwealth. I would be prepared to introduce legislation to this Parliament at any time, and I am sure that the Government would back this approach.

At the moment the National Health and Medical Research Council is examining our proposed legislation, which may well form the guide lines for legislation for the rest of the Commonwealth. However, there is a variance of opinion whether the tests should be done by a water uptake method or by a thaw test method. South Australia has held firmly that the fairest and the proper way to do it is on a water uptake test at the point of processing. This would mean that we would probably settle for a moisture uptake of about 8 per cent, whereas some States would like to have established the thaw method, where there would be about 5 per cent when thawed. However, net results would be much the same.

This matter will probably be finally decided by the Agricultural Council, which will meet in Tasmania next February. I can say that the heat is now on (if I may put it in that way) because all processors are conscious that the public is annoyed at having to pay a lot for water, and they have done something about putting their own houses in order. However,

it is desirable that we have uniform legislation, but I would have no hesitation in recommending that legislation be promulgated in this State if the position were to revert to that of six or eight months ago.

#### NORTH ADELAIDE SHUNTING

The Hon. D. H. L. BANFIELD: I seek leave to make a short statement prior to asking a question of the Minister of Transport.

Leave granted.

The Hon. D. H. L. BANFIELD: A person living at Bowden has taken up with me a question regarding the shunting that commences at the North Adelaide railway station between 3 a.m. and 4 a.m. every Monday to Friday. This person has a 5½-year-old boy who is under the care of a doctor because of a nervous complaint, and with the early start of the shunting next door the child is disturbed every morning. This, in turn, means that the mother has to get up and pacify him, with the result that she is now on the verge of a nervous breakdown. Will the Minister of Transport look into the possibility of arranging for the shunting to start at a later hour? I believe that the first lot of shunting is now done at North Adelaide, and that the trains then go back to Mile End before going on to Dry Creek. If it was not possible to eliminate the three o'clock start to shunting, perhaps it could be commenced at the other end for a short period to enable these people to recover their health.

The Hon. C. M. HILL: I will have a close look at the matter and let the honourable member know as quickly as possible.

#### YORKETOWN AREA SCHOOL

The Hon. M. B. DAWKINS: Recently I asked the Minister of Local Government, representing the Minister of Education, a question regarding extensions to the Yorketown Area School. Has the Minister a reply?

The Hon. C. M. HILL: Planning on repair and maintenance to the school buildings at the Yorketown Area School estimated to cost about \$20,000, maintenance of paved surfaces, additional paving and drainage of the school yard estimated to cost about \$27,000, and the erection of a new toilet block for infants estimated to cost about \$7,000, is proceeding. The Public Buildings Department expects to be in a position to call public tenders for this work during the present financial year. The Director of the department states that it is expected that funds will be available to enable

tenders to be called for each of these proposed works following the completion of tender documents.

#### PROFESSOR RICHARDSON

The Hon. A. J. SHARD: I give notice that on Tuesday, August 27, I will ask the Minister of Local Government, representing the Minister of Education, the following questions:

1. Has Professor J. A. Richardson been granted leave from his duties at the Flinders University to travel overseas;
2. How long has Professor Richardson been employed by this university;
3. Does he intend to visit Soviet Russia and Communist China in the course of his visit;
4. What is the purpose of his visit;
5. Is his salary being paid during his absence;
6. Has he given any undertaking, either verbally or in writing, that upon his return he will address public meetings and give a public account of his experiences; and
7. What part of his expenses are being met by Soviet Russia or, failing that, what facilities are being provided to him by Soviet Russia during his tour?

The PRESIDENT: Order! The honourable member is seeking to ask questions that have been asked on two previous occasions, which I recollect. I noticed on perusing *Hansard* this morning that the Minister had given a reply yesterday. The Minister is not obliged to reply to a question, any more than is an honourable member to ask a question which he has placed upon the Notice Paper. If the Minister's reply yesterday was not satisfactory, that was the time that the honourable member should have raised a supplementary question. In view of the circumstances and of the procedures of Parliament, I am unable to permit the question that the honourable member seeks to place on the Notice Paper.

The Hon. A. J. SHARD: Mr. President, I do not want to quarrel over this matter, nor do I refuse to accept your ruling. However, for my guidance and for the guidance of other honourable members, could I be told under what Standing Order my request is refused?

The PRESIDENT: I can give the honourable member the appropriate Standing Order. However, I do not know that I am obliged to quote Standing Orders, for at the present time I am giving a ruling. The honourable member can take what steps he desires on that matter,

but the procedure is definitely laid down in Erskine May's *Parliamentary Practice*—and I can easily get the references.

The Hon. A. J. SHARD: If the Minister refuses to answer my question, that is all right.

The Hon. C. M. Hill: No, he does not refuse. I gave you an answer.

The Hon. A. J. SHARD: You did not answer any one of the questions. You did not tell the truth there.

The PRESIDENT: Order! Call on the business of the day.

The Hon. C. M. HILL: Mr. President, I take a point of order. The Leader just said, "You did not tell the truth." I take exception to that, because on all matters in regard to this question that we have been discussing I have told the truth. I ask the Leader to withdraw his accusation.

The Hon. A. J. SHARD: The question I asked yesterday was replied to. However, I was promised the reply that the Hon. Mr. Kemp would have got to his questions.

The PRESIDENT: Order! The honourable member cannot debate the question. Objection has been taken to the honourable member's use of certain words. Does he withdraw those words?

The Hon. A. J. SHARD: No, Sir, I do not. What I said was the truth, and I will stick to it.

The PRESIDENT: Does the honourable member persist in that attitude?

The Hon. A. J. SHARD: I do not think what I got yesterday was the answer that was taken away previously by the Minister. Mr. President, on reflection, I think I may have said something out of place. If the words "You did not tell the truth" are out of order, I will withdraw them and attack the matter in another way, because I think I am justified in taking the stand I have taken. I did not mean to imply that anything was untrue. However, I am not satisfied that I got the answer I was promised.

The PRESIDENT: I point out that Standing Order No. 208 requires that an unqualified withdrawal and apology must take place when objection has been taken to the use of certain words. The honourable member has not given an unqualified withdrawal.

The Hon. A. J. SHARD: I was wrong, possibly, in saying that the Minister was stating an untruth in the Council. If that is offensive, I apologize for that, Mr. President.

### NURSES REGISTRATION ACT AMENDMENT BILL

Read a third time and passed.

### MOTOR VEHICLES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from August 20. Page 684.)

The Hon. S. C. BEVAN (Central No. 1): I support the second reading of this Bill, but with some reservations. I was surprised that this Bill, along with other Bills coming under the jurisdiction of the Minister of Transport, was introduced in another place before coming to this Council. In the true sense of the word, it is not a money Bill. If it was, one could appreciate the fact that it was introduced in another place before being debated here. I do not know whether this is an attempt to give the general public the impression that this Council is purely and simply a House of Review or whether the Government has not sufficient confidence in its own Minister to allow him to introduce his Bills into this Chamber, which I think is the proper place for them to be introduced. A Bill should be introduced in the House where the Minister in charge of it sits, so as not to place him in the position of being more or less a secondhand agent for his own Bill, for which he is responsible to Parliament.

This Bill, though not long, is important. It flows from an action taken successfully in the courts by an operator against the principal Act in relation to the powers, and the delegation of those powers, of the Registrar of Motor Vehicles. In that case the Government was unsuccessful, and the purpose of this amending legislation is to remove an anomaly in the Act concerning the Registrar. A clause causing not only me but many other people great concern is that dealing with retrospectivity. Its phraseology is wide and, if it is passed in this Council, it will have the retrospective effect of validating actions taken by an officer other than the Registrar of Motor Vehicles who has delegated his powers to that particular officer in respect of the Motor Vehicles Act, which in this instance relates to the Road Maintenance Act. This is not an easy question to determine. For instance, if this legislation had no retrospective effect, it would certainly invalidate previous payments by transport operators and could lead to claims amounting to about \$4,000,000, which it is claimed has been collected by the Government as road maintenance charges.

I believe this move is already afoot and will proceed if this legislation is defeated. I understand that transport operators are already primed to take court action against the Government for the recovery of the \$4,000,000 that has been paid in road maintenance charges. In view of the present phraseology of the provision, we must consider this aspect of the matter. About 500 cases of breaches of the Road Maintenance Act still await decision in the courts; they have not yet been completed. Here again I understand that, over and above the \$4,000,000 that I have already mentioned, there is a further sum of about \$90,000 in payments under the Road Maintenance Act, so it appears absolutely necessary that retrospective provisions be inserted in the principal Act. I am now led to believe (I had information to this effect only this morning) that the court decision applies only to re-assessments of vehicles done by an officer of the Motor Vehicles Department and not by the Registrar where the original assessment had been done by the Registrar himself. I am given to understand that this has been the procedure with assessments and with the Road Maintenance Act in respect of the tare weight of the vehicle, and that all the original assessments have been done by the Registrar himself. If this is correct, it throws a different light on the matter in relation to the retrospectivity provision in this Bill. If it applied only to re-assessments in these cases I have mentioned which, I believe, are pending or are part heard and adjourned pending the passing of this legislation, it would not have any bearing upon the retrospectivity clause, and the \$4,000,000 paid in contributions would not be affected either.

The only thing that would be affected would be the charges that have been collected under re-assessments of vehicles done by an officer other than the Registrar himself. If the information I have received is correct, it puts a different complexion altogether on new subsection (2a), and I will certainly not support the clause that inserts that new subsection. I hope that in his reply the Minister will indicate whether the \$4,000,000 already collected under the principal Act will be affected by the decision or whether only re-assessments will be affected. I have been told that it involves only re-assessments made by a person other than the Registrar. If my information is incorrect, I appreciate the necessity for the retrospectivity provided by the Bill. If it is correct and the legislation

applies only to re-assessments and not to assessments, I must vote against new subsection (2a).

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

#### ROAD MAINTENANCE (CONTRIBUTION) ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from August 20. Page 684.)

The Hon. S. C. BEVAN (Central No. 1): This is necessary amending legislation. Experience shows that, when proceedings are taken under the principal Act, it is sometimes necessary to prove the correct tare weight of a vehicle and there have been in the past, and no doubt there will be in the future, difficulties regarding this matter. One such difficulty is that laws dealing with motor vehicle registration and issuing certificates vary from State to State. At present such certificates are not taken as actual evidence by a court in a case involving a breach of the principal Act. This Bill amends the section dealing with the certificate of a vehicle's tare weight which is issued to a transport operator when his vehicle is registered. This certificate may be produced in court proceedings as evidence of the tare weight. I had discussions about this and other amendments to the Act prior to the last election and, if I had remained Minister of Roads, I would have introduced this amendment. Because it is a necessary amendment I have no hesitation in supporting the Bill.

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

#### EVIDENCE (AFFIDAVITS) ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from August 20. Page 684.)

The Hon. A. J. SHARD (Central No. 1): I support this Bill, which gives proclaimed bank managers the right, in addition to their other duties, to take affidavits on oath. This may assist the police in country areas when a justice of the peace is unavailable. As the Minister of Local Government said in his second reading explanation, although the Oaths Act, 1936, enables proclaimed bank managers to take declarations and attest the execution of instruments, it does not enable them to take affidavits for use in the courts. The only areas where this legislation will be taken advantage of will be in the country,

where justices of the peace are not as readily available as they are in the metropolitan area. Although I have never lived in the country, I know that country bank managers are very prominent people, and this legislation will assist the work of the courts and of police officers who we all know have more than their fair share of work. This Bill will assist them to carry out their duties in the interests of the State as a whole and it will not throw much added work on the bank managers. It is a step in the right direction to improve the efficiency of the courts and of the Police Force throughout the State, so I support the Bill.

The Hon. Sir ARTHUR RYMILL (Central No. 2): This short and simple Bill is very virtuous and it only surprises me that it has not been introduced before. I express this view as a former practising lawyer, because I know that for at least 30 years, although I am uncertain of the exact period, a proclaimed bank manager has been authorized to take statutory declarations under the Oaths Act. Curiously enough, this same authorized witness has not been authorized to take affidavits under the Evidence Act. The Leader of the Opposition has just pointed out to me that the Oaths Act has operated since 1936 but, speaking from memory, I believe that that Act replaced the former Statutory Declarations Act and was, in effect, an amending and consolidating Act. I can also remember when justices of the peace were authorized to take affidavits. Before that time, one had to go to a commissioner for taking affidavits (generally a practitioner of the Supreme Court) or a notary public for this purpose.

It is logical that proclaimed bank managers, too, should be authorized, and it is surprising, especially as it was agreed many years ago to accept them as witnesses under the Oaths Act, that they have not been authorized to take affidavits under the Act this Bill amends because, as the Hon. Mr. Shard has said, it is convenient, particularly in country towns, to have authorized people capable of taking affidavits. The word "proclaimed" bank managers should be noted, because unless a bank manager is approved and proclaimed as a witness he does not qualify. However, I cannot imagine that any bank manager would not be of sufficiently high repute to satisfy the authorities. I have much pleasure in supporting the Bill.

The Hon. C. D. ROWE (Midland): I, too, support this Bill, but I wish to raise two points. Before doing so, however, I agree

with the Hon. Sir Arthur Rymill that it is surprising that this kind of amendment has not been introduced previously. I cannot remember any request along these lines being made during my period as Attorney-General. New subsection 2a (1), inserted by clause 3, provides that affidavits for use in any court of the State may be sworn before any proclaimed bank manager. The affidavit that is most commonly taken is an oath sworn by executors in applying for a grant of probate. Such an affidavit is filed in the Probate Office, but I do not know whether it could be said that it is used in a court of the State. It seems to me that, if this facility is to be extended to include proclaimed bank managers, they should be able to take oaths of the kind I have mentioned. I would, therefore, be grateful if the Minister would confer with the Attorney-General to see whether this type of affidavit could come within the ambit of the Bill.

It has been the practice in the Supreme Court that a solicitor acting for an estate, although he may be a trustee or a commissioner for taking affidavits, is not permitted, as executor, to take an affidavit in connection with an oath. This means that he must go outside his office and get a third person to do this. It seems to me that this is unnecessary, as the solicitor has to pay a practitioner's fee and has to be qualified. I cannot understand, therefore, why he should not be permitted to take the oath but instead must get someone down the street to do it. I should be pleased if the Minister would take up this matter with his colleague, because it should be clarified.

The Hon. G. J. GILFILLAN secured the adjournment of the debate.

#### ADJOURNMENT

At 3.5 p.m. the Council adjourned until Tuesday, August 27, at 2.15 p.m.