

**LEGISLATIVE COUNCIL**

Tuesday, August 27, 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 35 persons, 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 petitioners 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: Has the Chief Secretary a reply to my recent question about the dates of the show week recess?

The Hon. R. C. DeGARIS: I wish to inform the Leader of the Opposition and the Council that it is intended that Parliament will adjourn on Thursday, September 5, and resume on Tuesday, September 17.

**ROSEWORTHY RAILWAY CROSSING**

The Hon. M. B. DAWKINS: I seek leave to make a short statement prior to asking a question of the Minister of Roads and Transport.

Leave granted.

The Hon. M. B. DAWKINS: My question raises a further query regarding the railway crossing north of Roseworthy, at which another serious accident has just occurred. The position, as I understand it from a report given to me, is that both the railcars and the road truck involved in this accident were proceeding towards Adelaide. Knowing the situation very well, I am aware that when a truck with a very wide cabin (as many trucks have today) is proceeding towards Adelaide, with the railway line crossing the road at the angle at which it does, unless there is a passenger sitting

on the left-hand side of the truck it is well-nigh impossible for the driver to ascertain whether a train is coming down at that angle. I believe from the reports in the newspaper that this accident occurred because of this set of circumstances.

Therefore, although I am aware that this question has been asked several times before and the request has always been rejected, I ask the Minister whether he will have another look at this matter and see whether a set of warning lights can be placed at this crossing—certainly not a "stop" sign, because one of the other disadvantages about the crossing is that it is in a dip and this means that any heavy, slow-moving vehicle would be in a dangerous situation if it had to stop and start again to crawl over that line. As this is a dangerous crossing, will the Minister re-examine this matter and possibly give it his personal attention?

The Hon. C. M. HILL: In view of the accidents there and also in view of the active representations of the honourable member regarding this crossing, I will obtain a further report on the matter. I also intend to have a look at the crossing personally. After I have received this report, I will advise the honourable member.

**CLARENDON RATES**

The Hon. H. K. KEMP: Has the Minister of Local Government a reply to the question I asked last week regarding moiety charges being levied on Clarendon ratepayers?

The Hon. C. M. HILL: The Local Government Act empowers a council to levy charges on adjoining owners for roadworks. This power refers to roadworks in a municipality or within townships in district councils. The works referred to by the honourable member were carried out by the District Council of Meadows in the township of Clarendon, and the council has levied charges on the adjoining owners. Whilst the matter is entirely one between council and ratepayer, I understand that the council would favourably consider permitting payment of the charges over an extended period, if the ratepayers would make an approach to the council.

**SUPPLY BILL (No. 2)**

Received from the House of Assembly and read a first time.

The Hon. R. C. DeGARIS (Chief Secretary): I move:

*That this Bill be now read a second time.*

For some years it has been customary for Parliament to approve two Supply Bills so that the current financial commitments of the Government may be met during the period between July 1 and the assent to the Appropriation Bill following the Budget debate. The Supply Act (No. 1) of 1968 approved by Parliament last June provides authority in respect of \$40,000,000. As the current requirement to meet ordinary expenditures from Revenue Account is about \$18,000,000 a month it may be seen that the present provision will suffice until about the first week of September.

It is desirable, therefore, for Parliament to deal with a second Supply Bill now to give authority that may be expected to suffice until the Appropriation Bill becomes effective—probably late in October. This Bill is for \$30,000,000, the same amount as that in the second Supply Bill last year. Together with the \$40,000,000 of Supply Act (No. 1), it will give a total of \$70,000,000, and this should ensure that a third Supply Bill will not be necessary before the end of the Budget debate. Clause 2 provides for the issue and application of \$30,000,000. Clause 3 provides for the payment of any increase in salaries or wages that may be authorized by any court or other body empowered to fix or prescribe salaries or wages. The clauses all follow the usual form for Supply Bills. I commend the Bill to members' attention.

The Hon. A. J. SHARD (Leader of the Opposition): I support the Bill and we on this side of the Council are agreeable to its being passed without delay. It is the usual Supply Bill that it has been the practice for many years for this Council to pass. It makes finance legally available to the Government to carry on its business and should suffice until the Appropriation Bill becomes operative, towards the end of October. I have no objection to this procedure, and any member of this Council who wishes to say something will have ample opportunity to do so on other financial measures later. I am quite happy to agree to the Bill going through its remaining stages without delay.

The Hon. G. J. GILFILLAN (Northern): I, too, support the Bill, which is necessary to enable the Government to carry out the financial working of this State. The Bill contains sufficient safeguards to protect the interests of the State and provides further funds until Parliament passes other financial measures

that will come before this Council. Like the Leader of the Opposition, I have much pleasure in supporting this measure so that it can be passed with the minimum of delay. As I have already said, it is essential that the State have finance with which to carry on in this interim period before the Budget is placed before Parliament.

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

#### DAIRY CATTLE IMPROVEMENT ACT AMENDMENT BILL

The Hon. C. R. STORY (Minister of Agriculture) obtained leave and introduced a Bill for an Act to amend the Dairy Cattle Improvement Act, 1921-1960. Read a first time.

#### MOTOR VEHICLES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from August 21. Page 740.)

The Hon. Sir ARTHUR RYMILL (Central No. 2): I have not found this an easy Bill on which to pass judgment, particularly as it provides for the retrospective amendment of a section of the Act that will affect the rights of persons, according to a judgment of the Supreme Court. I have found it necessary to consider the substance of the question before the Supreme Court and to try to judge whether the case of the appellant in that particular cause was meritorious or whether it was purely technical.

I do not think any honourable member in this Council is enthusiastic about retrospective legislation; on the other hand, every Bill must be judged on its merits and private members like myself have to make up our minds on what is fair and reasonable in the circumstances of each Bill. I have read and carefully considered the quite lengthy judgment of the Supreme Court in this matter (the unanimous judgment of three eminent judges) and, in effect, they found that the Registrar of Motor Vehicles was able to delegate some matters of judgment to certain deputy registrars, but no further. It appears that the Registrar of Motor Vehicles delegated powers further than the Supreme Court subsequently found he had power to.

I have looked carefully at this and feel (I am not criticizing the judgment in any way when I say this; I do not want to be misunderstood, because one accepts that that was

no doubt the correct judgment on the facts of this case) that the Registrar of Motor Vehicles would have found it difficult to act in any other way than the way he did. If all heads of departments acted personally, or tried to act personally, in every matter referred to them, we would not have any departments operative at all because those heads would get cluttered up with jobs with which they could not possibly cope.

The case is highly technical. A perusal of the judgment proves that, because it was not without fairly deep consideration that the court came to the conclusion it did. Having, as I say, carefully considered all aspects of this case, I have come to the conclusion that the plea of the appellant was purely technical—that is, there was a technical defect in the Act. The substance of the Act, or what is meant by the Act, is quite clear to the layman in the sense of reading the Act and knowing what Parliament intended but, of course, courts of law are bound by the language used in that Act and not by any other expression of intention that we members of Parliament may realize existed. So, what we are being asked to do is to rectify a technical defect in the wording of an Act, not merely for the future but also for a series of years just passed, because, of course, this Act relates to fairly substantial revenue. I have come to the conclusion that it would be proper for me to support the Bill, and I propose to do so subject to the consideration of one or two reservations.

The first reservation relates to the appellant in the case itself. He has secured a declaratory judgment of the Supreme Court that overrules the decision of the lower court where his case was first heard. The judgment states that he is not guilty of what he was charged with. In these circumstances, I do hope that the Government will carefully consider whether it should re-open this particular case. I suggest that, as this particular defendant has been relieved of his obligations by the Supreme Court, it would perhaps not be wise for the Government to pursue this case any further.

No doubt the Minister, in his reply, will explain in what category the Government places other cases that are pending. In my mind they are in a category intermediate between the company that was the actual defendant in the particular Supreme Court case and the public at large, who have taken no legal action at all in the matter. It seems that the Government will have to consider whether it should extend any latitude to the

people whose cases have been held over. This, I imagine, would be as far as the Government could, in all fairness, be asked to go, because I understand that, as the Hon. Mr. Bevan said last week, the revenue involved under the provisions of this Bill is very substantial. So, I hope that the Minister, in his reply, will deal with these two matters.

The petitions that I presented to the Council asked that the Council refer the matter to a Select Committee. I have also considered whether I should support this request. I understand that I am likely to be given further time to consider this question, but, on the face of it and upon reading the judgment, it seems to me that all the facts have already been presented to the Supreme Court. Consequently, I question whether this Council's formation of a Select Committee, which, of course, is a very substantial step, would give us any further information. I have no evidence before me that this would be so.

The Hon. C. M. Hill: I cannot see how it would do so.

The Hon. Sir ARTHUR RYMILL: Neither can I, on the face of it, because the Supreme Court has already fully investigated the matter. I have not seen the evidence that was presented to the court but the Chief Justice, who prepared the judgment, in which the other members of the court concurred, referred to a number of items in the evidence. From his comments it appears that the court went very deeply into the whole facts of the case. So, unless the petitioners can inform me of some specific matters that should be placed before this Council or before a Select Committee of this Council in addition to the matters that have previously been investigated, I do not believe that at this stage it would be proper for me to support the request for a Select Committee.

To summarize, at this stage of the debate—and, of course, one always tends to be guided by the opinions of others—it seems to me that the case of the people affected by this legislation is highly and purely technical and that there are no merits in their cause over and above the merits of the cause of any other individual who may be affected by this legislation or, for that matter, by any other legislation. Because I believe the case to be technical, unless I am persuaded otherwise during the course of the debate, I propose to support the Bill.

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

HON. SIR NORMAN JUDE: LEAVE OF  
ABSENCE

Order of the Day, Private Business, No. 4:

The Hon. G. J. Gilfillan to move:

That one week's leave of absence be granted to the Hon. Sir Norman Jude on account of absence from the State.

The Hon. G. J. GILFILLAN (Northern) moved:

That this Order of the Day be discharged.  
Order of the Day discharged.

ADJOURNMENT

At 2.48 p.m. the Council adjourned until Wednesday, August 28, at 2.15 p.m.