LEGISLATIVE COUNCIL

Tuesday 14 November 1978

The PRESIDENT (Hon. A. M. Whyte) took the Chair at 2.15 p.m. and read prayers.

DEBTS REPAYMENT BILL, ENFORCEMENT OF JUDGMENTS BILL, AND LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

At 2.16 p.m. the following recommendations of the conference were reported to the Council:

DEBTS REPAYMENT BILL

As to Amendments Nos. 1, 2 and 3:

That the House of Assembly do not further insist on its disagreement thereto.

That the Legislative Council make the following consequential amendment to Amendment No. 14:

New subclause (5)—After the word "secured" insert "(or for extinguishing a mortgage debt that was so incurred)".

And that the House of Assembly agree thereto.

As to Amendment No. 8:

That the Legislative Council do not further insist on its amendment but make the following amendment in lieu thereof:

Page 4, line 22 (clause 11)—Leave out "fifteen thousand dollars or such other amount as may be prescribed" and insert "ten thousand dollars or such other amount (not exceeding fifteen thousand dollars) as may be prescribed".

And that the House of Assembly agree thereto.

As to Amendment No. 16:

That the House of Assembly do not further insist on its disagreement.

As to Amendment No. 33:

That the Legislative Council amend its amendment by striking out from subsection (3) the passage "any member of the public" and inserting in lieu thereof the passage "any person who satisfies him that he has a proper interest in the contents of the register".

And that the House of Assembly agree thereto.

Consideration in Committee.

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

That the recommendations of the conference be agreed to.

As the House of Assembly managers saw that the Council managers were adamant in relation to many of the amendments, they entered into discussion in a co-operative manner, with the result that we were able to arrive at a satisfactory agreement. Knowing that the Council managers would not budge on amendments Nos. 1, 2 and 3 to the Debts Repayment Bill, all of which were carried unanimously in the Council, the House of Assembly managers, after some discussion, readily accepted those amendments.

The conference was well worth while, as none of the managers from either House wanted the Bills to be lost. Indeed, we wanted to obtain the best results from the legislation, as a result of which the discussions ensued in a co-operative manner. The conference managers included three lawyers, two of whom represented the Council, and this is the first time that I have seen them come to an agreement so quickly. Undoubtedly, my fellow managers will explain the conference recommendations.

The Hon. R. C. DeGARIS (Leader of the Opposition): First, I congratulate the Select Committee of the Council which inquired into and reported on the five Bills related to the restructuring of the law in this State in regard to debts. The committee sat over a long period, but it produced an excellent report. Indeed, it was one of the best pieces of legislative work that I have seen done since I have been a member of this Council. Unlike the Minister, I pay a particular tribute to the three lawyers on the Select Committee, the Hon. Mr. Burdett, the Hon. Mr. Griffin, and the Hon. Mr. Sumner.

The Hon. D. H. L. Banfield: Are you casting any reflection on the other members?

The Hon. R. C. DeGARIS: No. However, if it had been left to the Minister, the Hon. Mr. Blevins, and me to decide the issues without the valued assistance of the lawyers, we would probably have arrived at a different result. As the Minister has said, the conference was good, and it solved the few remaining problems in relation to the five Bills. Amendments No. 1, 2 and 3 were originally agreed to by this Council, but disagreed to by the House of Assembly. I do not believe that the Assembly insisted very strongly on its disagreement in this respect. I will leave it to the Hon. Mr. Burdett and the Hon. Mr. Griffin to comment on consequential amendment No. 14 and on amendments Nos. 8 and 16. About 50 amendments were made to the Debts Repayment Bill in this Council as a result of the Select Committee's recommendations. Of the amendments made in this Council, only in respect of four or five was there any fundamental disagreement in the House of Assembly—a truly excellent achievement.

I wish to comment on amendment No. 33, on which there is a recommendation in the schedule that is before members. There was disagreement between the members of the Select Committee on the question of maintaining a register of those people who had entered into schemes regarding their debts. Other members felt that the credit provider often should not provide credit in certain cases but, if he did so, he only exacerbated the position so far as the debtor was concerned. The point was clear that, unless the credit provider had information about a person's debt structure, we could add to the problems by the credit provider's not knowing the exact position in providing credit to people who often should not have it. Therefore, in the amended Bill as it left this Chamber, we included a provision that a register had to be kept of the various schemes and the variations to those schemes that took place.

The other place and this Chamber have now compromised and provided that that register shall not be a public register but that the Registrar may, if he is satisfied that a person has a proper interest in the contents of the register, decide that that person can examine it. I think that an excellent principle has been adopted. In other words, a person must satisfy the Registrar that he has a proper interest in the register before that person can see it. A change has been made in the Bill as it was before this Chamber, but I think a good compromise has been reached between the two places. I repeat that I was very pleased with the conference, and the legislation, which represents an entirely new approach to the debt law in this State, can be passed with the general satisfaction of all members who have been involved in the debates on it.

The Hon. J. C. BURDETT: I, too, support the motion. There was a substantial degree of co-operation from the other place, not only at the conference but also even before it, because two substantial amendments made by this place were initially disagreed to by the Government here but were agreed to in the other place, even before the Bills got to conference. Regarding the first of those amendments, we wished the administration of the Bill, when it became an Act, to be committed to the Minister of

Prices and Consumer Affairs rather than to the Minister of Community Welfare, and we were agreeably surprised that the other place agreed with that, even in the House, before the conference.

Another controversial amendment is in relation to clause 12 (3) *(c)*, regarding the ability of the tribunal to vary contracts. In the Bill, that provision was completely wide: there was no limitation at all. We thought it should be restricted to the matter of interest, the time of payment, and the amount of payment, because these were the only things that we thought could be related to the repayment of debts. The other place is to be congratulated for agreeing to that amendment in the House.

As to the matters that went to conference, as the Hon. Mr. DeGaris has said amendments Nos. 1, 2 and 3 were readily agreed to by the other place but had been disagreed to in the House, and we were surprised at that. They had been unanimously recommended by the Select Committee and unanimously supported in this place; in fact, the Minister of Health moved them, and we were amazed to find that the other place disagreed to them.

The Hon. D. H. L. Banfield: We soon brought them back into line.

The Hon. J. C. BURDETT: As has been suggested by interjection, there obviously was a mistake, and this was referred to in Cassandra's column in last weekend's *Sunday Mail*. That was a very good report and showed some accurate guesswork on the part of whoever writes the column. The only thing wrong was that the photograph showed the Minister of Health looking very worried, his name was given, and the report suggested that what happened had all the hallmarks of someone being in too much of a hurry.

The Hon. D. H. L. Banfield: Do you think they painted the wrinkles on?

The Hon. J. C. BURDETT: Yes. Of course, that someone who was in too much of a hurry was not the Minister of Health: it was someone else, who was unnamed.

The Hon. B. A. Chatterton: Who was that?

The Hon. J. C. BURDETT: It was the Attorney-General. Regarding amendment No. 8, the original Bill had a limitation of $15 000, providing that where the total liabilities exceeded $15 000 the matter was not within the scope of the Bill. We moved to restrict this to $7 500. We did so on the basis of evidence given before the Select Committee by Mr. Moore, Senior Lecturer in Law at the University of Adelaide, who had had the experience of seeing this scheme in operation for some time on the North American continent, particularly in Canada. He said that in his experience these schemes rarely succeeded in excess of about $7 000. Obviously, it is an arbitrary limit, and the amendment we have agreed to is to make it $10 000, in lieu of $15 000, or such other amount not exceeding $15 000 as may be prescribed, so that it can be extended by regulation up to $15 000.

As to amendment No. 16, the Bill originally provided that, where any asset had been seized by a creditor pursuant to a security, that could be directed by the scheme to be brought back into the estate, and that was without any limitation at all. Our amendment was to confine this to cases where the asset was still in the hands of the creditor and also with a six-month relation-back period. It had to be seized not more than six months prior to the coming into effect of the scheme, and this amendment was agreed to in conference by the House of Assembly. I believe the Hon. Mr. DeGaris has adequately explained the position concerning amendment No. 33.

Motion carried.

ENFORCEMENT OF JUDGMENTS BILL

As to Amendment No. 4:

That the Legislative Council do not further insist on its amendment but make the following amendment in lieu thereof:

Page 2, line 26 (clause 4)—Leave out "fifteen thousand dollars" and insert "ten thousand dollars or such other amount not exceeding fifteen thousand dollars as may be prescribed".

And that the House of Assembly agree thereto.

As to Amendment No. 20:

That the Legislative Council amend its amendment:

(a) by striking out from subsection (5) of section 26a the passage "if satisfied that the judgment creditor's failure to approve the proposal was in the circumstances of the case unreasonable" and inserting "if satisfied that the judgment creditor's failure was not, in the circumstances of the case, justified";

and

(b) by leaving out proposed new section 26c and inserting the following new section in lieu thereof:

26c. (1) Where a judgment debtor fails to comply with an order for the payment of the judgment debt, or for the payment of instalments, the court may, upon the application of the judgment creditor, issue a writ of attachment against that person.

(2) Where a judgment debtor is brought before the court upon a writ of attachment issued in pursuance of subsection (1) of this section, he shall be examined as to the reasons for his failure to comply with the order.

(3) Where it appears to the court, after the examination of the judgment debtor, that he has failed, without proper excuse, to comply with the order, it may commit him to gaol for a period not exceeding forty days.

(4) A judgment debtor shall not be committed to gaol under subsection (3) of this section where an order for garnishment of his salary or wages is for the time being in force.

And that the House of Assembly agree thereto.

As to Amendment No. 21:

That the Legislative Council amend its amendment:

(a) by leaving out proposed subsection (2) and inserting the following subsection in lieu thereof:

(2) No order shall be made under subsection (1) of this section in respect of salary or wages owing or accruing to a judgment debtor unless he consents to the making of the order but, once that consent has been given, the extent to which the salary or wages are attached shall, subject to this section, be in the discretion of the court.;

and

(b) by striking out from proposed section (2a) the passage "for the garnishment of salary or wages" and inserting in lieu thereof the passage "under this section";

And that the House of Assembly agree thereto.

Consideration in Committee.

The Hon. D. H. L. BANFIELD (Minister of Health) moved:

That the recommendations of the conference be agreed to.

The Hon. R. C. DeGARIS (Leader of the Opposition): The position concerning amendment No. 4 is the same as that referred to by the Hon. Mr. Burdett on the Debts Repayment Bill, wherein the sum is reduced to $10 000 but not exceeding $15 000 as may be prescribed. There is no need to deal with the amendment again. As to amendment No. 20, members may recall from the debate

in this Chamber that there was disagreement relating to what one might term the final sanction.

After all the procedures had been gone through in relation to the schemes, and so on, and the debtor still failed to comply, it was the view of both sides of the Chamber that there should be a final sanction. The Government came down on the side of imprisonment as the final sanction, but we believed that the final sanction should not be imprisonment. We considered that that was rather archaic and that, all things considered, the garnishment of wages should be the final sanction. The conference recommended a compromise between the two views.

The Hon. N. K. Foster: Does that include the dole cheque?

The Hon. R. C. DeGARIS: If the honourable member read the Bill and understood what he was talking about—

The Hon. N. K. Foster: That's what you wanted earlier.

The CHAIRMAN: Order!

The Hon. R. C. DeGARIS: If the honourable member read the Bill and understood what was happening in it, he would realise that all questions relating to social security are exempt.

The Hon. N. K. Foster: That's not what you wanted.

The Hon. R. C. DeGARIS: It is exactly what we wanted. The amendment recommended by the conference takes into account both viewpoints: that where it appears to the court, after examination of the judgment debtor, that he has failed without proper excuse to comply with the order, it may commit him to gaol for a period not exceeding 40 days, but a judgment debtor shall not be committed to gaol under subclause (3) where an order for the garnishment of his salary or wages is for the time being in force.

That brings together the views of both sides into the one amendment, but still the provision applies that there must be a reasonable amount left for the person against whom the judgment is given, to care for his normal life and family, and so on, before the garnishment of wages can take place. It is a reasonable compromise between the views of both sides, and I support the motion.

The Hon. J. C. BURDETT: I, too, support the motion. It is necessary to speak only on amendments Nos. 20 and 21. I agree with what the Hon. Mr. DeGaris has said, but I will put it in a somewhat different way. Before the Select Committee the main evidence on this issue was given by Dr. Kelly of the Australian Law Reform Commission, although he gave the evidence in his personal capacity, and not as a member of the commission. Dr. Kelly, a former South Australian, which I think is to his credit, made it clear that there were two ultimate sanctions. If it is a question of repayment and someone just will not pay, no matter what happens or how many orders are made, and even though he may have the means to pay, in the last resort there are two sanctions: imprisonment or compulsory garnishment of wages. He came down strongly, as did the British trade union movement, on the side of compulsory garnishment of wages in preference to imprisonment. The House of Assembly made it clear that it would not accept compulsory garnishment of wages.

So, the net result of what has happened to amendments Nos. 20 and 21 is really a third alternative, because it means that a debtor can make his choice in the matter. If he voluntarily agrees to garnishment of wages, he is not to be imprisoned. If he does not do so, the court must take into account all the circumstances, including his ability to pay, and so on, and may decide on imprisonment. If he has no wages, the fact that he has not had his wages garnished, is not to be taken into account. This really leaves the ultimate choice, when wages are being earned, to the debtor and, if the debtor agrees to his wages being garnished, the amount of the garnishment is left to the court to decide. If a person agrees to his wages being garnished, he is not to be imprisoned. If he does not agree, the court may consider whether, in all the circumstances, he ought to be imprisoned.

The variation from the original Bill is that, in relation to consent, the debtor merely consents to his wages being garnished but does not decide the amount of the order. If he agrees to garnishment, the court decides what the amount should be. It may be, in a sense, Hobson's choice for a debtor who finds himself in the position of deciding whether to have his wages garnished or to go to prison. This seems to me to be a unique and sensible alternative. The alternatives previously were considered to be, on the one hand, imprisonment or, on the other hand, compulsory garnishment of wages. This means that a debtor can say, "I will agree to my wages being garnished, with the amount to be determined by the court." If he does not do so, a debtor knows that the court may consider all the circumstances and may imprison him. This seems to be a sensible ultimate solution, which will overcome the objections that everyone has raised in the debate.

Motion carried.

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

As to Amendment No. 1:

That the Legislative Council do not further insist on its amendment but make the following amendment in lieu thereof:

Page 1, line 18 (clause 3)—Leave out "two thousand five hundred" and insert "one thousand two hundred and fifty".

And that the House of Assembly agree thereto.

As to Amendment No. 2:

That the Legislative Council do not further insist on its amendment but make the following amendment in lieu thereof:

Page 3, lines 36 and 37 (clause 16)—Leave out "two thousand five hundred" and insert "one thousand two hundred and fifty".

And that the House of Assembly agree thereto.

Consideration in Committee.

The Hon. D. H. L. BANFIELD (Minister of Health) moved:

That the recommendations of the conference be agreed to.

The Hon. R. C. DeGARIS (Leader of the Opposition): I support the motion. The original Bill provided that the small claims court could deal with claims of up to $2 500. Honourable members considered, when the Bill was passed, that the limit should be $1 000. In a democratic manner, the conference reached the compromise of a limit of $1 250.

The Hon. J. C. BURDETT: I, too, support the motion. Some important concessions were made in another place before this Bill went to conference. I refer notably to the matter of interlocutory orders. This Council considered that interlocutory orders ought to apply in the small claims jurisdiction just as they apply in any other jurisdiction, and the House of Assembly agreed to that. The degree of compromise by the House of Assembly on these Bills when dealing with them not only in another place but also at the conference was indeed great, and that House is to be commended. Council members have said that the Debts Repayment Bill is a step forward in relation to handling debts, and I certainly hope and believe that that Bill will function very well indeed.

Motion carried.

QUESTIONS

TROTTING

The Hon. R. C. DeGARIS: I seek leave to make a statement before asking the Minister of Tourism, Recreation and Sport a question regarding trotting.

Leave granted.

The Hon. R. C. DeGARIS: When speaking in the debate on the Lottery and Gaming Act Amendment Bill in August 1973, I said that if an unspecified number of country status meetings were held in the metropolitan area it could do considerable damage to the trotting industry generally. You, too, Mr. President, also asked certain questions regarding the passage of that Bill. In reply to my question on that Bill, the then Chief Secretary (Hon. A. F. Kneebone) said that eventually country status meetings would disappear altogether. Following the Chief Secretary, the Hon. Mr. Shard said:

> The trotting authorities have complete agreement for 12 country status meetings at Globe Derby Park. In order to obtain permission for metropolitan clubs to run country status races, the authorities must get permission from the Interdominion Trotting Conference, which will soon take the stand and insist that all metropolitan trotting meetings must be conducted on metropolitan standards. I think the only reason the South Australian Trotting Club was given permission to conduct day-time meetings in the winter months was that it was in financial trouble. After another season (or two at the most, in my opinion) the permission to operate under country status will be taken away. If he wishes, the Chief Secretary can lay down the number of country status meetings. As I understand it, everyone is happy with the present position but the Chief Secretary can say that there will be no significant increase in the number of country status meetings to be held at Globe Derby Park. I agree wholeheartedly with the views expressed, and I think if attempts were made to go wholesale into country status meetings at Globe Derby Park the Interdominion Trotting Conference would refuse permission.

Has there been a reduction in country status meetings run at Globe Derby Park? Does the Minister agree that country status meetings at Globe Derby Park are not in the best interests of the trotting industry? Finally, if the Minister agrees with the view expressed by all honourable members in 1973, will he have this matter investigated as soon as possible?

The Hon. T. M. CASEY: I will obtain a report for the Leader and bring back a reply.

CHINESE AGRICULTURE

The Hon. F. T. BLEVINS: I seek leave to make a brief explanation before asking a question of the Minister of Agriculture about his visit to Canberra last week.

Leave granted.

The Hon. F. T. BLEVINS: The Council will be aware that the Minister visited Canberra last week and, as we understand it, the principal object was to attend a meeting of the Fisheries Council. I believe that the Minister also had discussions with the Minister for Trade and Resources, Mr. Anthony, concerning South Australia's possible involvement in trade with the People's Republic of China. Can the Minister give any details of his discussions on this matter?

The Hon. B. A. CHATTERTON: I think all honourable members would be aware of the considerable changes in policy that have occurred in China since the new leadership came to power there and took over the Government. From South Australia's viewpoint, the major change is the new attitude toward foreign technology. The Chinese are anxious to acquire expertise from other countries. When the Minister for Trade and Resources was in China recently on a trade mission, Chinese Government officials approached him for expertise, particularly in agriculture.

My discussions with the Federal Minister in Canberra were mainly concerned with the possible establishment of a demonstration farm similar to the farms which South Australia has established in Libya and is about to establish in Algeria. My discussions were also concerned with ascertaining whether a demonstration farm of that type would be appropriate to the northern and north-western parts of China. A mission from some of the northern provinces of China is in South Australia at present, and I intend to discuss with members of that mission the sort of agricultural development that has been undertaken and whether South Australian expertise would be appropriate.

A couple of things make such a venture probable. First, the Chinese have already entered into a contract with a large American tractor company to establish a demonstration farm in northern China; that has resulted in that company acquiring considerable export orders for farm machinery and tractors. Secondly, the Peking farm machinery trade fair held recently was very successful. At that fair, South Australian manufacturers did extremely well and sold all the machinery that they exhibited there. This shows that China is opening its doors to other countries and is aware of its need for modern technology. It is also aware of the expertise available in South Australia in connection with the more arid and marginal areas of northern and north-western China. I certainly hope that the discussions with the Chinese representatives develop further, because they could lead to valuable exports from South Australia of farm machinery, pasture seeds, and breeding livestock. All those industries could benefit considerably if we take advantage of these opportunities.

AIR FARES

The Hon. N. K. FOSTER: I seek leave to make a brief explanation before asking a question of the Minister of Tourism, Recreation and Sport about air fares.

Leave granted.

The Hon. N. K. FOSTER: Most members would be aware, if they can take their minds off this morning's newspaper and their own political problems, that there has been considerable conjecture and delay concerning negotiations for cheaper air fares. The Federal Government has finally made a decision about cheaper international air fares. Can the Minister inform the Council of the disadvantages that South Australians will suffer from the introduction of cheaper international air fares, in the light of the fact that Adelaide is not an international airport? Considerable publicity has already been given to the fact that South Australians will have to pay full domestic fares to Melbourne, Sydney, or other Australian international airports to take advantage of the cheaper flights. Can the Minister state any other consequences that the proposal will have on the South Australian tourist industry as a whole?

The Hon. T. M. CASEY: There has been considerable publicity recently regarding the disadvantages that South Australians experience when travelling overseas. I commend the statements made regarding this matter, because we are disadvantaged as a result of having to pay the domestic air fare to get to international airports such as Melbourne, Sydney, or Perth. However, no reference has

been made to the problems and disadvantages accruing through the export of tourists; that is, tourists from overseas coming to Australia, particularly South Australia. Let us say that 1 per cent of the population of South Australia travels overseas each year; that means that 12 000 people leave Adelaide, travel to another State, and then board an international airline.

From the export viewpoint, the West Coast of the United States of America has about 30 000 000 people and, if 1 per cent of that number could be encouraged to come to South Australia, 300 000 people a year would come to this State. So, the ball is in the Federal Government's court in regard to this matter. Liaison should take place at that level with international carriers such as Qantas and with domestic airlines such as Trans Australia Airlines and Ansett Airlines. The spin-off to Adelaide in connection with overseas tourists should be measured in that light. I hope that the Federal Government takes this aspect into account, because South Australia is disadvantaged as a result of its not having an international airport.

UNEMPLOYED WORKERS UNION

The Hon. N. K. FOSTER: I seek leave to make a brief explanation before asking a question of the Leader of the Government in this Council about the Unemployed Workers Union.

Leave granted.

The Hon. N. K. FOSTER: A copy of the minutes of a conference of the Unemployed Workers Union held at Monarto recently is available. Some startling resolutions were adopted at that conference; some were adopted unanimously, but all resolutions were adopted following considerable debate. This underlines clearly the problems of those who are disastrously disadvantaged in this community, particularly young unemployed people. Among the resolutions adopted was a resolution concerning the disadvantages relating to school-leavers and the waiting time that they experience before they become due for social security payments. I am prepared to request the Council to have the document inserted in *Hansard* without my reading it, but such incorporation may be difficult to achieve during Question Time. It would be advantageous if it were possible to insert the document. Will the Minister take up this matter with the Minister of Labour and Industry, seek the full support of the Government for the resolutions adopted by the conference at Monarto last week, and request his colleague to give every consideration to supporting the principles outlined in the minutes of the conference?

The Hon. D. H. L. BANFIELD: I will refer the question to my colleague.

BOILERS AND PRESSURE VESSELS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 November. Page 1836.)

The Hon. D. H. LAIDLAW: The object of this Bill is to simplify procedures for the registration of boilers and pressure vessels. To ensure safe operation, all boilers are expected to be inspected by the Labour and Industry Department every 12 months and pressure vessels every two years. If one considers the unfortunate accident that occurred at a tyre factory at Bowden yesterday, when two men were killed because of the malfunctioning of a pressure vessel, one realises the importance of having regular inspections of such vessels.

Under the existing Act, a user pays an initial registration fee and then an annual or bi-annual inspection fee. On many occasions it may be inconvenient for the user to take a vessel out of service when the time comes for inspection, or else the inspector is not available when the allotted period expires. Thereafter the user is in breach of the Act by continuing to use the vessel.

Under the proposed amendment, the user will pay a regular registration fee. The inspector will inspect the boilers or pressure vessels at regular intervals and when convenient to the user, and, if some apparatus is unsafe, the user must take remedial action; otherwise the registration certificate may be withdrawn. Henceforth no inspection fee will be payable, but, as I have pointed out, there will be a registration fee.

The amendments will overcome an anomaly where users are in breach of the law but the department hesitates to prosecute, because it has been impractical for users to conform to the existing law. I understand that in the past 10 years there has been only one prosecution, and that occurred when one employee threatened to bash an inspector.

There are 18 clauses in this amending Bill. The other clauses deal mainly with wording, conversion to metric measurements, and penalties. For example, South Australia now has a Director rather than a Secretary as head of the department. In this State, it seems no longer acceptable to refer to the senior public servants as merely Secretary. Permanent Head, Director-General, or Director is regarded as more fitting for their status. In contrast, Washington, London and Canberra persist with the term Secretary by which to describe their permanent heads. Nevertheless, the wording in our Act is being changed, and the reference will be to the Director.

I note that in clause 4 the penalty imposed upon a manufacturer for not making a boiler or pressure vessel in accordance with the specification approved by the Chief Inspector is increased from $500 to $1 000. I do not object to this, but I am pleased to learn that better liaison now exists between the inspectors in each State than hitherto.

I recall that, as a manufacturer of pressure vessels, one might obtain a certificate of approval from our local inspector but, if the vessel was dispatched to a user interstate, the inspectors in other States (and this often seemed to be done out of cussedness) often would ignore the South Australian certificate and insist on carrying out their own tests. This was time consuming and if a vessel such as an air receiver was part of a large piece of equipment, like a mechanical metal-forming press, it was often costly to detach it and carry out the tests.

Clause 6 empowers the Governor by proclamation to exempt certain vessels or classes of vessel from the provisions of this Act. Although government by proclamation is often undesirable, it seems adequate in this instance. As the Act is worded, simple vessels such as coffee boilers would fall within the Act, and it is intended that such items should be excluded. I support the second reading.

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

LEVI PARK ACT AMENDMENT BILL

In Committee.

(Continued from 9 November. Page 1868.)

Clause 5—"Creation and incorporation of trust."

The Hon. K. T. GRIFFIN: I move:

Page 1, lines 16 and 17—Leave out "subject to the general control and direction of" and insert "responsible to".

If subsequent amendments are successful, those amendments providing that, of the five members of the trust, the Walkerville council will be able to nominate three, it will not be reasonable to leave, in clause 5, a provision that the trust is subject to the general control and direction of the Minister. In those circumstances, a body that could not properly be regarded as a statutory governmental authority still would be subject to the general control and direction of the Minister. I see no harm in the trust being constituted of three members nominated by the Walkerville council and two members nominated by the Government remaining responsible to the Minister, in view of the nature of the park being administered by the trust.

The Hon. T. M. CASEY (Minister of Lands): For reasons outlined during the second reading debate, the Government is very concerned to have control of Levi Park. If we take out the words "subject to the general control and direction of", we take away from the Minister the powers he already has in regard to other trusts. He has that power in regard to the West Beach Trust and, whilst that power is there, his policy is not to exercise it to that extent. Nevertheless, if we delete those words and insert the words "responsible to" in their place, the trust will be able to do whatever it wishes and report to the Minister whatever it is doing, he having no control over the trust in general as he has over most other trusts and in most other Acts under his administration.

The Government wants to maintain control of the trust in the interests of the facilities already there as an impetus to attract people to the metropolitan area and to South Australia in general. However, we are afraid that, if we hand control to the Walkerville council, something could happen that we did not want to happen. For those reasons, I cannot accept the amendment.

The Hon. C. M. HILL: I support the amendment irrespective of the references made to the following amendment of mine to clause 6. I believe that, if the words remain in the Bill, the trust will be simply an advisory body. The Minister's argument is weak when he says that the Minister of Local Government does not intend to exercise his power but wants it there as some kind of reserve power. We have to consider not only the present Minister and situation but also the future. A future Minister could not be bound by any undertaking given now that he does not intend to exercise this control and direction.

It is quite improper for such a trust to be updated as it is under this Bill, and then find that a Minister of the Crown has general control and direction over its affairs. I agree that it should be responsible to the Minister, and that the Minister has every right to have some influence over the trust and for them to work in partnership.

The Hon. T. M. Casey: What about the West Beach Trust?

The Hon. C. M. HILL: I have not read these words in the West Beach Trust legislation, and I would be interested to hear the Minister quote the section to which he is referring. His submission is that as it applies to the West Beach Trust, it is right and proper that it should apply to this Bill. This is the Bill we are arguing about, and we must envisage situations that can occur if this Council passes this legislation in which the Minister is given general control and direction of the trust. The Minister should not seek that power and he should not be given that power. However, I agree that the trust should be responsible to him.

The Committee divided on the amendment:

Ayes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, K. T. Griffin (teller), C. M. Hill, and D. H. Laidlaw.

Noes (10)—The Hons. D. H. L. Banfield, F. T. Blevins, T. M. Casey (teller), B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

The CHAIRMAN: There are 10 Ayes and 10 Noes. As this is part of other amendments, I give my casting vote for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 6—"Constitution of trust."

The Hon. C. M. HILL: I move:

Page 2, line 6—Leave out "two" and insert "three".

This would mean that the Government's proposal that two members of the new trust be appointed by local government is amended so that three be appointed on the nomination of the Walkerville council. There were five persons on the previous trust and there are five persons in the new plan. I listened with interest to the Minister's second reading explanation in which he said that the Government should, in effect, take control of this new trust by nominating three members to the five-man trust.

The two main points made by the Minister were, first, that he seemed to object to the Walkerville council's having the right to nominate three people. It surprises me that he, or the Minister of Local Government, reflected some feeling of animosity towards that council, and I am at a loss to understand that attitude. I believe that representatives of the Walkerville council will continue with the responsible work of administration of this trust, the park, and other amenities as effectively and as economically in future as it has done in the past. Secondly, the Minister feared that, by having control of the trust by three votes out of five, the Walkerville council may be responsible for the sale of the subject land in future. Section 25 of the original Act gives the trust power to sell some of the land. That section provides:

> The trust may sell or otherwise dispose of any of its property which is not required for the purposes of the park, but shall not have authority to sell any of the land comprised in the certificates of title registered in the Lands Titles Office in Register Book volume 1742 folio 60, or volume 1601 folio 34.

That is not unconditional power to sell the land, as the Minister implied. I do not know what part of the land comprises those two titles, but I presume that it is part of the land on which the old buildings have been erected. However, if the Government is sincere in its worry that Walkerville council may be responsible in future for disposing of this land, it should have included in its long list of amendments an amendment to the effect that the sale and disposal could take place only with the Minister's consent. That would be a simple amendment to cover that point.

I do not accept the Minister's argument defending the Government's Bill with any measure of strength. I rely on my original contention that local government previously has nominated three persons to the five-member trust, and I think that in future local government ought to continue to have that power. That is what my amendment achieves.

The Hon. J. A. CARNIE: In supporting the amendment I deal first with the Minister's rather strange comment that Walkerville council might sell the park. That is ridiculous, and I am sure it is a red herring that the Minister has drawn across the trail for some obscure reason. As the Minister said, it would be sheer stupidity to do away with

Levi Park. The council has the same opinion and wants to keep the park as it is.

I refer to something the Minister said in the second reading debate in dealing with evidence given to the Select Committee by Mr. Elliott, who was Town Clerk of Walkerville council from 1937 to 1965 and who is still Secretary of the trust. The Minister quoted Mr. Elliott as making the following statement to the Select Committee:

> The property was left to Walkerville council. As soon as the council knew about that it refused to accept the property because of its absolutely run-down condition.

In 1948 there was a Select Committee on this Bill, and Mr. Elliott appeared before it with Mr. Waterhouse, who was a councillor of Walkerville council. Mr. Elliott did not give evidence (certainly, none is reported) as Mr. Waterhouse seemed to be the main spokesman for the council. Nowhere in that evidence does the Walkerville council say that it refused to accept the property because of its absolutely run-down condition. In fact, Mr. Waterhouse referred in the opening paragraph of his evidence to it as a valuable property and stated:

> When we discussed the matter with her—

Mrs. Belt, the donor of the land—

> and Mr. Marriott and pointed out that the park was outside our territory, she said that if Walkerville did not have a big say in the administration she would not be prepared to hand over the property.

That was a clear wish of Mrs. Belt. In that sentence is given the reason why the council did not, and could not, accept the gift at that time—because in 1948 that area of Vale Park, where Levi Park is situated, was outside the Walkerville council area and the council believed it could not rightly spend taxpayers' funds to maintain a property outside its area. Further in that same evidence Mr. Waterhouse states:

> As a result of our conferences you—

being Mr. McIntosh, the then Minister of Lands—

> suggested that a trust should be created and Walkerville should have representation on it.

As a result of those conferences and that Select Committee the trust was established in 1948. There is no question about Mrs. Belt's intention that the council should have control of Levi Park then. This is still the case: the wishes of the original donor should be respected. Also, I believe that we must stop the erosion of power from local government, and that seems to be inherent in this Bill.

The Hon. T. M. CASEY: Members opposite never cease to amaze me with the way in which they can jump from one argument to another. The Hon. Mr. Carnie referred to what I said about evidence given by Frank Vincent Elliott, Secretary, Levi Park Trust, Walkerville. That evidence is on file and, if the honourable member would like me to read his whole evidence, I am willing to do so.

In the second reading debate I referred to his submission to the Select Committee. Mr. Elliott made clear that the council did not want the property, because it was not worth anything. It did not want to spend taxpayers' funds for the benefit of people coming from outside. Because of the efforts of Mr. McIntosh and Mrs. Belt, who was most distressed at the council's attitude, the trust was established under Mr. McIntosh and the Walkerville and Enfield councils, and it started to become a revenue-raising area. Suddenly, because of all that has happened, Walkerville council now wants to take it over. I can understand that. It is quite sensible.

However, I am worried because, recently, that council decided to do away with tent-dwellers in the park. It did not want people on their holidays occupying tents in the park. However, camping is becoming popular, even more popular than caravaning. The Hon. Mr. DeGaris knows how popular are caravan parks in the South-East, and those parks cater for both caravaners and tent dwellers. The Beachport caravan park is one of the best in the State, and includes an area set aside exclusively for tent-dwellers on holidays.

Levi Park had an area set aside for tent-dwellers, but it was not wanted by the council, which went so far as to introduce a by-law outlawing tents. However, one councillor found that, if he wanted to erect a marquee on his back lawn for his daughter's wedding or the like, he could not do that if the by-law was passed. This aspect worries the Government. Levi Park is a caravan park and a park to which people go to stay because it is close to the city. I should like to maintain it in that way, and I would adopt the same attitude that the Minister of Local Government has adopted.

However, I do not want to see it in the hands of one council. This is where the Hon. Mr. Hill has shifted ground. First, he said that local government should control all these areas, but the honourable member was then told that the West Beach park is run not by a council but by a trust under the Minister's general direction and control and that it works well.

The Hon. R. C. DeGaris: Who runs the tent park at Beachport?

The Hon. T. M. CASEY: The district council does.

The Hon. J. C. Burdett: The point being that it is run by local government.

The Hon. T. M. CASEY: If honourable members vote for this amendment, they will alter the whole context of the Bill. They will take the park from the Minister's control and put it in the hands of the Walkerville council, and the Government is not willing to hand over control of this park to Walkerville council. That was explained in the second reading debate and in relation to the other amendment, which is consequential on this one. I cannot understand the reasoning of members opposite. This park was never under the control of Walkerville council, and the Government wants to maintain that position.

The Hon. J. C. Burdett: It was never under the Government's control, either.

The Hon. R. C. DeGaris: So, it's the same argument.

The Hon. T. M. CASEY: That does not matter. The Government cannot therefore accept the amendment.

The Hon. C. M. HILL: The point must be made that this park was never previously under the Government's control, but now the Government wants to control it. The Minister has made great play on the erection or non-erection of tents. Under this Bill, the Government can introduce any regulations it likes concerning tents, be they at Walkerville, at private gardens in that area, or anywhere else. That matter is left entirely with the Government in the regulation-making power that it is seeking under this Bill.

The Government does not even need to be directed by or to obtain the consent of the trust in relation to the introduction of regulations under this Bill. Therefore, it can introduce any regulations or controls relating to the use of tents within this park that it sees fit. So, the reference to tents and the criticism of Walkerville council on that ground are irrelevant.

The Committee divided on the amendment:

Ayes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, K. T. Griffin, C. M. Hill (teller), and D. H. Laidlaw.

Noes (10)—The Hons. D. H. L. Banfield, F. T. Blevins, T. M. Casey (teller), B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

The CHAIRMAN: There are 10 Ayes and 10 Noes. As this amendment is consequential on the other amendment and is worth further consideration, I give my casting vote for the Ayes.

Amendment thus carried.

The Hon. K. T. GRIFFIN: I move:

Page 2, after line 18—Insert new subsection as follows:

(6) In the case of a member of the trust appointed on the nomination of the Walkerville council no deputy shall be appointed except on the nomination of the council.

This amendment is merely designed to express what is probably implicit: that, when deputies are appointed to take the place of members who are appointed by the Government on Walkerville council's nomination, those deputies will also be nominated by Walkerville council.

The Hon. T. M. CASEY: As this is a sensible amendment, the Government is willing to accept it.

Amendment carried; clause as amended passed.

Clause 7 passed.

Clause 8—"Repeal of sections 16 to 22 of principal Act and enactment of sections in their place."

The Hon. K. T. GRIFFIN: New section 17 (2) provides:

Such of the moneys of the trust as are not immediately required by the trust may be lodged on deposit with the Treasurer or invested in any other manner approved of by the Treasurer.

Previously the trust had power to invest its moneys in other ways. Can the Minister say whether, if the moneys are on deposit with the Treasurer, it is intended that they bear interest, or will some other provision apply?

The Hon. T. M. CASEY: It is not uncommon for moneys of this nature to be invested with the Treasurer. The normal rate of interest is paid. I am not sure what it is; it may be the bond rate or the normal rate of interest.

Clause passed.

Clause 9 passed.

Clause 10—"Repeal of section 28 of principal Act and enactment of sections in its place."

The Hon. C. M. HILL: New section 30 (2) provides that regulations may be made that:

(d) prohibit any person from bringing a dog, or from allowing a dog to enter or remain in the park, or prescribe conditions on which dogs may be brought into, or allowed to enter, the park.

I do not object to the Government's regulating to control people entering the park with dogs on leashes, but to seek the power to prohibit any person from bringing a dog into the park seems to be creating ridiculous legislation. I suppose the only action I can take at this time is to ask whether the Government intends to regulate to stop dogs from entering the park. Where does the Government expect the citizens of the area to walk their dogs?

The Hon. T. M. CASEY: This provision covers the caravan park in general. The trust would probably indicate to the Minister that it wished to have regulations brought down prohibiting dogs inside the caravan park. This is not uncommon. There is only one caravan park in Australia, to my knowledge, where dogs are allowed; that caravan park is in Western Australia. This provision contemplates prohibiting dogs in caravan parks; it would have to be a recommendation from the trust to the Minister for regulations of this nature to be brought down. Representations have been made to me by people who have travelled from this State with their pet dogs and have encountered this difficulty. Those people have asked why dogs are not permitted in caravan parks; that is not for me to judge.

The Hon. C. H. HILL: I have taken a caravan away, and the family dog has been in the car on such occasions When I went into caravan parks in this State and in Victoria I did not notice any signs stating that dogs were not permitted. I am mindful of the fact that, if the Government brings down regulations in this connection, those regulations must lie on the table of this Council, and honourable members can then consider them. I shall let the matter rest until then.

Clause passed.

Title passed.

Bill read a third time and passed.

POLICE REGULATION ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 9 November. Page 1870.)

The Hon. J. C. BURDETT: This Bill follows Her Honour Justice Mitchell's Report but, with respect, I do not agree with Her Honour's recommendations. I therefore certainly do not agree with the Bill. I shall listen to the debate and make up my mind as to how I shall vote. We have had two Bills on this matter before us this session; the first was the Hon. Mr. Hill's Bill, and now we have this Bill. I shall summarise the difference between the two Bills. The Hon. Mr. Hill's Bill put the Commissioner of Police in the same position as the Auditor-General, the Valuer-General and the Public Service Commissioners; that is to say, they did not receive the same protection as, for example, Their Honours the Judges, who may be removed only on an address of both Houses of Parliament.

The officers can be removed by an address of both Houses of Parliament, or they may be suspended. If they are suspended, a full statement of the reasons for suspension must be laid before Parliament within seven days of the suspension, if Parliament is then in session; if Parliament is not in session a full statement of the reasons for suspension must be laid before Parliament within seven days of commencement of the next session. If, within a month, no address of either House praying for the removal of the officer is presented to the Governor, the officer shall be restored to office. If such an address is presented, the Governor may remove the officer from his position. This Bill simply states the grounds on which the Governor may remove the Commissioner of Police or the Deputy Commissioner of Police from office. Those grounds are incompetence, neglect of duty, misbehaviour, misconduct, or mental or physical incapacity. If the Governor removed the Commissioner, the Commissioner could then take civil action for wrongful dismissal through the courts on the ground that none of the grounds for dismissal existed: the Commissioner could claim that he had not been guilty of incompetence, neglect of duty, misbehaviour, misconduct, or mental or physical incapacity. If he could establish that, he would obtain damages from the court, but he would not be reinstated to office. That is a very important aspect.

Her Honour Justice Mitchell justified the distinction between the positions of Auditor-General, Valuer-General, and Public Service Board Commissioners on the one hand and the position of the Police Commissioner on the other by saying that the Police Commissioner would fulfil a purely executive function of government. I suggest with respect that it is clear that the Auditor-General, Valuer-General, and Public Service Board Commissioners fulfil a purely executive function of government. It is well known that the three executive functions are judicial, legislative, and executive. Further, it is quite clear that in no way do those officers fulfil a judicial function, although they must exercise discretion in certain matters, as does

the Police Commissioner. However, there is no doubt that they fit into the executive section of government, as does the Police Commissioner.

Her Honour has said that the Auditor-General, the Valuer-General, and the Public Service Board Commissioners need a measure of independence, but I suggest that the Police Commissioner also needs that. He is charged with the very important function of supervising the Police Force and with enforcement of the law. It is not beyond the bounds of possibility that some Government (and I am not saying the present Government) may wish the law to be enforced in a certain way and against certain people only. Therein lies tyranny. It should not be possible for a Government to do that, and a person of independence should be able to ensure that the law is enforced according to what the law states. He should be able to ensure that there is no fear or favour, no harsh law enforcement against any section of the community, and no letting-off of any section.

The point about the Bill is that, although a greater measure of protection is given to the Police Commissioner than exists at present, once he is sacked he cannot be reinstated. That is important under two headings. The first is the name. Although if he is dismissed he can seek damages, he is still a person holding an important position that he cannot get back. What is more important is the matter of the community, because when an oppressive Government is trying to enforce the law harshly against certain sections and is not enforcing it against other sections, the Police Commissioner may be the bastion and the protection of the public.

If a Government removes a Police Commissioner so that it may appoint another who will be more amenable to its will, in terms of the Bill the person dismissed is deprived of protection. It is not only a matter of the man himself (but that is important enough, because he is a man the same as other men are) but it also is a matter of protection of the public.

The Bill puts the Police Commissioner in much the same position as the Solicitor-General is in. Whilst there are certain matters for which the Solicitor-General can be dismissed and whilst, if he contends that the grounds do not exist, he can claim damages, there is no way in which he can be reinstated. The office of Solicitor-General is a most important one but there is not the same need, in regard to the public, to see that he is independent as there is in the case of the Police Commissioner. If a Solicitor-General is biased and gives bad advice to the Government, that bad advice can be tested in the courts, but the same position does not apply to the Police Commissioner. It is necessary that he have a measure of independence.

I have noted with surprise another matter in the Bill, but I merely comment on it: I do not oppose it. That is that the Deputy Commissioner receives the same protection as the Commissioner, and that is a new matter. The position of Police Commissioner is recognised in many Statutes, one of which is the Road Traffic Act. The Police Commissioner can do various things that the Deputy Commissioner normally cannot do. The Police Commissioner is in charge of the Police Force and has the responsibility to the Minister. I have been wondering why the Deputy Commissioner needs the same protection as the Commissioner, but I raise that matter only as a query.

One remarkable matter has been brought to my attention. I think the House of Assembly is dealing with Bill No. 101, and there are about 48 Bills on the Notice Paper for that House. Therefore, if that House is going to deal with the remaining Bills on the Notice Paper and others in the last week of the session—

The Hon. B. A. Chatterton: Some will be held over.

The Hon. J. C. BURDETT: Yes, but we still will have a work load and, for that reason, some members have examined House of Assembly Bills. The Hon. Mr. Griffin, who has looked at the Bill to amend the Administration and Probate Act, has brought to my notice that under the existing Act the Public Trustee is in a similar position to the Police Commissioner regarding appointment and dismissal. He is appointed by the Governor and, therefore, according to the clear law in that regard, he holds office during the Governor's pleasure and may be dismissed by the Government in the same way as the Police Commissioner can be dismissed.

In the Bill to amend that Act, the Government seeks to introduce a procedure along exactly the same lines as the Hon. Mr. Hill proposed in his Bill regarding the Police Commissioner. Under the Administration and Probate Act Amendment Bill, the Governor may remove the Public Trustee from office if he becomes incapable, by reason of mental or physical illness or disability, of carrying out the functions of his office or if both Houses of Parliament present an address praying for his removal. If the Governor suspends the Public Trustee from office, the statement of suspension is to be laid before Parliament in the same way as the Hon. Mr. Hill set out in his Bill and if, within one month, no address is presented, the Public Trustee is restored to office.

While the Government has opposed the Hon. Mr. Hill's Bill and is proposing a smaller measure of protection for the Police Commissioner, it is proposing for the Public Trustee a Bill along the lines of the Hon. Mr. Hill's measure. Whilst I realise that the Public Trustee needs a measure of independence, the Police Commissioner also needs that protection.

I suggest that in the situation that applied in relation to Commissioner Salisbury, or in any other such consideration, it probably would not inconvenience the Government and there would be nothing improper about the situation if Mr. Salisbury had been required to be suspended and the statement of reasons for his suspension laid before Parliament. An address would then be made to the Governor requesting the Commissioner's removal from office. That would have been the proper way of dealing with the matter, allowing an orderly public debate, not rallies in Victoria Square or elsewhere but an orderly debate in Parliament, which would decide whether or not it would address the Governor praying for the Commissioner's removal. I have yet to decide how I will vote on this Bill, but I believe that the Hon. Mr. Hill's measure provided not only a more real protection for the Police Commissioner but also a real protection for the public.

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

DEBTS REPAYMENT BILL, ENFORCEMENT OF JUDGMENTS BILL, AND LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

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

SPICER COTTAGES TRUST BILL

Adjourned debate on second reading.

(Continued from 9 November. Page 1871.)

The Hon. K. T. GRIFFIN: I support the second reading.

This Bill is designed to implement a request and recommendation from the Uniting Church for the amendment of the Spicer Cottages Trust. As stated by the Hon. Mr. Cameron, this trust was established to provide a home for widows of ministers of the Methodist Church and supernumerary ministers of that church. With the union of the Methodist Church, the Presbyterian Church and the Congregational Union of South Australia, it is necessary, in order for ministers of the Uniting Church to be accommodated, for the terms of the trust to the amended. The Uniting Church is desirous of having the Bill passed so that those variations, together with a consolidation of the terms of the various trusts affecting the Spicer cottages, can be implemented.

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

[Sitting suspended from 4.50 to 5.12 p.m.]

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL

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

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

That this Bill be now read a second time.

This Bill amends the Administration and Probate Act on a wide range of miscellaneous subjects. It gives effect to a report of the Law Reform Committee of South Australia relating to administration bonds and the abolition of rights of retainer and preference. It empowers the Supreme Court on the application of the Public Trustee to require the administrator of an estate to deliver accounts of the administration. The Bill enables Government hospitals to pay or deliver to the next-of-kin of a deceased patient money or property held on behalf of the patient without production of probate or letters of administration. The Bill establishes the office of Public Trustee as a statutory office and deals with the conditions upon which the Public Trustee is to hold office. It sets out in some detail the powers and functions of the Public Trustee, and provides that he is to be subject to Ministerial control on matters of policy. A new provision that is somewhat similar to a provision inserted some years ago in the Legal Practitioners Act provides that the Public Trustee may continue to act as an attorney notwithstanding that the donor of the power of attorney has ceased to be *sui juris*.

The right of the Public Trustee to continue to act will however terminate if a manager or administrator of the estate of the person in question is appointed or if the authority is revoked at any time by the court. The circumstances in which the Supreme Court can order that administration of an estate be granted to the Public Trustee are widened to some extent. A new provision is inserted which enables the Public Trustee or executor companies to elect to administer an estate where the value of the estate at the time of the deceased's death did not exceed $20 000.

This new provision is analogous to provisions existing elsewhere in Australia, and it is thought that the new procedure will have certain cost benefits where the estate of the deceased is not substantial. An election cannot be filed where a caveat has been lodged against the grant of administration, or if administration is in fact granted by the court. Section 106 which prevents the Public Trustee from disposing of certain securities without the approval of the court is repealed.

A new provision is inserted by the Bill empowering the Public Trustee, by leave of the court, to be a party in two or more capacities to any proceedings before the court. A further provision inserted by the Bill empowers the Public Trustee to act as a custodian trustee of any trust. In such a case the property will vest in the Public Trustee, and he will take custody of instruments of title relating to the property, but the actual management of the trust will remain in the managing trustees.

The Bill inserts new provisions relating to the scale of fees to be charged by the Public Trustee. These may be fixed by regulation or determined in any particular case by the court or on a basis determined by the court. A series of new provisions is inserted by the Bill empowering the appointment of a Public Trustee as manager of unclaimed property in the State. These new provisions are analogous to similar legislation in other jurisdictions. They generally empower the Public Trustee to exercise any powers that might have been exercised by the owner.

The Bill also inserts new provisions relating to the administration of the estate of persons of unsound mind. These provisions presently exist in the old Mental Health Act, but it is felt that they would fall more appropriately into the present Act. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 inserts a definition of "the Public Trustee" in the principal Act. Clause 4 amends section 18 of the principal Act. The amendment is inserted because administration bonds will no longer be required as a matter of course in every case. Clause 5 repeals and re-enacts section 31 of the principal Act. This new section deals with the circumstances in which administration bonds will be required. Such a bond will be required where an administrator is not resident in this State, where he has some claim against the estate arising from a liability incurred by the deceased before his death, where persons who are not of full capacity are beneficiaries, or where the court believes that the circumstances of the case are such that an administration bond should be required.

Clause 6 empowers the court upon the application of the Public Trustee or any person interested in the estate of a deceased person, or of its own motion, to order an administrator to deliver to the Public Trustee the statement of account relating to his administration of the estate. Clause 7 increases to $1 000 the amount that an administrator who is in default in the production of accounts can be required to pay.

Clause 8 provides that money or property held by a Government hospital on behalf of a deceased patient may, at the direction of the Treasurer, be paid or delivered to next-of-kin of the deceased without production of probate or letters of administration. It does happen, particularly in the field of mental health, that Government hospitals accumulate substantial property on behalf of chronic patients. This provision will facilitate disposal of that property. Clause 9 establishes the office of Public Trustee as a statutory office and deals with the conditions of office of the Public Trustee. New sections 75 and 76 deal with the powers of the Public Trustee, and provide that he is subject to direction by the Minister, and obliged to report, when the Minister so requires, to the Minister.

Clause 10 sets out the various capacities in which the Public Trustee may act, and provides that the Public Trustee may continue to act in pursuance of a power of attorney notwithstanding that the donor of the power has

ceased to be of full capacity. Clause 11 somewhat expands the circumstances in which administration may be granted to the Public Trustee. Clause 12 inserts a new provision empowering the Public Trustee or an executor company to file an election to administer an estate where the value of the estate at the date of death of the deceased did not exceed $20 000. The conditions on which such an election may be filed and the circumstances on which it may be revoked or shall terminate are dealt with in detail in this provision.

Clause 13 repeals section 106 of the principal Act which presently places a restriction on the right of the Public Trustee to dispose of certain securities. Clause 14 empowers the Public Trustee by leave of a court to be a party in two or more capacities to an action or proceeding before the Court. Clause 15 empowers the Public Trustee to be appointed as custodian trustee of a trust, and sets out the powers and function of the Public Trustee in that event. Clause 16 deals with the fees and commission payable to the Public Trustee. These are to be fixed generally by regulation, but the Supreme Court may, upon the application of the Public Trustee, determine the commission or fees to be paid in a particular case.

Clause 17 amends section 118a of the principal Act. This section deals with the acquisition of a building by the Public Trustee. At present subsection (4) provides that the terms and conditions upon which moneys are to be repaid to the common fund are to be determined by the Minister upon the advice of the Auditor-General. The provision that the advice of the Auditor-General is to be obtained seems inappropriate in this particular context, and is accordingly removed by the Bill.

Clause 18 inserts a new Division in Part IV of the principal Act empowering the appointment of the Public Trustee as manager of real or personal property in the State where the identity or whereabouts of the owner cannot be ascertained. New sections are included in this Division setting out the powers of the Public Trustee in relation to the administration of the property and providing for the eventual transfer of the property to the Crown if in fact it remains unclaimed for a substantial period.

Clause 19 inserts new Part IVA in the principal Act. This new Part sets out the powers of an administrator appointed under the Mental Health Act in respect of the estate of a person of unsound mind. It also provides that the Public Trustee may exercise powers of administration in this State where a person of unsound mind is domiciled or resident in some other State. Clause 20 is an evidentiary provision. Clause 21 restricts the exercise by an administrator of rights of retainer or preference. It also enables the Public Trustee to apply for the attachment of an administrator in circumstances that justify such action.

The Hon. J. C. BURDETT secured the adjournment of the debate.

STATUTES AMENDMENT (EXECUTOR COMPANIES) BILL

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

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

That this Bill be now read a second time.

Its object is, first, to amend the enabling Acts of the four private trustee companies operating in South Australia to increase the maximum commission payable to those companies on the administration or management of estates, to provide for a minimum commission, and to empower the companies to charge fees for the preparation of income tax returns. The companies concerned are Bagot's Executor and Trustee Company Limited, Elder's Trustee and Executor Company Limited, Executor Trustee and Agency Company of South Australia Limited, and Farmers' Co-operative Executors and Trustees Limited.

Secondly, the Bill is designed to frustrate apprehended moves to take over the Executor Trustee and Agency Company of South Australia by two gentlemen popularly described as "company raiders". The Government believes that intervention by Parliament in this matter is urgently necessary in the public interest. If the attempted takeover should prove successful, there will be a real danger of the raiders exercising their controlling interest to strip the company of its assets; this would gravely impair the stability of the company and place the administration of many trust estates in jeopardy.

Clauses 1, 2, 3 and 4 are formal. Clause 5 amends section 16 of the Bagot's Executor Company Act, 1910-1972, (a) by raising the commission payable on the capital value of an estate from 5 per cent to 6 per cent and that payable on the income from 5 per cent to 7·5 per cent; and (b) by providing that the total commission payable shall in no circumstances be less than that which would have been payable under the law of the State if the estate in question had been committed to the administration or management of the Public Trustee.

Clause 6 inserts a new section 16c in the Bagot's Executor Company Act empowering the company to charge and receive reasonable fees for the preparation of income tax returns. Clauses 7, 10 and 14 are formal, while clauses 8, 11 and 15 provide for amendments to section 20 of the Elder's Executor Company's Act, 1910-1972, section 10 of the Executors Company's Act, 1885-1972, and section 20 of the Farmers' Co-operative Executors Act, 1919-1972, respectively, which are of corresponding effect to the amendment in clause 5.

Clauses 9, 12 and 16 insert new provisions corresponding to that provided in clause 6 in each of the Acts set out immediately above. Clause 13 inserts new section 21a in the Executor Company's Act. The new section limits the number of votes exercisable by a member, or group of associated members, of the company to 1·67 per cent of the total number of class A and class B shares issued by the company. The effect of this will be that a shareholder or group of shareholders will not be able to control more than 10 000 votes at a general meeting of the company.

[Sitting suspended from 5.23 to 8.25 p.m.]

The Hon. R. C. DeGARIS (Leader of the Opposition): I support at this stage one measure in the Bill, but it is obvious that, for the other measures, the Council will require more time to consider them. I refer to the increase in maximum commission payable to companies on the administration or management of estates. On such issues, the matter requires somewhat longer consideration. Therefore, when this Bill is read a second time, I will be moving to divide the Bill into two parts, so that the second part (the urgent part) can be dealt with promptly and can go back to another place.

The reason for the second part, which comprises clause 13, as the second reading explanation indicates, is that it is designed to frustrate apprehended moves to take over the Executor Trustee and Agency Company of South Australia by two gentlemen popularly described as "company raiders". When the enabling Act was first passed in South Australia, enabling the operations of

trustee companies, there were certain protections given in the original Act to those companies. As I understand the position, the protections are now not sufficient to maintain a South Australian flavour in trustee companies. Therefore, I support the Bill at the second reading stage with the idea of dividing it, so that the urgent part can be passed by the Council, and with the Council given the opportunity to consider in more detail the other matters.

The Hon. D. H. LAIDLAW: I wish to declare that I have a pecuniary interest with respect to the provisions in clause 13, which amends the Executor Company's Act, 1885-1972. I am a director and shareholder in Bennett and Fisher Limited, which is one of the three largest shareholders in Executor Trustee and Agency Company of S.A. Limited.

Executor Trustee and Agency Company has a small issued capital of $400 000. There are three classes of shares: 400 000 class A shares of $2 each paid to 50c; 200 000 class B shares and 200 000 class C shares, each of 50c fully paid.

The articles of the company impose restrictions upon class A and class B shares, in that no member can own more than 10 000 of these two classes of share. However, this provision is of little use in practice, because a predator can hold up to 10 000 shares in each of a variety of nominee holdings. The articles of the company impose no restriction on voting rights.

The 200 000 class C shares are held equally by Bennett and Fisher Limited and another pastoral company. There is no restriction on the number of class C shares that one member can hold, nor is there any restriction on voting rights.

The Government is concerned because a Sydney-based company, Industrial Equity Limited, with a reputation as a corporate raider, is believed to have acquired about 19 per cent of the class A and class B shares in Executor Trustee and Agency Company. Since Industrial Equity owns 47 per cent of the issued capital of Southern Farmers Holding Limited, it could easily acquire a majority control.

Only four statutory trustee companies operate in South Australia and, if Industrial Equity obtains control of the Executor Trustee and Agency Company, the only such company controlled within the State will be Elders Trustee and Executor Company Limited, which is a wholly-owned subsidiary of Elder Smith Goldsbrough Mort Limited.

Although trustee companies over the years have made only modest profits by administering estates, they have acquired as trustees large shareholdings in most South Australian based public companies and, therefore, considerable voting power.

In recent years they have commenced the practice of accepting short-term interest-bearing deposits from the public that they in turn invest in public securities. Therefore, if Industrial Equity gets control of Executor Trustee and Agency Company, it will acquire as trustee for many estates a voting influence over other local companies as well as a source of liquid funds through deposits.

My colleagues and I share the concern expressed by the Minister in his second reading explanation. In an attempt to prevent Executor Trustee and Agency Company being taken over by an interstate-owned company, clause 13 provides that no member or group of associated members (and these are as defined in section 6A(5) of the Companies Act) shall have voting rights greater than 1.67 per cent of the total A and B shares. At present this is limited to 10 000 shares or, in other words, to 10 000 votes. Furthermore, directors of Executor Trustee and Agency Company are given the right to decide which members shall be deemed to constitute a group.

This is drastic action to take in order to protect a local company, but I believe that a statutory trustee company is like a bank and is in a special category. For instance, there is provision in the Federal Banks (Shareholding) Act, 1972-1973 to provide that no member may hold more than 10 per cent of the shares of any trading bank. Therefore, I believe that the action proposed by the Government in this instance is justified.

If those many members in the community who depend on the estates administered by the Executor Trustee and Agency Company for all or most of their income were to lose confidence, because of doubts regarding the intention of Industrial Equity Limited, it would have a harmful effect upon the stability of this State.

I am concerned about what attitude the committee of the Adelaide Stock Exchange will adopt regarding the continued listing or trading in class A and class B shares of Executor Trustee and Agency Company if the provisions of clause 13 to which I have referred become law.

The rules of the Associated Stock Exchanges prescribe that each share in a listed public company should have equal voting value. With this principle, in the case of the stock exchanges and shares, I agree wholeheartedly. However, there are, of course, occasions when exceptions are necessary. I hope that the Stock Exchange committee accepts this view and continues to list Executor Trustee shares; otherwise, the A class and B class shareholders will be disadvantaged in that their securities will lose negotiability. I support the second reading.

The PRESIDENT: I thank the honourable member for declaring a pecuniary interest in this matter. I draw his attention to Standing Order 225, which provides:

> No member shall be entitled to vote upon any question in which he has a direct pecuniary interest not held in common with the rest of the subjects of the Crown, and the vote of any member so interested may, on motion, be disallowed by the Council; but this order shall not apply to motions or public Bills which involve questions of State policy.

The Hon. C. M. HILL: I take a point of order in relation to the matter which you, Sir, have raised and on which you have spoken to the Hon. Mr. Laidlaw. I ask for your ruling on whether or not the Hon. Mr. Laidlaw should vote on this matter. It is my firm belief that he is entitled to vote, because he has disclosed the shares that he, in common with other citizens of the Crown, holds.

The Hon. T. M. Casey: Why don't you leave that to Mr. Laidlaw?

The PRESIDENT: Order! There will not be a debate on this matter. I believe that the ultimate decisions of this Council should remain with honourable members. However, if the Council directs me to give a considered opinion on the matter, I will need some time to enable me to do so. Alternatively, I can put the matter to the Council, which decision will be final. The Hon. Mr. Laidlaw has declared a pecuniary interest, and I understand that, under the Council's Standing Orders, he should not vote on this matter. However, the Hon. Mr. Hill has pointed out that in all probability this is a matter involving a public interest and that, having declared his interest, the Hon. Mr. Laidlaw is entitled to vote.

The Hon. M. B. CAMERON: I take a point of order, Sir. This involves more of a question to you, Sir, because the decision regarding whether the Hon. Mr. Laidlaw can exercise his right to vote is indeed an important one. It can affect every honourable member who has a shareholding (be it a large or a small one) in a company that is affected by legislation introduced in the Council. If a decision had to be made each time that a similar matter arose, it would

take much time. I should be much happier, therefore, if you, Sir, would take time and give a ruling on this matter.

The Hon. D. H. L. BANFIELD: I wonder whether the second reading debate can continue and the decision be made at the end thereof. By then, something may have been sorted out. The vote is not to be taken at this stage, and any decision made by the Chair could be made at the conclusion of the second reading debate, before the vote was taken. If a satisfactory solution has not been arrived at, the Council could adjourn for a short time. However, I should prefer the debate to continue at this stage. That will give you, Sir, an opportunity further to consider the matter. It will also give honourable members an opportunity to consider the Standing Order involved.

The PRESIDENT: That is indeed a logical suggestion. I am willing to allow the debate to continue, and will give a ruling before the vote on the second reading is taken.

The Hon. C. M. HILL: I should like briefly to contribute to the debate and to say that I support measures that are designed to protect South Australian companies from share raiders, whose ambitions are obviously not in South Australia's best interests. When speaking about problems of this kind in relation to trustee companies, an important sector may be adversely affected.

However, I make the point that every endeavour should be made to see that such measures do not unreasonably affect genuine existing shareholders. In this instance, I understand that some shareholders possess more than 10 000 shares. Those people bought those shares in good faith and in the knowledge of their then existing voting rights position. As a result of legislation of this kind, their voting rights are immediately and adversely affected.

The Council should not overlook the fact that, in trying to control share raiders in situations such as this, all other considerations regarding shareholders ought to be borne in mind.

I want to make the point, too, that I believe the executor company board and management is an extremely responsible group of men, and I do not in any way imply any criticism of them.

The Hon. Anne Levy: There aren't any women on the board, are there?

The Hon. C. M. HILL: Are there not? I see.

The Hon. Anne Levy: I just asked you whether there were any women on the board.

The Hon. C. M. HILL: I do not know whether the executive staff includes women. To put the matter briefly, I express the wish that the results that the Government hopes will be achieved by this Bill do come to fruition, because two immediate features become apparent. One is that, under the legislation, the two companies that now hold 200 000 shares out of the total of 800 000 shares issued will not have their voting rights reduced. This means, of course, that by the passing of this Bill, their complete control of this company is assured.

The second point that arises is that, if we envisage a possibility of their particular shareholdings being taken over by a raider, that is a means by which a share raider can almost automatically acquire control of this company. I cannot foresee any ways by which these two situations can be improved, and on this point I cannot help but criticise the Government about the haste with which this legislation has been brought before Parliament. I know the argument that the Government advances in reply to that charge. That is that, once the raider is made aware of the Government's intentions, one would expect, the raider would make immediate efforts to secure further shareholdings. However, I have grave doubts that the raider could act in such a way as to capture a vast parcel of shares within a period of 24 or 48 hours.

When this Council was confronted with the Bill late this afternoon and was told that the Government expected this Chamber to review and pass it before the end of the day's sitting, and especially as we had no knowledge of the measure being introduced in the other House until only about a half an hour before it was introduced in this Chamber, that was hurrying things so much that it was impossible to review the legislation adequately.

There may well be some areas that could have been improved if we had had longer to examine the Bill and, with the passing of time, the Bill may prove to be disadvantageous to the shareholders, the clients, and, indeed, the total management and staff of the executor company. However, I hope that that situation will not occur and, as I see the matter, I have little alternative at this stage but to support the measure.

[Sitting suspended from 8.50 to 10.5 p.m.]

The Hon. M. B. CAMERON: This Bill, particularly clause 13, makes me feel distinctly uneasy. I do not know what the effect will be tomorrow. Tonight we are passing a Bill that tomorrow could have a dramatic effect on people's investments. I share the concern of all members about the activities of Mr. Brierley and Industrial Equity, and I understand the motivation behing the Bill. However, members must understand that, by passing the measure, we are affecting not only the shareholding of Industrial Equity in A and B class shares (I think that is 19 per cent) but also the 81 per cent held by other people who, I understand, are not associated with Mr. Brierley.

Tomorrow they will find that, overnight, Parliament has deprived them of the voting rights to which their shares have entitled them, and it has been stated tonight that one of those persons has held shares for 30 or 40 years. We are going to deprive these people of a potentially large value of their shareholding, because I can imagine the reluctance of people to purchase A and B class shares, following the deprivation of voting rights. We are virtually changing the whole control to C class shares, which I understand are wholly owned by Bennett's and Dalgety's. Tonight we are exercising a virtual take-over on behalf of Bennett's and Dalgety's of the Executor Trustee Company.

That is the only conclusion to which we can come: Parliament is doing this job for these companies. I do not believe that that is a proper role for Parliament, and I cannot see why, if Bennett's, Dalgety's, or the C class shareholders are concerned about the activity of Mr. Brierley and Industrial Equity, they cannot go to the market place and, by purchasing shares with him, ensure that he does not get control. That is the proper role of the Stock Exchange and the role that it should be exercising if it is concerned.

I believe that it is potentially a grave misuse of Parliament for us to take this action tonight. From time to time I have heard that this Council is a House of Review, and one reason for its existence is to give free opportunity to examine legislation and, if it believes necessary, to delay legislation so that people can put a point of view on how that legislation may affect them.

The Hon. R. C. DeGaris: The original Act gave some protection. We are going to either throw all that away, or do what the Bill is intended to do.

The Hon. M. B. CAMERON: That may be, but we can almost guarantee that tomorrow the A and B class shareholding of Executor Trustee Company will lose value, a value that shareholders have enjoyed, I guess,

since the company has existed. The beneficiaries will be the C class shareholders, who will gain control.

The Hon. R. C. DeGaris: There is no change. That exists now.

The Hon. M. B. CAMERON: Except that there are voting rights.

The Hon. R. C. DeGaris: The voting rights are not being changed for A and B class shares.

The Hon. M. B. CAMERON: I think they are. I do not know whether, in this situation, with the obvious benefit that will flow to the C class shareholders, we are going to charge them gift tax, or whatever else.

The Hon. D. H. L. Banfield: Do you think we should?

The Hon. M. B. CAMERON: That is a matter for the Government to decide. I could easily say that whatever is the change in values tomorrow is a direct benefit as a result of the action of this Council. I do not believe that this legislation should pass, and I intend to vote against the second reading for that reason. I am extremely disturbed that it has been found necessary, according to the Government and even some members on this side, to take this precipitate action. I suggest that more time should be taken over the legislation and that we should not be required to pass it tonight, because this is a drastic step for this Council to take and almost an improper one in terms of principle.

I trust that members will think carefully before supporting it, because I do not believe that, in the long run, this will prevent what will happen. Either of these companies could sell its C class shares to Brierley tomorrow, or there could be a take-over of Bennett's, which is one of the companies that has a South Australian base, at some time. There is no reason why Mr. Brierley and Industrial Equity cannot take that action. I do not believe that we are conferring absolute protection, and for that reason I do not intend to support the second reading.

The Hon. K. T. GRIFFIN: I take exception to the haste with which we are being required to consider this complex Bill and the other measure which we will consider soon and which deals with administration and probate matters. The complexity of the Bill before us relates particularly to clause 13. Other questions arise on those parts of the Bill that deal with an increase in commissions. It should be noted that that increase is to a maximum commission that can be charged on corpus and on income: it is not the minimum. It must be remembered that the companies must still remain competitive in the market place and, while they can increase commission on income earned on assets that they now administer, such increase will have some impact on the future business that they expect to get.

I therefore raise no major objection to the increase in the commissions provision, knowing that the companies would still have to face their prospective clients and present clients if they increased their commissions unreasonably.

Clause 13 is difficult because it presents us with a dilemma: whether, if the clause is passed, it will prejudice the present shareholders and whether it will achieve the results that the Government believes will be achieved. If the clause is not passed, will it prejudice the present shareholders, more particularly, the clients of the Executor Trustee and Agency Company of South Australia? It has been put to us that that company is under threat in connection with the acquisition of its shares by company raiders who are reported to have a reputation for making quick profits from their share purchases and sales, often at the cost of the company in whose shares they are dealing. This could prejudice the shareholders of the trustee company. It has been put to us that there could be some detrimental effect in the present instance if no hurdle is placed in the way of these raiders. The affairs and funds of clients administered by this company could be prejudiced by these activities.

On the other hand, the Hon. Mr. Cameron has put the proposition that tomorrow the holders of C class shares will wake up to find that they have a substantial capital profit through the alteration of the voting rights on the shares; further, the holders of A and B class shares will awaken to find a considerable diminution in the value of their holdings, as a result of this Bill. I have not had time to consider that aspect in depth. Whilst that is a prospect, it may not necessarily occur, because clause 13 seeks to deal with groups of members of a company who are associated in accordance with section 6a (5) of the Companies Act. In these circumstances it does not necessarily follow that there will be either an increase in value to the shareholders of class C shares or a diminution in value to shareholders of class A and class B shares. Nevertheless, there is no guarantee that either effect will not result from this Bill. Having weighed the possible consequences that could result if we do not pass this Bill and the detriment that could occur to clients of the Executor Company and the disadvantage that the company and the community would suffer if a hurdle was not placed in the way of the raiders, somewhat reluctantly I believe that I ought to support the Bill as a whole.

The PRESIDENT: The question is "That this Bill be now read a second time". For the question, say "Aye"; against, say "No". I think the Ayes have it.

The Hon. M. B. Cameron: Divide!

The PRESIDENT: I hear only one dissentient voice. I therefore declare that the motion is carried in the affirmative.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—"Amendment of principal Act, section 16—Commission chargeable by the company."

The Hon. D. H. LAIDLAW: This clause provides that the commission that Bagot's Executor Company can charge on capital and income shall be increased. I am concerned about the extent of the increase, especially as it will make South Australia the highest State in Australia in this respect. In South Australia at present the statutory trustee companies (and I am now referring particularly to Bagot's Executor Company) can charge 5 per cent on capital and 5 per cent on income. It is proposed that these rates be increased to 6 per cent on capital and 7½ per cent on income.

In New South Wales, the rates are 4¼ per cent on capital and 5¼ per cent on income; in Victoria, 5 per cent on capital and 6 per cent on income; in Western Australia, 6 per cent on capital and 6 per cent on income; and in Queensland, 5 per cent on capital and 6 per cent on income. However, in those States statutory trustee companies can make specific charges for various services not available to companies in South Australia.

For example, in Queensland companies can charge for the arrangement of insurance and for acting as auctioneers in connection with real estate, for the preparation of succession accounts and estate duty returns, the preparation of land tax returns, and the keeping of books of account in respect of business undertakings. In Western Australia, companies can charge for the same types of things, and they can charge a fee of ·5 per cent on funds used in a business owned by an estate.

However, in South Australia the charges have been limited to capital and income, but there is now provision for making charges for the preparation of income tax

returns. So, although South Australian trustee companies will be entitled to make higher charges than those made in other States, I point out that at present South Australian companies cannot charge for the services to which I have referred. This clause is acceptable, and I support it.

Clause passed.

Clauses 6 to 12 passed.

Clause 13—"Enactment of section 21a of principal Act—restriction of voting rights."

The Hon. R. C. DeGARIS (Leader of the Opposition): I wish to explain why I did not proceed with my earlier intention to divide the Bill. Honourable members appreciate that with such a Bill there is some urgency in its passage for several reasons. However, we have had no time to consider other aspects of the Bill, which in some members' minds was causing concern. In discussions amongst members from this side and with other members, it has been possible to reach a consensus without the necessity to divide the Bill. Therefore, I did not proceed with that intention.

When the original Bill was passed governing the operation of trustee companies in South Australia, it was the intention of Parliament to provide some protection for those companies by providing that no-one could have more than 10 000 class A and class B shares in a trustee company. This would have the effect of restricting the voting of any one person on those shares to 10 000 votes.

The original intention of the legislation is now unable to prevent a person or a group of persons gaining more than the voting capacity of 10 000 votes while holding more than 10 000 shares with associated members holding a series of shares. Parliament is faced with this problem, that either we should rescind entirely the original concept of Parliamentary protection given to those companies, or we should shore-up and continue with that policy. It is a difficult question, and I know that every honourable member has some misgivings about clause 13. Nevertheless, I believe a correct decision has been made.

I do not believe there will be any great change in share values because of this Bill. The position has not changed, with the exception that no person can control more than 10 000 votes, which was the original intention. I do not think there will be any great rocking of the boat on the Stock Exchange because of the passage of this measure.

It has been a difficult question to resolve. I appreciate the need for urgency and the fact that there are strong arguments why the Bill should be passed and dealt with quickly. I should like to thank the Minister for his co-operation, because the matter has been resolved as satisfactorily as possible. I thank members on this side for their patience in attacking the problem that we had before us. While clause 13 may be a problem, at least Parliament has made an attempt to place in the Statutes a measure that is in the conception of the original legislation.

Clause passed.

Remaining clauses (14 to 16) and title passed.

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

That this Bill be now read a third time.

I express my appreciation to members for their tolerance and co-operation in this matter. True, we were not entirely happy that the Bill was introduced in another place this afternoon and had to be passed here immediately. That is not the way that legislation is normally passed, but I think that everyone appreciates the necessity for speedy passage of a Bill such as this. I apologise to members who might not have known that it was necessary for various discussions to take place, but members have readily accepted the position, and I express my appreciation and thanks to them for their co-operation in assisting with the passage of this Bill at such short notice.

Bill read a third time and passed.

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1909.)

The Hon. J. C. BURDETT: I support the second reading. There is no single principle running through the Bill, which is essentially a Committee Bill. The Bill was introduced in this Council this afternoon, and it has been amended in another place. We are asked to deal with it in a hurry, but I suggest that it is not fair to anyone to have to deal with such a complicated Bill in such a short time. It contains several complicated clauses, many of which are far-reaching in effect. I hope that the Minister in his reply and in Committee will be able to cope with the various questions that will be asked about aspects of the Bill. I can see no urgency for it, and no reason why we should have been asked to hurry.

The PRESIDENT: Order! It is not necessary for members to speak in such volume so that it is almost impossible to hear the member who has the call. It makes it extremely difficult for *Hansard* and everyone else. I ask honourable members to modify their conversation within the Chamber when a member is speaking. The Hon. Mr. Burdett.

The Hon. J. C. BURDETT: I see no urgency for this Bill and no reason why we should have been asked to deal with it in haste. Possibly we may overlook some matter: in the past we have been asked to deal with Bills in a hurry when we have not had proper time to consider them. I cannot recall a time when the Government has pulled the wool over our eyes or taken advantage of us in any way, but we have usually found after the event that there was not the degree of urgency that the Government claimed.

I understand that the urgency applies rather to the other Bill, the one with which we have just dealt, and that the Government considers that that Bill is tied to this Bill, hence the urgency. No-one has been able to explain to me why this Bill is tied to the other Bill, and I cannot understand the connection. Clause 10 provides a new extended section 77 of the principal Act. It extends the capacity in which the Public Trustee may act, and I refer particularly to the powers it gives him to act as an agent or attorney.

I intend to vote against clause 12 because of the lack of time that has prevented me from considering its full ramifications. It enables the Public Trustee and trustee companies to elect to administer small estates of less than $20 000 without applying for a grant of administration or probate.

I suggest that in the first place this puts the Public Trustee and trustee companies in a position of advantage over other executors and trustees who are not able to avail themselves of this provision. Also, although it was said in the second reading explanation that this clause is analogous to the provision in other States and elsewhere, I point out that it is novel in South Australia to enable anyone to administer an estate without a grant of letters of administration or probate. This may have quite far-reaching effects that do not seem to be expressly covered in the Bill.

In Committee, I will oppose clause 14, which provides

for a new section 109 and which seems to me to be contrary to all principles of justice. One cannot properly act for two people who have conflicting interests. This provision empowers the Public Trustee to represent two or more parties whose interests conflict. So, the Public Trustee must fight against himself: he must represent someone who has one interest and someone else who has a conflicting interest. He may represent beneficiaries who, in a certain estate, may have conflicting interests. This seems to me to be untenable and, indeed, unfortunate.

It is fortunate that the legal profession has a code of ethics that would not allow legal practitioners to do this. In proceedings before the court, the Public Trustee would have to instruct different solicitors to represent different parties with conflicting interests. The parties involved would have to be represented by different counsel. All the same, the person who had the responsibility of representing those parties, namely, the Public Trustee, would be the same. I do not see how the Public Trustee can properly represent people with conflicting interests.

I refer also to clause 19, and I ask the Minister of Health, when he replies to the second reading debate, to have regard to this matter. This provision enacts a new Part IVA, which provides for the administration of estates of the mentally ill and mentally handicapped. I have not had time to check this. Hence, I ask this question. I had understood that the Mental Health Act already provided a full procedure for the administration of estates of the mentally ill and handicapped. I ask the Minister of Health why it is necessary to insert this provision in the Bill. I think all honourable members understood that the provisions in the Mental Health Act took care of this matter.

It is rather surprising that we have had the Mental Health Act on the Statute Book for some time and it has not previously been found necessary to amend the Administration and Probate Act in this regard. There is no single principle running through the Bill, which is essentially a Committee Bill. So that it may go into Committee, I support the second reading.

The Hon. K. T. GRIFFIN: In the limited time that has been available to honourable members to consider the detailed provisions of the Bill, which in many instances have a significant impact on the present law, I have been able to draw attention to many possible difficulties. Many questions have arisen which with further time I might have been able to sort out myself but on which the Minister might be able to give an answer when he replies.

As the Hon. Mr. Burdett has said, this Bill has been tied to the previous Bill that the Council debated, and there is no obvious reason that can be discerned for that tying. No reason is evident from the Bill why there should be such haste in considering this matter.

The first matter I raise relates to clause 5, which seeks to repeal section 31 of the principal Act and to replace it with a new section 31. It deals principally with administration bonds, where letters of administration are sought by a person entitled to a grant. It is provided in proposed section 31(3) that an administration bond is not to be required of any agency or instrumentality of the Crown, the Public Trustee, or any body corporate authorised by a special Act to administer the estate of deceased persons.

The present practice is that, where the Public Trustee or one of the trustee companies takes a grant of letters of administration, an administration bond is not required. When an individual seeks such a grant, ordinarily a bond with one or more sureties is required.

I cannot see the need for the provision that any agency or instrumentality of the Crown other than the Public Trustee ought to be exempted from that requirement. I do not know in which circumstances such an agency or instrumentality would want to take a grant of letters of administration.

Clause 7 *(b)* seems to contain an amendment that already has been made. Therefore, that amendment is not necessary, and in due course I will move to delete it from the Bill.

Clause 8 seeks to provide that, where a patient in a Government hospital dies (and a Government hospital is defined as being any Government hospital within the meaning of the Health Act, or any other institution declared by notice in the *Government Gazette* to be a Government hospital for the purpose of this section) and money or property has been left with the hospital on deposit or in safe keeping, the Treasurer is entitled to pay out that property to the surviving spouse or relatives or to any other person who, in the Treasurer's opinion, is entitled to it.

It seems to me that that provision, which is consistent with the Government's right to pay out a sum up to $2 000 belonging to a former employee who dies, nevertheless raises the question whether it is intended that those provisions ought to override those which apply in the will of a deceased person in relation to the distribution of his or her income, assets or other property.

Clause 9 deals with the appointment of the Public Trustee. It gives him a significant measure of protection that he obviously has not had in the past. I do not disagree with this provision. The question arises, however, as to why the term of five years is fixed.

The question also arises as to why the procedure for removal from office of the Public Trustee is that laid down in the clause. In a subsequent part of clause 9, there is reference to the Governor, subject to the Public Service Act, being able to appoint one or more deputies of the Public Trustee. I do not object to that general provision, but I have not had opportunity to check the Public Service Act to find out why the appointment of one or more deputies is subject to that Act. If the Minister has information on the matter, I should be pleased to receive it. The other matter of some concern in the Bill is the proposed new section 76, which provides in proposed subsection (1):

> The Public Trustee shall observe and carry out any direction of the Minister on a matter of policy.

That is a new concept in the Administration and Probate Act and, as the Public Trustee is a person in public office administering funds of citizens, it causes me concern that a direction by a Minister on a matter of policy may be contrary to the best interests of one or more persons who may be receiving assistance from the Public Trustee.

The Hon. Mr. Burdett, when dealing with clause 10, has raised questions about the scope of the activity of the Public Trustee. The Auditor-General's Report for the year ending 30 June 1978, at page 212, indicates that the principal functions of the Public Trustee are:

> To act as executor, trustee, or administrator of deceased estates.
>
> To manage the estates of persons pursuant to the Mental Health Act.
>
> To receive, invest and disburse moneys for the benefit of widows and minors when directed by the courts.
>
> When directed by a protection order made by the court pursuant to the Aged and Infirm Persons Property Act, to manage the protected person's property.

In the proposed amendment, there is a substantial widening of those provisions. The one that creates most concern is the power to act as an agent or attorney, with consequential amendments in that clause. I am not sure

about the extent to which the Public Trustee now acts in that capacity, but I do not believe that he acts to any large extent if at all as agent or attorney. However, if the Minister has information on that matter, I should appreciate receiving it.

The Hon. Mr. Burdett has referred to clause 12, which makes a substantial change in the law affecting the power of the Public Trustee to administer estates without a grant of probate. The amendments passed in the House of Assembly seek to extend that to the trustee companies. Several technical aspects that need to be considered in that context cause me difficulty in interpreting the provision at this stage. Therefore, at the appropriate time I will be asking the Committee to vote against that provision.

Clause 14 also gives concern, because it enables the Public Trustee to act, although certainly with leave of the court, for more than one party where there is conflict of interest. That situation ought to be avoided, not only with the Public Trustee but also with any other person or body in a position of trust or responsibility.

The provisions of clause 18 regarding unclaimed property are novel, but they are provisions for which I see some need. At the appropriate time I will move several amendments, particularly to delete a provision that gives the Public Trustee the right to become a manager of unclaimed property without doing more than give notice in the *Government Gazette*, where the property has a value of less than $2 000. For all other property, he must seek leave of the court but, when he gives notice regarding a property that has a value of less than $2 000, he gives the notice where he is satisfied that, in the interests of the owner of the property or of any other persons, or to secure the development or better utilisation of land, it is advisable that he should become manager of the property. In those circumstances, there are few safeguards against some unfortunate erroneous exercise of that power. As I have said, I am concerned about the haste with which the Bill is being debated tonight. Nevertheless, I support the second reading.

The Hon. D. H. L. BANFIELD (Minister of Health): Reference has been made to the reason for the inclusion in clause 19 of Part IVA. This relates to the administration of estates of mentally ill and handicapped persons. This is supplementary to the new Mental Health Act, which was passed some time ago and which has not yet been proclaimed. In the light of the action taken in the Mental Health Act, it is necessary to have the provision that is in this Bill. The Mental Health Act sets up some boards and it has been necessary to draw up regulations. We have nearly reached finality in that matter and I hope to be in a position to proclaim the Act soon.

The Hon. C. M. Hill: When do you think you will proclaim it?

The Hon. D. H. L. BANFIELD: As soon as possible.

Bill read a second time.

In Committee.

Clauses 1 to 6 passed.

Clause 7—"Proceedings to compel account."

The Hon. K. T. GRIFFIN: I move:

Page 3, lines 5 to 8—Leave out all words in these lines.

Those words seek to effect an amendment which, according to the consolidation of the Administration and Probate Act, has already been made. Therefore, the change seems unnecessary.

The Hon. D. H. L. BANFIELD (Minister of Health): We have no objection to the amendment.

Amendment carried; clause as amended passed.

Clauses 8 to 11 passed.

Clause 12—"Administration by the Public Trustee without grant."

The Hon. K. T. GRIFFIN: I oppose this provision, which seeks to give the Public Trustee and the trustee companies the right to administer estates with a value of less than $20 000 without formally applying for and being granted probate of the will of a deceased. As the Hon. Mr. Burdett has said and as I have mentioned in part, a number of questions arise on this provision, some of a technical nature and some of a practical nature, affecting the whole area of the probate law. There are such questions as the caveating of a will, the provisions of a will under the Inheritance (Family Provision) Act and the rights of the members of a family under that Act, the question of liability of the trustee, and other questions, all of which suggests that it is undesirable to proceed with this novel provision at this stage. I therefore oppose the clause.

The Hon. D. H. L. BANFIELD: I ask honourable members to support this clause. The Government believes that clause 12 makes the procedures less expensive, especially for smaller estates. If clause 12 is defeated, it will be much more costly, and it will be necessary for lawyers to come into the field.

The Hon. K. T. GRIFFIN: It may, in fact, be more costly in the long run if a number of technical difficulties are not ironed out. There are other questions concerning the rights of beneficiaries in such areas as the negligence of the Public Trustee or a trustee company. There are also questions of the rights of beneficiaries to compel the Public Trustee or a trustee company to take action or to restrain them from taking action, all of which are complex questions relating to probate law. Grants of probate have been a tradition over the centuries. Because of the extent of the development of the law in that area, an innovation such as this can have implications which at first view are not immediately recognised. I therefore believe that, whilst on the face of it there may be a saving, it is quite possible that there will be an increase in cost, because of difficulties that could arise.

The Hon. D. H. L. Banfield: There cannot be any saving if clause 12 is defeated.

The Hon. K. T. GRIFFIN: That is acknowledged. There are other technical problems relating to probate that could have an adverse effect not only on the cost of administration but also on the rights of beneficiaries. It is for those reasons that I want to be cautious about it, rather than to rush in and support a clause such as this when we have had only a few hours to consider its implications.

The Hon. J. C. BURDETT: I, too, oppose the clause at this stage. Clause 12 was amended this afternoon in the House of Assembly. The Bill was introduced there only last Thursday. It is a far-reaching provision that could have considerable technical and substantive results in the law. It is new to South Australia to have the concept of administration without a grant. Where there is a grant, the law is well known. The concept of administration without a grant is novel. It may be that, when we have had an opportunity to consider this, we may agree to it, but it is not fair, if there is some urgency about the rest of the Bill, that we should be expected to accede to a substantial departure from the existing law at this stage. Also, enabling the Public Trustee and trustee companies to have this ability to administer without a grant gives them an unfair advantage over other trustees. The existence of other trustees is well recognised and has a long history. Generally, they have done their job very well. It is difficult to see why the Public Trustee and trustee companies, which enjoy many advantages, should be given this additional advantage at the expense of private trustees. I am not prepared to vote for this clause at this stage.

Clause negatived.

Clause 13 passed.

Clause 14—"Public Trustee may represent two or more parties in action."

The Hon. K. T. GRIFFIN: I oppose this clause, which allows the Public Trustee, by leave of the court, to be a party before the court in two or more capacities, notwithstanding that in one capacity he represents the interests of a person or class of persons that are in conflict with the interests of another person or class of persons whom he represents. It is basic that there ought not to be any conflict of interest either in the Public Trustee's office or in the private legal profession or in any other agency acting in this sort of relationship. It is quite improper. Whilst in the case before us it is by leave of the court, nevertheless there is still the problem that I have in reconciling the conflict of interest. How can the Public Trustee act in the best interests of both parties if there is a conflict of interest? I do not believe he can. Even if he can, he will not be seen to be acting in the best interests of both parties. I therefore oppose the clause.

The Hon. D. H. L. BANFIELD: I ask honourable members to support the clause. The Public Trustee can act in more than one capacity only by leave of the court. It is not likely that, if there was to be a conflict of interest, the court would grant the Public Trustee that leave. So, the safeguard is there. The court can determine whether there would be any conflict of interest. So, the situation is completely covered.

The Hon. J. C. BURDETT: I oppose the clause. The Minister's reply does not convince me. He said that it was not very likely that the court would grant leave where there was a conflict of interest. Actually, proposed new section 109a makes clear that the question of conflict of interest is not to be taken into account. It provides:

> (1) The Public Trustee may, by leave of a court, be a party in two or more capacities in any action or other proceedings before the court notwithstanding that in one capacity he represents the interests of a person or class of persons that are in conflict with the interests of another person or class of persons represented by him in that action or proceeding.

So, in a sense, the court is specifically instructed to disregard the conflict of interest as such. I do not think the court should be put in a position to have to grant leave or to be asked to grant leave.

It is contrary to the traditional concept of representation to represent two people who are at loggerheads. How can one do justice to both of them? Even if it is by leave of the court, the concept is countenanced in the new provision and therefore I oppose it.

The Hon. K. T. GRIFFIN: The Minister indicated that, where there was a conflict of interest, it was unlikely that the court would allow the Public Trustee to act for both parties. If that applies, why do we need the clause? Although there is the safeguard of the leave of the court, as a matter of principle I do not believe that even the court should be able to order that the Public Trustee can act in two or more capacities where there is a conflict.

Clause negatived.

Clause 15—"Custodian trustee."

The Hon. K. T. GRIFFIN: I move:

> Page 10, lines 6 and 7—Leave out "whose decision shall be final and shall not be subject to appeal."

I object to new subsection (10) because I believe that an appeal should be possible. There can still be some substantial matters in dispute and there ought to be a right of appeal.

The Hon. D. H. L. BANFIELD: I hope that the honourable member will accept my amendment. Therefore, I move:

> Page 10, lines 6 and 7—Leave out "whose decision shall be final and shall not be subject to appeal." and insert "who may determine the matters in dispute in such manner as he may consider just."

The Hon. K. T. GRIFFIN: As I am willing to accept that amendment I seek leave to withdraw my amendment.

Leave granted; the Hon. K. T. Griffin's amendment withdrawn.

The Hon. D. H. L. Banfield's amendment carried; clause as amended passed.

Clause 16 passed.

Clause 17—"Expenditure of moneys from common fund in acquisition of land."

The Hon. K. T. GRIFFIN: I do not wish to proceed with my amendment on file.

Clause passed.

Clause 18—"Enactment of Division IV of principal Act."

The Hon. K. T. GRIFFIN: I move:

> Page 10, line 34—Leave out "or become".

New section 118c (3) relates to unclaimed property of a value less than $2 000. Public Trustee can become the manager of that property merely by giving a notice in the *Gazette* if he believes that to be in the interest of the owner of the property or to secure the development or better utilisation of the land.

In all other cases he must obtain a court order to become the manager of what he would regard as unclaimed property. I want to ensure that, with any unclaimed property, the Public Trustee must obtain a court order.

Amendment carried.

The Hon. K. T. GRIFFIN: I move:

Page 11—

Lines 14 to 25—Leave out subsection (3).

Lines 33 to 38—Leave out subsection (5).

Page 12, line 39—Leave out "or to become".

Page 14—

Line 2—Leave out "or election or other act".

Line 3—Leave out "or became".

Line 13—Leave out "or election or other act".

Line 14—Leave out "or became".

I have already indicated why I oppose new subsection (3). New subsection (5), which I have also moved to delete, is of a technical nature. That subsection provides that no Public Trustee can make an application under this provision to vest in himself property of which he is the manager. I oppose that provision in this Bill.

Amendments carried; clause as amended passed.

Remaining clauses (19 to 21) and title passed.

Bill read a third time and passed.

MOTOR VEHICLES ACT AMENDMENT BILL

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

CLASSIFICATION OF PUBLICATIONS ACT AMENDMENT BILL

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

FILM CLASSIFICATION ACT AMENDMENT BILL

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

CRIMINAL LAW (PROHIBITION OF CHILD PORNOGRAPHY) BILL

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

POLICE OFFENCES ACT AMENDMENT BILL

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

METROPOLITAN TAXI-CAB ACT AMENDMENT BILL

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

STAMP DUTIES ACT AMENDMENT BILL

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

ADJOURNMENT

At 11.35 p.m. the Council adjourned until Wednesday 15 November at 2.15 p.m.