Legislative Council,

Thursday, 3rd December, 1908.

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The PRESIDENT took the Chair at 4.30 p.m., and read prayers.

PETITIONS (5)—EARLY CLOSING WEEKLY HOLIDAY.

Hon. R. D. McKENZIE (North-East) presented petitions from 71 assistants employed by Montgomery Bros., Kalgoorlie, 17 assistants employed by Alexander & Co., Kalgoorlie, 48 assistants employed by J. H. Pellew, Kalgoorlie, 16 assistants employed by J. W. Finister & Co., Kalgoorlie, and 13 assistants employed by Bricknell Bros., Kalgoorlie, praying for the retention of the Wednesday half-holiday.

Petitions received and read.

QUESTION—LABOUR BUREAU.

Hon. G. RANDELL asked the Colonial Secretary: What is the cost to the State of each person engaged for employment during 1908 through the agency of the Government Labour Bureau?

The COLONIAL SECRETARY replied: There were 3,692 men and 806 women found engagements through the Government Labour Bureau during the eleven months ending 30th November, 1908. The expenditure for the same period for salaries, advertising, postage, stationery, etc., totalled £694 3s. 8d. The cost to the State therefore of each person has been three shillings and one penny.

PERSONAL EXPLANATION.

Weekly Holiday.

Hon. J. W. KIRWAN (South): With the indulgence of the House I would like to make a personal explanation. I have received two documents by the mail this morning, and I would like to inform the House that they are petitions to this Chamber. They enter a protest against any change in the weekly half-holiday from Wednesday to Saturday. One of these documents comes from Boulder City, and is signed by 152 shop assistants who represent all classes of shop assistants at Boulder City. The other document is also in the form of a petition, and it is signed by 74 shop assistants also representing all classes of shop assistants at Kalgoorlie. Now I very much regret that neither of these petitions is in the form in which I can present it to the House. I find that the names are signed on varied sheets of paper, and I find they do not conclude with the usual prayer; but these are mere technical objections, and I make this personal explanation in order that the large number of assistants who signed the petitions, 152 in one case, and 74 in the other, may know why it is that I have not presented them to the House, and that though these petitions have been received, through their not being framed in accordance with the orders of this House I have not been able to present them. That fact may be instrumental in achieving the object the petitioners have in view.

MOTION—CROWN SUITS ACT, 1898.

Hon. M. L. MOSS (West) moved:

That it is expedient that the Government should introduce a Bill without delay to amend the "Crown Suits Act 1898."

He said: Instead of taking upon my own shoulders the burden of drafting a Bill I thought fit to give notice of this motion. I think it is essentially a measure which the Government should bring down as a part of their programme during next session. The old rule with regard to a subject having remedies against the Crown was that the courts of law were not open to the subject at all. After a certain period of time

that rule was relaxed to the extent that on a petition of right the Sovereign, or in this State his representative the Governor might order that right should be done on the petition, and the courts of law made available to the subject for the purpose of taking proceedings against the Crown. But this petition of right never extended further than permitting the subject to bring an action on a contract against the Government. The old rule of law, that the King could do no wrong, was still applicable to the circumstances, and to all the transactions that the Government were concerned in, although the greatest amount of mischief and wrong and injustice might be done to the subject. But if a private individual inflicted that injustice on a private person, the doors of the courts of law were open so that person could get his remedy. If the Government inflicted that injury, however, there was no remedy at all for the subject. That remained the state of affairs in Western Australia until 1896, when a Crown Suits Bill was introduced to the Legislative Assembly. At that time I was a member of the Assembly, representing North Fremantle, but in consequence of the insertion of some clauses that were not in the Bill when introduced by the Forrest Government, the measure was slaughtered in the session of 1896, and did not find its way on to the statute book until 1898. That Act which still remains in force is practically a copy of the measure that has been on the New Zealand statute books since 1881. It was recognised in New Zealand as here that where you have a Government embarking on a number of businesses which in most countries are left to private enterprise, it became necessary that the Government should be amenable under the ordinary rules of law regulating the conduct of transactions of private people. Therefore, a certain measure of relief is given in the Crown Suits Act. Provision is made by means of a petition to sue the Crown for a breach of any contract, or for the payment of moneys under a contract. There was also conferred upon the subject a further right which is a very great advance on the common law rule which said the King could do no wrong. It was provided that one of these petitions could be presented for wrong or damage done or suffered in connection with a public work as hereinafter defined. The public works were defined in that Act to mean railways, tramways, roads and bridges, buildings, electric telegraphs, telephones, steamboats, dredges, harbour works, quarries, water works, jetties, cranes and other works of a like nature used by the Government or constructed by the Government, the revenue derived from which formed part of the Consolidated Revenue of the State. Let me illustrate what that means. I will mention the case of Mr. Mayhew who had his garden flooded as the result of various acts of negligence in connection with construction of a bore for the Claremont Water Supply. And had it not been for the Crown suits Act, as that was a wrong independent of contract, the courts of law would have been shut against Mr. Mayhew. He could not, even on a petition to the King, have gone to court and recovered the damages he ultimately succeeded in getting against the Crown for a wrong done against his property. However, the Crown Suits Act, as it is to-day, has proved to be tremendously defective, because, although Section 32 says that the laws, statutes and rules of procedure are to be applied between the Crown and the subject to the same extent as if the litigation were between subject and subject, it turns out, as the result of years of experience in operating under this Act, that Section 32 does not mean anything like what it was intended to mean, or what it says. For instance, when two people have litigation one with the other, and when one person has in his possession a number of documents which are useful for the case of his antagonist, it is an easy matter to get what is known as an order for discovery, and the person holding the documents is bound to show them, so that he may secrete nothing, and so that complete justice may be done between the two parties; but inasmuch as the

Crown Suits Act does not say who is to make the affidavits which disclose these documents, and as the Governor cannot be called on to do it, the power to obtain this order for discovery for documents in the possession of the Crown is non-existent so far as proceedings under the Crown Suits Act go. Likewise it is a common procedure in litigation between subject and subject to put interrogatories to the opposing party for the purpose of discovering immediately definite facts, and the result of the procedure often means the stopping of a good deal of litigation. The plaintiff finds out long before he could get into court that certain facts he expects to exist do not exist, and so the litigation is put an end to. But very often there are matters that are peculiarly in the knowledge of an officer of the Crown in litigation between a subject and the Crown, matters that he should be compelled to disclose before he is in the witness box, yet the Crown Suits Act is so worded that there is no person named to whom these interrogatories can be put. The Act is defective in this regard, just as much as it is in the matter of securing relief by way of discovery. There is yet another blot. If in the course of one man's dealings with regard to another man's property, injury is being done, or is apprehended, it is an easy thing to get an injunction at once to stop the work threatening injury to property, or to prevent a repetition of the injury, but as the injunction is from the Crown enjoining someone not to do a certain thing it would be reducing the matter to an absurdity for the Crown to give an injunction enjoining the Crown not to do a certain thing. In this State where we have public servants carrying out public works and other things that in ordinary circumstances are left to private enterprise in other places, there should be a remedy open to the individual to prevent the doing by these public servants of those acts which inflict great injury to a person or a person's property. This matter has been dealt with on a very much better basis by the Federal Parliament. I do not consider that their method of dealing with it is by any means perfect, still it is a marvellous advance on the condition of affairs existing in Western Australia. In Part IX. of the Federal Judiciary Act, 1903, we have a group of sections from 56 to 67 providing a code of procedure for suits by and against the Commonwealth and the States, and it is provided in Section 56—

> "Any person making any claim against the Commonwealth, whether in contract or in tort, may in respect of the claim bring a suit against the Commonwealth in the High Court or in the Supreme Court of the State in which the claim arose."

Immediately there is done in connection with a public work any wrong for which one subject could go to law and obtain compensation against another, the Commonwealth freely threw open to the subject the High Court or the Supreme Courts of the States in which to take action against the Commonwealth if the Commonwealth has done wrong. That is what I think should be done in Western Australia. I commend these sections in the Commonwealth Act to the Colonial Secretary's attention, and I hope he will bring them under the notice of the Attorney General. It is further provided in Section 60 of the Commonwealth Act that the High Court may grant an injunction against a State and against all officers of the State and persons acting under the authority of the State. I do not wish to labour this question, but I may be asked at this juncture why I should move this motion, particularly in such a short session. I will tell the House something that has occurred in the last week or two at Fremantle. Dr. White, a very respected resident of Fremantle, resides on the Canning Road, and the Government have thought fit in connection with the Fremantle water supply to erect on the Canning Road, almost abutting on the residence which Dr. White has put up at a cost of some £3,000, a water chamber, which is connected with the pipes from the reservoir at the top of Monument Hill. In this water chamber there is an electric pump used to pump the water from it to a higher level, 150 feet,

in order to supply people on the Canning road with water from the Fremantle water supply. So little judgment has been exercised in connection with the locality chosen for this pumping chamber that for about a week Dr. White had the very great pleasure of the noise created by the suction of this electric pipe running through the water pipes in his house, and all kinds of unbearable noises were made in the night. That has been stopped, because they have cut off Dr. White's supply from the Canning Road and they now supply him from Duke Street; but the trouble has gone on, because there is a rocky foundation there and the vibration and shaking of the house is so serious that no one in the house can get a wink of sleep at night time. This gentleman, who is a friend of mine and a respected resident of the place I represent, said to me, "You tell me that my only remedy is to go against these people for damages, but I cannot get to the Court for the next four or five months. Am I to live under this nuisance and not get any remedy?" If a water works company were carrying on operations in these conditions an injunction would be granted against them very promptly, and the nuisance would be stopped. I have only cited this because it is one of the cases that may occur in connection with many of the undertakings the Government have embarked on. The Federal authorities have been very fair. They seek to put the Commonwealth in no better position than one of the King's subjects who has done wrong to the community, and I appeal to the Government to deal with this question during recess. The Crown Suits Act is out of date. It is entirely unsuited to the present requirements of the State, and I think that if the Commonwealth think this legislation is necessary our Government should not seek to put themselves behind a hedge and expect to have different treatment meted out to them in regard to their obligations towards people's rights from that which is the case between subject and subject.

On motion by *the Colonial Secretary* debate adjourned.

BILL—PERMANENT RESERVES (SUBIACO) REDEDICATION.

Third reading.

The COLONIAL SECRETARY (Hon. J. D. Connolly) in moving the third reading said: On the second reading, Schedule 2 had escaped his notice. Schedule 1 dealt with a piece of land adjoining the Subiaco Gardens, as was fully explained on the second reading, but there was another piece of land at Subiaco he had omitted to mention. Reserve 186 was situated at the corner of Hay-street and Thomas-street, and a piece about 1 rood 20 perches in extent was to be taken from this reserve and granted to the Children's Hospital which stood on Reserve 6052, facing Thomas-street, and had no access to Hay-street. This piece of ground was needed for out-patients' buildings, and also in order to take the drainage from the main buildings into Hay-street. The building for the out-patients was now being built, and as the reserve was used for no particular purpose the Government had granted it to the hospital, but as it was a Class A reserve it was necessary to get the consent of Parliament.

Question passed.

Bill read a third time and transmitted to the Legislative Assembly.

BILLS (2)—THIRD READING.

1. Supply, £365,579, returned to the Legislative Assembly. 2. York Reserve, transmitted to the Legislative Assembly.

BILL—HEALTH ACT AMENDMENT (No. 2).

Second reading.

The COLONIAL SECRETARY (Hon. J. D. Connolly) in moving the second reading said: I scarcely know whether it is necessary to offer any explanation in moving the second reading of this Bill, as it has been explained so often by myself to this House. Let me say again, however, that the time for striking the health rate provided in the Act

of 1898 is the first of November, while the time for striking the ordinary roads boards rates is the first of July. Certain roads boards are also constituted health boards, and it is inconvenient to make them strike the rate as from the 1st of July, and then go through the same form and send out health notices on the 1st of November; while in the case of municipal councils they issue notices on the 1st of November, setting forth that the municipal rate is so much and that the health rate is so much, and the assessment, the collection and the notices are all done at one and the same time. Where the boundaries of the roads boards are coterminus with the boundaries of health boards it will enable the boards to use the machinery of the Roads Board Act of 1902 for that purpose, and in anticipation of this Bill passing certain roads boards have followed that procedure. There is a number of roads boards in this State that have a large amount of money outstanding. Some people who are rather anxious to evade the payment of rates have discovered that the rate has been struck illegally, and strictly speaking it is illegal.

Hon. W. Kingsmill: It is rough on those who have paid their rates.

The COLONIAL SECRETARY: Yes, they have to keep up the whole government of the health boards. The second clause seeks to validate the rate which has been struck.

Hon. R. F. Sholl: The others can recover.

The COLONIAL SECRETARY: Consequently some of these health boards are in rather a bad way, and are asking the Government to make advances—which the Government refuse to do—in order to carry on the work of the boards. Immediately the clause is passed it will validate the rate, and if the ratepayers will not pay, they can be sued and made to pay. The rates outstanding amount to a good many hundreds of pounds in some of the health board districts. I want it to be clearly understood, as some members seem to be under a misapprehension, that the Bill does not give local boards any further powers of taxation. It does not increase their power to tax the ratepayers in the least, but it enables them to strike a rate at a different time, on the 1st of July instead of on the 1st of November. The second clause validates the rate which has already been struck in the way I have mentioned. The last two clauses deal with an entirely different matter. Clause 3 reads—

> "Paragraph *e* of Section 33 of the principal Act is amended by inserting after the word "animals" the words "and enabling the board to cause any diseased cows or other animals to be marked with a prescribed brand."

In regard to dairy cattle there is some doubt as to the validity of the regulations and the right of the central board to brand diseased cows. It is not a question as to whether they have the right, if it is deemed fit, to order the destruction of diseased cows, but whether they have the power to make regulations to brand these cows.

Hon J. W. Hackett: It will be under regulation at any rate.

The COLONIAL SECRETARY: Yes, it gives them power. The clause relating to regulations gives them power to make regulations for branding. They have power at the present time to order the destruction of animals that are diseased. Section 54 of the principal Act is also amended in order to give the central board power to make regulations for the inspection of articles of food and to prescribe marks which may be applied by the board to articles of food deemed by the board to be wholesome, and for the fees to be paid for such inspection, and the persons by whom such fees shall be payable. In other words, the present section does not give the board power to brand wholesome or unwholesome food. The clause provides for the charging of fees for inspection. Sometimes the board are put to expense in making these inspections; and it is usual to allow them to charge a fee for branding. Indeed some owners of foodstuffs wish their food to be branded, and are quite willing to pay for it. The provisions of this Bill were passed in the

consolidating Health Bill which has passed this House on two occasions. It came before us in 1907, was referred to a select committee which took a great deal of evidence, was afterwards passed by the House, and sent to the Legislative Assembly. Everything in this Bill was contained in the consolidating measure which has been passed twice by this House. Therefore, there is nothing new in the measure; only the two matters which I have mentioned, and which are very pressing. Time will not permit of the passing of a consolidating Bill this session, and that is the reason for a short amendment of the Health Act of 1898 being introduced now.

Hon. G. Randell: This brand is to be a sort of certificate.

The COLONIAL SECRETARY: Four inspectors are continually kept at Robb's Jetty standing over the slaughtermen, and they have power to brand the carcases to show that they are not diseased. I move—

That the Bill be now read a second time.

Hon. R. F. SHOLL (North): I think the title of this Bill is incorrect. It should be a Bill to validate certain illegal actions that have been done by certain roads boards in levying rates when they were not entitled by an Act of Parliament to do so. That is what the title ought to be. I do not wish to appear obstructive, but I do not wish secretaries of roads boards, and the boards themselves to speculate on the passing by Parliament of a Bill, and to levy rates which they are not entitled to. Certain roads boards have levied these rates for two or three years. It is no mistake with them; they may have made an error in the first instance, but they have continued to levy the rates on the chance that the ratepayers may pay them, and they will then use the money for health purposes. The Colonial Secretary said that boards had the right under certain health Acts to levy a rate, but that it must be levied during November. That does not affect the roads boards; they can levy their rates. I think the principle is wrong. Roads boards should not speculate as to the passing of a Bill through Parliament, and if they make a mistake and the Bill does not pass, they should not come to Parliament for the passage of a measure to validate what they have done illegally. Certain roads boards have done that, and I do not think Parliament should sanction anything of the kind. If the goldfields roads boards were not strongly represented in Parliament and in the Ministry, such an action would be scouted and this Bill would not be brought forward.

The Colonial Secretary: It is not confined to the goldfields.

Hon. R. F. SHOLL: I know, but it is policy to include the whole of the roads boards of the State.

The Colonial Secretary: There are West Guildford, Melville Park, and many others.

Hon. R. F. SHOLL: They were equally wrong in levying a rate.

The Colonial Secretary: But you made reference to the goldfields.

Hon. R. F. SHOLL: I said it was policy on the part of the Government to pass a Bill dealing generally with the roads boards. These boards have levied the rate on every occasion. They did it the first year, and then the next year, and the year after. We find certain roads boards levying the rates illegally, and there are other boards that will not levy the rate, because they are not entitled to do so; and these latter boards are placed in a worst position than the roads boards that have levied the rate. I know some boards that have not levied a rate. I think the principle of the Bill is wrong. As soon as a roads board makes a mistake and does something illegally they ask Parliament to pass a Bill to validate that which they have wrongfully done. It is not done accidently; it is not done inadvertently. It may have been in the first instance, but it has been continued for three years. I do not think the House should encourage any public body whether roads board or municipality or any other body, to take the chance of a Bill passing through Parliament, and if the Bill does not pass, to come to Parliament for a validating measure. That appears to be

what has occured in this instance. I do not care to move that the Bill be read this day six months, but if the measure is challenged, I shall vote against it. The principle is wrong. I speak more in protest because these boards know they occupy an illegal position in what they have done. I do not think that it adds to the dignity of the House to find that people can speculate on Bills passing through Parliament, and if the Bill does not pass to be able to get a validating measure. I do not wish to move an amendment in regard to the Bill. I speak more in protest.

Hon. E. M. CLARKE (South-West): I should like to point out to the Minister with regard to Clause 4, which says that the board may make certain regulations for the inspection of articles of food, that I see no definition of "articles of food," and if this provision is to apply to ordinary grocery stores, to my mind it is a provision that should not exist, because an officious inspector may go to a person's warehouse and inspect that person's stock, find it is of first-class quality, and then the owner may be mulcted in costs. "Articles of food" is a phrase with a very wide meaning.

Question put and passed.

Bill read a second time.

In Committee.

Clause 1—agreed to.

Clause 2—Application of Roads Act 1902 to health rates levied in road districts:

Hon. R. F. SHOLL: The meaning of the words "health rates levied" was not, in this application, very clear. The clause read, "All health rates heretofore made and levied, or hereafter to be made and levied by the local board of such health district." Were we not only going to validate these illegal acts but to perpetuate them; to provide for a continuance of what these bodies had been illegally doing?

The COLONIAL SECRETARY: Possibly it had not been made quite clear. The boundaries of certain roads board districts and health board districts being co-terminous, to save time and expense the rates had been levied from 1st July first part of the clause validated that, not care to move that the Bill be read this while the second part gave these bodies power to in future strike their rates as from the 1st July instead of from the 1st November.

Hon. R. F. SHOLL desired to say that he himself had been mulcted in these rates illegally levied and had appealed against them. To that appeal no reply had been made. The board was waiting for the validating Bill to be passed. Under this clause they would be given power to continue to levy these rates. If ever an Act required consolidating it was the Health Act. There was no reason at all why the roads boards should be allowed to illegally levy rates.

Hon. W. MALEY: The purpose of the Bill before the House was to amend the Health Act of 1898, and validate certain rates which had not been struck under that Act at all, but under the Roads Act of 1902. Roads boards were established primarily for the purpose of affording easy means of communication between one part of a district and another, and not for the purpose of dealing with the collection of health rates and rates for sanitary services at all. The roads boards had been busy establishing themselves as health boards. They had done certain illegal acts, and now the Government had come forward with this Bill. It required some precise investigation to discover the meaning of it all. Under this Bill the roads board districts were being converted into health board districts, and a board would be permitted to levy rates through the whole of a district for the benefit of one small town within its boundaries. It was exceedingly hard on the agriculturist, who had to provide funds illegally collected, which were being used to pay for services within a town. It would have been better had the Minister, in introducing the Bill, honestly stated the real purpose of the measure instead of talking about the boundaries being co-terminous. The whole reason of the Bill would be found in the last paragraph of Clause 2. The Government proposed not only to validate illegal actions, but to provide for the continuance of them.

Hon. E. M. CLARKE: One could not help protesting against corporate bodies doing things which they were not empowered to do and then appealing to Parliament to have their illegal acts validated. These bodies were not sufficiently careful in such matters and they had a very exalted idea of their own powers.

Clause put and passed.

Clause 3—Amendment of 62 Vict., No. 24, s. 33:

Hon. J. W. LANGSFORD: It was difficult to see why this and the succeeding clause had been given a place in the Bill seeing that they had no connection whatever with the clauses already passed.

The COLONIAL SECRETARY: The point had been fully explained when the Bill was introduced. It sometimes happened that dairy herds were found to be diseased; and the central board had full power to order the destruction of animals so affected, provided that they were affected to such an extent that they were unwholesome in milk and in beef. But means were not provided in the existing Act for dealing with such an outbreak as that recently discovered. Many animals had been found to be suffering from tuberculosis; but while their milk was affected their flesh was perfectly wholesome for food. In such a case it was very much better that a dairyman, instead of having to destroy his cow straightway, should subject her to a branding and turn her out in order to fatten her for the butcher. Before this could be done a regulation was needed and this was provided for in the clause. After the passing of the Bill, when a cow was found to be diseased in such a way that her milk only and not her flesh was unwholesome, she would be branded and turned out. Then when she should come to the slaughterhouse the brand would serve to specially call the attention of the inspector to that particular carcase. Even under the existing Act it was questionable whether the board had not the right so to treat an animal, but this clause had been framed with a view to making the position clear.

Hon. R. F. SHOLL: To fire-brand an animal in this way would spoil the beast; and this merely because some roads board considered the animal to be affected.

The Colonial Secretary: Not a roads board, but the Central Board of Health.

Clause put and passed.

Clause 4—Amendment of Section 54:

Hon. E. M. CLARKE: Under the proposed alteration there was a likelihood of a person who had a quantity of very wholesome food in his warehouse suffering harshly. Possibly it might be that the inspector had some quarrel with a man whose warehouse was full of wholesome food, and if such were the case, he could go through the building, discover that everything was wholesome and of the best quality, and still make the owner pay for the cost of the inspection. Certainly it was right that if a man had unwholesome food in his possession he should be penalised, but the clause, as worded, might permit a man to be unfairly treated. He would, therefore, move the following amendment:—

That all the words after "wholesome," in line 5, be struck out.

The COLONIAL SECRETARY: If those words were struck out there would be no meaning in the clause. There was no danger to be feared of any such thing happening as that referred to by Mr. Clarke. The reason for the clause was to allow of inspection of milk, and, more particularly, meat and cattle. It did not refer to grocery shops. At times large quantities of lambs were exported, and the central board inspectors were asked to inspect them. If they were in proper order they were branded, and thus a guarantee was given that the meat was wholesome. Under the existing Act there seemed to be no power to charge for this branding, and the clause was inserted in the Bill to remedy that mistake. In all the other States power was given to the central board to make a small fee, perhaps 1d. per carcase, just to cover the cost of the branding. There was nothing to prevent an inspector going to any shop to-day. If he found

on inspection that there was unwholesome food exhibited for sale, he could order the destruction of the food. Where meat was wholesome, surely the proprietor would like it to be branded.

Hon. J. W. LANGSFORD: Two different methods were adopted. In Clause 3 the inspectors were going to brand with a prescribed brand all diseased cows or other animals; while in Clause 4 the inspectors were going to brand with a prescribed brand food that was wholesome. It would be better only to brand the unwholesome food.

Hon. M. L. Moss: No; destroy that.

Hon. J. W. LANGSFORD: There might be some foods that were not altogether unwholesome, but simply the lowest degree of wholesome foods. Section 54 of the Act gave very extensive powers to an inspector, not only to enter butchers' shops, but also to visit any kind of business place. Under the clause regulations could be framed and carried out by inspectors which would act harshly, and in an irksome manner, to the owner.

The COLONIAL SECRETARY: There would be no sense in branding unwholesome food, for that must be destroyed right away. There was a great difference between Clauses 3 and 4 of the Bill.

Amendment negatived: clause put and passed.

Bill reported without amendment: the report adopted.

BILL—MIDLAND JUNCTION BOUNDARIES.

On motion by *the Colonial Secretary* report of Committee adopted.

BILL—CONSTITUTION ACT AMENDMENT.

Second reading.

Hon. M. L. MOSS (West) in moving the second reading said: I think it will be admitted on all hands that this Bill is of a very important character. I would rather that it had emanated from the Government, but when I made some move in that direction, I found the Government apparently considered that it was not of sufficient importance for them to take up. I saw one Minister, but he did not seem to give the measure that importance which it possesses in my mind: therefore, I have attempted to deal with the question myself. I wish to say at once, that so far as the Bill members have before them is concerned, I shall not be at all displeased if some member can show a better way of dealing with the question than I have done. I do not say the remedy in this small Bill is perhaps the best that can be applied in the circumstances, but it is a remedy, and one to remove certain grievances which, I think, members of both branches of the Legislature admit exist in the Constitution Act. This Bill, I think, provides a remedy for the grievances, and, if the suggestions are carried, they will place matters on a better footing than at present exists. At the time the Australian States were granted their Constitutions by the Imperial authorities, the prevailing idea in connection with the Government of any country was that which prevailed in Great Britain with regard to the government of the mother country; but when one comes to regard the altered circumstances in Australia, the fact that the Governments throughout this continent are embarking in numbers of enterprises which are left to private individuals or to county or borough councils in the old country, it will be realised that the conditions are such that the same constitutional provisions should not exist in the two cases. Members who make a careful examination of Sections 32 to 36 of the Constitution Act Amendment Act of 1899, will, I think, agree with me in the conclusions I have arrived at, when an explanation is made as to what these sections really mean. These sections are what I may call the contract sections of the Constitution Act, and when I first looked into them, the question arose in my mind as to where they had been obtained. I am indebted to the Clerk Assistant of the House, for he has put before me an Act

passed in 1781, the 22nd year of the reign of George III., a measure put on the Imperial statute book restraining any person concerned in any contract, commission, or agreement made for the public service, from being elected, or sitting and voting as a member of the House of Commons. That Act will be found on page 541 in the Revised Statutes, volume 2, being part of the Imperial Statutes, of which copies are in the library of this Parliament. Any member who looks at the Imperial Statutes and compares the sections of that Act with Sections 32 to 36 in the Constitution Act Amendment Act of 1899—which will be found on pages 118 to 120 of our Standing Orders—will find that the latter are exact transcripts of the section of this old Imperial Act. I have no doubt that at the particular time they were passed, and right up to the present time so far as the Imperial Parliament are concerned, they are essentially proper provisions for the Imperial Parliament. Outside the service in connection with the army and navy, the Imperial Parliament are concerned in none of those affairs which we find our Government embarking upon. When we know that our Government have extensively invested money in waterworks and railways, that a million of money is in the Agricultural Bank, from which loans are made; that there is established a Savings Bank, from the deposits of which loans are made; that in numbers of places in the State there are small centres with only one store, on occasions run by members of Parliament; and when we know that in this last-named instance the section of the Act really precludes, to my mind, that he should provide even a pound of nails for work wanting immediate repair; when we find all these things it is obvious that it is time some alteration was made. Section 32 of the Constitution Act is as follows:—

> "Any person who shall directly or indirectly, himself, or by any person whomsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy in the whole or in part any contract, agreement, or commission made or entered into with, under, or from any person whomsoever, for or on account of the Government of the Colony; or shall knowingly furnish or provide in pursuance of any such contract, agreement, or commission any money to be remitted abroad, or any goods whatsoever to be used or employed in the service of the public; and any member of any company, and any person holding any office or position in any company formed for the construction of any railway or other public work, the payment for which, or the interest on the cost of which has been promised or guaranteed by the Government of the Colony, shall be disqualified from being a member of the Legislative Council or Legislative Assembly during the time he shall execute, hold, or enjoy any such contract, agreement, or commission, or office, or position, or any part or share thereof, or any benefit or emolument arising from the same."

In the marginal note of Section 34 we read: "Any member accepting a contract, or continuing to hold any contract after the commencement of the next session, his seat shall be void." And I want to say here there is a popular idea prevailing that a contract is something that must be reduced to writing. My friends, Mr. Jenkins who is not in the House, and Dr. Hackett, I am sure will both agree with me that the operation of going into a store and buying a pound of nails and paying for those nails constitutes a contract. The operation of going in and asking for a particular commodity in the store, either by paying or getting credit constitutes a contract.

Hon. J. W. Kirwan: What if a man gets a drink at the State hotel?

Hon. M. L. MOSS: Certainly that is a sale and a contract. I want to show what these sections are. If you look at Section 35 there will be found there an excellent provision to get round Sections 32 and 34 in this way. If a contract is made with an incorporated company consisting of more than 20 persons then that is outside the provisions of the other two sections I have read, which means if I am running a business, and I put into

that business a capital of £5,000, and I have myself £4,900, and divide the balance between 19 other persons, any of those persons can contract with the Government. He incurs no pains and penalties, nor the forfeiture of his seat; no penalties such as a member would who contracted without the benefit of corporation and who besides losing his seat, would render himself liable to a payment of £200 to the first person who may sue him in the Supreme Court for that amount in his own name. That is a very great premium to the blackmailer who has only to wait. I will show with what ease the blackmailer may get his opportunity on any member of Parliament if he chooses to take advantage of that opportunity. He can commence his action and besides proving the disqualification he gets £200 from the member and pockets that money. Before I go further there is another thing I want to draw attention to and it is the proviso to Section 34 of the Constitution Act. That says, "Provided that nothing in this or the last preceding section shall extend to persons contributing towards any loan for public purposes heretofore or hereafter raised by the Colony, or to the holders of any bonds issued for the purpose of any such loan." I want hon. members to look at the end of the next section which excuses any incorporated company where such company consists of more than twenty persons, and a contract or agreement in respect of any lease, license, or agreement in respect to the sale or occupation of Crown lands. Those two sections mean that all contracts you enter into are contracts which disqualify you under this Constitution Act, and save and except the contract whereby you subscribe to a public loan and purchase the waste lands of the Crown from the Government. My contention that hon. members are contracting with the Government is made all the stronger by virtue of the fact that the amendment of 1899 excludes the operation of the contract clause defining specific instances. I have no doubt in my mind, and I am confirmed in that opinion by other members of my profession including gentlemen holding important positions in the Government service, that the purchase of water from the Government constitutes one of the contracts aimed at by the amendment of 1899, and I am sure hon. members will need little convincing of this, that when they go to the railway station of this State and sign a consignment note for sending goods away, there is a contract of guarantee entered into by the Government through the Commissioner of Railways on the one hand, and the member of this or the other House on the other hand to safely carry goods for a reward.

Hon. J. W. Hackett: If you buy a postage stamp?

Hon. M. L. MOSS: It may be the same thing probably with regard to purchasing a postage stamp as payment of a fee for services rendered; but it might not be held to be a contract as the purchase of water or the consigning of goods on the railway or even the purchasing of railway tickets. A member of Parliament can purchase railway tickets. It is not because he possesses a free pass that he does not enter into a contract with the Commissioner to carry his wife or his family on the railways. Take the Agricultural Bank. We have a million of money invested there and I have no hesitation in saying that if any member of Parliament borrows from the Agricultural Bank on a holding, or if he purchases from the Minister any of the stock imported to assist in agricultural development, he is certainly entering into contracts in connection with these matters. The Government guarantee repayment of all moneys placed on deposit in the Savings Bank when the money is lent by the Treasurer on behalf of that bank on mortgage. The member who secures that loan has entered into a contract.

Hon. R. F. Sholl: How about the depositors?

Hon. M. L. MOSS: It is exactly the same thing with regard to depositors. I noticed in the *West Australian* this morning some charitable individual writing under a nom de plume refers to the fact and almost imputes I think that a member of the legal profession who happens to be in Parliament can hold no brief on behalf of the Govern-

ment and he can get no counsel fees on account of this. It is a perfectly truthful statement. I want to say it might be regarded that because I want to get some retainers from the Government that that is the reason that has actuated me in bringing in this Bill. I think this is the only State in Australia—and what I am going to say does not apply in New Zealand or Great Britain—where a member of Parliament may not hold briefs to appear on behalf of the Government without incurring a pain or penalty. The payment that a counsel receives is only in the nature of an honorarium and is not a contract made for services rendered.

Hon. W. Kingsmill: Very ingenious.

Hon. M. L. MOSS: It is a fact and the same thing also applies to physicians. My point is that when we passed in 1893 the Legal Practitioners Act we made barristers, solicitors, and notaries what we call "legal practitioners." I want to tell the gentleman who wrote under this nom de plume that I have on some occasions been offered retainers on behalf of the Crown, and I have always declined them so that my motive in bringing forward this measure is not to cure that difficulty although it may do so. I am so anxious about the other part that I am quite willing to do with regard to counsel's fees what other members may do with regard to other services rendered to the Government. Hon. members will see if they refer to the Bill, in the marginal notes of Clauses 3 and 4 I have referred them to Letters Patent granted by the King when the Transvaal was granted its Constitution and I have gone to the Transvaal Constitution for the reason that that is the last word of the authorities of the Colonial Office in connection with the granting of Responsible Government to one of the dependencies of the Crown. The conditions of the Transvaal are much the same as the conditions prevailing in Australia. The Transvaal Government have an agricultural department and a savings bank, and they have constructed water works and perhaps are going in for necessary enterprises in order to develop that country. Their Constitution is granted by the Government under Letters Patent which the King has granted, and hon. members will find in its framework it is on all fours with the Australian Constitution excepting with regard to these contract clauses. I find the whole of these clauses are eliminated from these Letters Patent, and I find that, "No person holding any office of profit under the Crown within the Colony (other than a Minister as hereinafter defined) no unalienated insolvent, no person whose estate shall be in liquidation, under assignment in trust for his creditors, and no person declared of unsound mind by a competent court shall be eligible to be elected a member of the said Assembly." When I look at Section 31 of this amendment of 1899 I find that what I just read, Section 18 of these Letters Patent, all the provisions there are contained in Section 31 of this Act of ours, but I cannot find the whole of these contract clauses which have been eliminated. Our disqualification section is 31. The disqualification section of these Letters Patent is Section 30, and that follows almost word for word Clause 18 which I have just read. If he fails for the whole ordinary annual session to give his attendance in the Legislative Council or the Legislative Assembly. . . . . or accepts any office of profit under the Crown, other than that of a Minister his seat shall become vacant. Look at the additional intelligence with regard to the penalty for sitting when you are disqualified. There instead of enabling the black-mailer to bring an action against a member of Parliament and putting the £200 in his own pocket, proceedings have to be taken at the suit of the Attorney General, and the money recovered is to be used for the benefit of the Treasurer. There may be a difference of opinion with regard to this matter but I think that is the more desirable destination for that money than the pocket of the man who turns informer. One other word in regard to the way this has been dealt with in the Transvaal. These contract clauses have been eliminated from the Constitution Act and a

member is now only disqualified if he holds an office of profit, but the words "office of profit," unless they are defined, in some way leave the door open probably to some abuse, and so immediately these Letters Patent were adopted the first act of the Transvaal Parliament was to pass an Act declaring—

> "A member of the Legislative Council or Legislative Assembly who may at any time either before or after the passing of this Act have performed any of the services described in the Schedule hereto and is or may be paid out of the public revenue fees (other than salary periodically calculated) for or in respect of such services shall not by reason of the same be deemed to hold or to have held an office of profit under the Crown within the meaning of section eighteen or section thirty of the Transvaal Constitution Letters Patent, 1906."

They passed their Act and declared at once as to the five different matters that should be deemed not to be an "office of profit." I will read these, but preface doing so by observing that I by no means agree that it is expedient the various things mentioned in the Transvaal schedule should be excluded from the definition of "office of profit" in Western Australia. But that is one of the details. I shall be prepared to listen to hon. members when they make suggestions in other directions. These are the things laid down by the Transvaal Parliament as not being offices of profit:—

> "1, As member of the Inter-Colonial Council constituted under the 'Inter-Colonial South Africa Order-in-Council, 1903,' or any amendment thereof or of the Railway Committee of such council.
>
> "2, As member of a Liquor Licensing Court constituted under the Liquor Licensing Ordinance 1902 or any amendment thereof.
>
> "3, As member of the Transvaal Land Settlement Board constituted under Section fifty-two of the Transvaal Constitution Letters Patent 1906.
>
> "4, As a volunteer enrolled under the Volunteer Corps Ordinance 1904 (other than on the permanent staff as therein defined).
>
> "5, As a member of any Commission appointed by the Governor-in-Council to make any public enquiry."

I express no opinion on these more than to say I think in the circumstances that it would be expedient, if the disqualification in regard to "contract" be removed, to have some definition of what is an "office of profit." I have mentioned all I desire to say with regard to this matter. I think every member of Parliament is in a somewhat precarious position at the present time. Take the agricultural members for instance, who are using these railways daily for the transport of their produce from one part of the State to another. Their position is very unenviable. I think they are disqualified and liable to this penalty. That is not a fair position for an hon. member to be put in.

Hon. W. Patrick: Everyone uses the railways for carrying goods.

Hon. M. L. MOSS: This law was passed in England before the railways were built, and they allowed the law to remain on the Imperial statute book when railways came into vogue, but the railways in England were constructed out of private money and run by private companies and not by the Government, so that while the provision may be distinctly applicable to a country like Great Britain, to a new country like Australia in which it is obviously necessary for the Government to embark on a number of enterprises to open up the country, it is not at all applicable. It is therefore necessary, if there is anything in what I say in this regard, that some amendment should be made promptly, so that members of Parliament may be taken out of the position I think they are in and put on a footing that does not enable them to be made a target for every man who likes to have a shot at them.

Hon. J. W. Kirwan: I think it is provided for already in Section 38, Subsection 6 of our Constitution Act.

Hon. M. L. MOSS: Then it may be unnecessary for it to be in. I am free to admit that this Bill may need a little more careful looking at.

Hon. W. Patrick: Has this question been raised in another State?

Hon. M. L. MOSS: No, but it has to be raised somewhere first. I am quite willing if this Bill passes the second reading that it should go to a select committee, and I think that, instead of taking the opinion of a member of this House, we should subpœna before the committee three or four members of the Bar of this State, and get from them a definition for the guidance of the House when the Bill is in Committee, to see whether the opinions I have expressed are in accordance with their view of the law. I would start first with the Solicitor General, and we could have some other members of the Bar in private practice and get their opinions. However I have done my duty, not only to the members of this House but to members of another place. It is an unfair position to put members of Parliament in. While I do not say that the amendment of the Constitution should be on the lines indicated in this Bill, I think some amendment is necessary to put this thing on a sensible footing.

Hon. J. W. Hackett: You have said nothing about Royal Commissions.

Hon. M. L. MOSS: No. I say it is a moot question whether a gentleman acting on a Royal Commission holds an office of profit or not. I have this afternoon drawn attention to something that is of public importance, and I think I am entitled not only to the assistance of this House but also to the assistance of members of the Government and of another place, to correct what I think is a blot on our Constitution.

On motion by *Hon. W. Kingsmill*, debate adjourned.

House adjourned at 6.8 p.m.

Legislative Assembly,

Thursday, 3rd December, 1908.

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The SPEAKER took the Chair at 4.30 p.m., and read prayers.

QUESTION—SAVINGS BANK LOAN, P. STONE.

Mr. HOLMAN (without notice) asked the Treasurer whether the land on which the money was advanced to P. Stone was valued by a Government officer, and if so by whom?

The TREASURER replied: The land was valued by a valuator named Earle, a gentleman who has on several occasions valued for the Government.

QUESTION—BLACKBOY AGREEMENT.

Mr. CARSON (without notice) asked the Premier: Has the agreement been signed with Messieurs Wallace & Black in respect to the blackboy project?

The PREMIER replied: Yes, the contract has been signed.

QUESTION—STATE BATTERY SLIMES CHARGES.

Mr. TROY (without notice) asked the Minister for Mines: Has the Minister's promise made at Coolgardie some months ago been fulfilled in regard to retaining the old sliding scale for battery charges in respect to slimes?

The MINISTER FOR MINES replied: No it has not, the reason being that on account of the election I did not know but that somebody else might be filling the post I now occupy: conse-