The COLONIAL SECRETARY: I move an amendment—

That a new subclause be added as follows:—(3.) A subclause is hereby added to section thirty-one of the principal Act as follows:—(3.) If any unqualified person shall have or acquire, by contract or arrangement with any owner of any ship or with any servant or agent of such owner the right to share in the results or proceeds of any pearling in which the ship is or shall be used or employed, such and the like consequences shall ensue and such and the like proceedings may be taken as if such person had acquired an interest in the ship.

The object of this amendment is to still further prevent dummying.

[Hon. G. Taylor took the Chair.]

Mr. DURACK: I support the amendment. It should meet the difficulties pointed out by the member for Pilbara with respect to white men dummying for Japanese.

Amendment put and passed.

Mr. DURACK: It is thought that the proposal to forfeit the ship is too drastic, and that some innocent person may suffer as a result of it. I move an amendment—

That a new subclause be added as follows:—A subsection is hereby added to section thirty-one of the principal Act, as follows:—(3) It shall be a defence to any complaint by which the condemnation of a ship is sought under this section that no owner of the ship has been party or privy either personally or through his duly authorised agent, to the unqualified person acquiring or retaining the interest in the ship or the right to share in the results or proceeds of the pearling.

The COLONIAL SECRETARY: I hope the amendment will be withdrawn, as it opens wide the door to dummying.

Mr. Durack: I will withdraw the amendment.

Amendment by leave withdrawn.

Clause as previously amended, agreed to.

New clause:

The COLONIAL SECRETARY: I move—

That a new clause be added to stand as Clause 28 as follows:—"A section is hereby added to the principal Act, as follows:—Procedure of Justices. 108. All proceedings before justices under this Act shall be regulated by the provisions of The Justices Act, 1902-1920, and any decision given in any such proceeding shall be subject to appeal as provided in that Act."

New clause put and passed.

Title—agreed to.

Bill reported with amendments.

*House adjourned at 11.10 p.m.*

# Legislative Council,

*Tuesday, 14th November, 1922.*


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

## QUESTION—LICENSING ACT AMENDMENT BILL.

Hon. J. W. KIRWAN asked the Minister for Education: Will he provide the House with the opinion of the Crown Law Department as to the bearing of the Commonwealth Constitution on the Licensing Act Amendment Bill now before the House, particularly with reference to the questions: 1, Can a State prevent the importation of liquor (a) for sale; (b) for private consumption? 2, Can a State prevent the manufacture and sale of liquor on which the Commonwealth collect excise, and thus affect the Commonwealth revenue? 3, Can a State discriminate in its legislation or administration between wine, the produce of Western Australia, and wine the produce of other Australian States?

The MINISTER FOR EDUCATION replied: The opinion of the Solicitor General has been obtained and is annexed: "On the questions raised by Mr. Kirwan regarding the Licensing Act Amendment Bill, I beg to advise as follows: 1, The State cannot legislate to prevent the importation of liquor, but Section 113 of the Commonwealth Constitution Act is as follows: "113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage shall be subjected to the laws of the State as if such liquids had been produced in the State." Therefore the State Parliament can pass laws prohibiting the sale of liquor whether imported or of local production. 2, Yes. 3, No. All licenses under the Licensing Act, 1911, for the sale of wine authorise the sale of any wine made in the Commonwealth. The exemption in paragraph (b) of Subsection (1) of Section 44 of the principal Act (which enables the occupier of a vineyard to sell on such vineyard wine manufactured by him, the product of fruit of his own growing) is amended by Clause 17 of the Bill before Parliament, on the recommendation of the Royal Commission, by substituting for the words 'of his own growing' the words 'grown within the State.' The effect of that amendment will be to permit the occupier of a vineyard within the

State to sell on such vineyard wine the product of fruit grown within the Commonwealth. (See Fox v. Robbins, 8 C.L.R., p. 115.) Therefore, if the exemption is not to be restricted to the manufacture of wine the product of grapes of the vigneron's own growing, I would suggest that Clause 17 of the Bill should be amended by omitting the words '"grown within the State" are substituted for the words "of his own growing,"' and substituting the following words: '"and the product of fruit of his own growing" are deleted.' Clause 17 will then read as follows: '17. (1) In paragraph (b) of Subsection (1) of Section 44 of the principal Act the words "and the product of fruit of his own growing" are deleted,' etc. W. F. Sayer, Solicitor General. 13th November, 1922."

## QUESTION—RAILWAY SURVEYS.

Hon. J. A. GREIG asked the Minister for Education: 1, Has any railway survey been made between Armadale and Brookton? 2, If so, what are the steepest grades and the shortest curves? 3, Has any survey been made between Armadale and Dwarda? 4, If so, what are the steepest grades and the shortest curves?

The MINISTER FOR EDUCATION replied: 1, A trial survey has been made between Armadale and Brookton. 2, Surveyed for 1 in 80 as ruling grade, and 20 chains as sharpest curve. 3, No. 4, Answered by No. 3.

## BILL—CLOSER SETTLEMENT.

### Second Reading.

Order of the Day read for the resumption from the 9th November of the debate on the second reading.

### Dissent from Ruling.

The President: Hon members will remember that when we dealt with this Bill last, the unusual and, what I may call, the extreme course of disagreeing with the President's ruling was resorted to. The position now is that the motion of dissent will have to be discussed. So far as I can make out the position in connection with the Bill, the whole question is whether or not the measure as presented to this Chamber is in order and in proper form. I gather there is no objection to most of the clauses, but that there is something unusual or illegal in the Bill as presented. It is regarded as not being in conformity with the Standing Orders of this Chamber. One point that suggests itself to me is that we must remember that the Bill came from another place, and there it had the advantage of the knowledge and experience of the lower House, where not only one Speaker, but an ex-Speaker of very long standing, of several Chairmen of Committees, and of the Government, as well as, I should say, a number of experienced members, in addition to the Clerks of that institution. Therefore, it would be an argument, though not necessarily a convincing argument, that the Bill was practically in order because, with the advantage possessed by another place, it might be suggested that had there been anything wrong with the measure, or had the Bill been in a form that was irregular, notice would have been taken of it there. I admit, however, that is not a convincing argument. If the Bill is in an incorrect form, it only gives substance to the remarks made here recently when it was mentioned that we should have as a Minister for Justice an Attorney General who would know in what form a Bill should come forward. I have given the matter consideration since then and I find no reason to alter my views. As I gave my decision very briefly on the occasion to which I refer, I propose to read what I have written, after carefully thinking over all the circumstances surrounding the point that has been raised. It is as follows:—

> The point of order raised by the hon. member at the last sitting of the House was that this Bill contains Clause 13 which amends Section 34 of the Constitution Act Amendment Act, 1899, and that, in consequence, under the terms of Standing Order 180, it was necessary, before the Bill could be proceeded with by the Council, that it should be certified by the Clerk of the Assembly on the Bill that its second and third readings had been passed with the concurrence of an absolute majority of the whole number of the members of the Assembly, whereas the Bill contained no such certificate.

That, I think, sets out the state of affairs as fairly as it can be stated.

> I gave my decision against the hon. member, ruling that the Bill was in order and could be proceeded with by the Council. To that ruling, the hon. member took objection, and, having complied with the terms of Standing Order No. 406, the debate on the question was adjourned till this sitting. This being the position, I wish to add a few words in support of my ruling. The whole question, in fact, resolves itself into one, namely, whether Clause 13 in the Bill effects an alteration in the Constitution of either House in the terms of Section 73 of the Constitution Act 1889, which reads as follows:—
>
> "The Legislature of the Colony shall have full power and authority from time to time to repeal or alter any of the provisions of this Act: Provided always, it shall not be lawful to present to the Governor for Her Majesty's assent any appeal by which any change in the Constitution of the Legislative Council or of the Legislative Assembly shall be effected, unless the second and third readings of such Bill have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Council and the Assembly respectively."

That sets out the position quite correctly.

> In my opinion, Clause 13 of the Bill does not make an alteration in the Constitution of either House, for the following reasons: Sections 32, 33 and 34 of the Constitution Act Amendment Act 1899, in effect, provide that any member accepting a contract from the Government whereby he obtains any pecuniary benefit or advantage, shall be ineligible to sit as a member of either House. The Bill now before the House provides for the compulsory acquisition of undeveloped land in proximity to railways by the Government, from the owners. There is no provision anywhere in the Bill authorising the Government to enter into contracts for the purchase of such land which would result in any pecuniary advantage to the owner.

That is to make it quite clear that it is not a question of profit. So far as I can read it, it is a question of compensation. The property, in many cases, will not be taken away from the owner with the consent of that owner, but it will be resumed by the Government. In these circumstances, no one can argue that it would be a contract, because when one goes for a contract for profit, it is generally done willingly and there is some object in making the contract.

> If among the owners of such land there are members of either House of Parliament, it is manifestly desirable that they should be dealt with in the same manner as applies to the general public and should not be exempt from the provisions of the Bill, and the Bill, in fact, seeks to carry out this object. In my opinion, Clause 13 of the Bill is merely declaratory of the fact that the arrangements contemplated in the Bill are of a different character to the contracts referred to in Sections 31 to 34 of the Constitution Act, as the former are not intended to, nor could they in any way ensue to the benefit of *the individual*. For these reasons, I am satisfied that the provisions of the Bill do not alter the Constitution of either House. This being so, it is useless to deal with the further point, namely: Whether, on the grounds that the provisions of the Bill amend these sections, the Bill requires to be passed by an absolute majority of the members of both Houses. Section 73 of the Constitution Act 1889, apart from its proviso, gives the Legislature full power and authority from time to time by any Act to repeal or alter any of the provisions of this Act, while in the amendment of the Constitution Act Amendment Act, 1899, there is no restriction whatever.

I will now give the House one or two instances which I have looked up to ascertain what is regarded as profit. "May's Parliamentary Practice," 12th Edition, cites a case in which a member of Parliament contracted loans from the Government, and the provisions of the House of Commons (Disqualification) Act have been held not to apply to contracts for Government loans. "May" states:—

> In June, 1855, the attention of the House was directed to the fact that Messrs. Rothschild had entered into a contract with the Government for a loan of £16,000,000 for the public service; and a committee was appointed to inquire whether Baron Lionel Nathan de Rothschild, who was a partner in that house, had vacated his seat by reason of this contract. The committee, after hearing Baron Rothschild, by counsel, reported their opinion that there was no contract, agreement, or commission between Messrs. Rothschild and the Treasury within the true intent and meaning of the House of Commons (Disqualification) Act, 1782, and a clause to this effect has been introduced into the Acts since passed for raising loans.

"The Annotated Constitution of the Australian Commonwealth," by Quick and Garran, deals with the various Federal Acts, and contains a small paragraph (149) which deals with this point concisely, and, I think, convincingly. It reads as follows:—

> Interest in any agreement.—This is a disability arising from any contract or agreement for valuable consideration, which any person may have entered into to supply any goods or perform any service to the Government of the Commonwealth. In England, Government contractors are disqualified under 22 Geo. III. c. 45, sec. 1. The reason for the disqualification of the Government contractors is that they are supposed to be liable to the influence of their employers.

These are two points which apply to the present Bill. There are no profits to be made out of it, and, in the circumstances, an exemption has been made. For these reasons, I am satisfied that the provisions of the Bill do not alter the constitution of either House. This being so, it is useless to deal with the further point, viz: whether on the grounds that the provisions of the Bill amend these sections, the Bill requires to be passed by an absolute majority of the members of both Houses. Section 73 of the Constitution Act, 1889, apart from its proviso, gives the Legislature full power and authority from time to time by any Act to repeal or alter any of the provisions of this Act, while in the Amendment of the Constitution Act Amendment Act, 1899, there is no restriction whatever. In the circumstances my ruling that the Bill is in order stands. The question now is, "That the President's ruling be disagreed with on the ground that it is contrary to the provisions of Standing Order No. 180."

Hon. A. Lovekin (Metropolitan) [5.1]: I hope you will not be in any way offended because I have seen fit to move to disagree with your ruling. It seems to me the only

course open to me in view of your decision, In our courts when a person is dissatisfied with the ruling of the judge he may exercise his right to appeal. I have been forced by your ruling to go to a court of appeal, which in this instance is this House. The objection I have raised, I hope, will not be regarded as a technical one. It is the only way one of the greatest issues which can be raised in this House can be brought before it, and from my point of view, the question contains very great merit. It puts aside the Closer Settlement Bill, and goes to the issue of the purity of Parliaments. It seeks to keep the escutcheon of Parliaments clean and to keep public life free from the corruption, the bribery, the fraud, the abuse, and the jobbery which have sullied the reputations of legislatures in the past. Members who are familiar with modern English history, will remember that some of the 18th century Parliaments were known as corrupt Parliaments—Parliaments in which Ministers used public funds to suborn members. In the time of Walpole, Ministers went so far as not only to use public funds for influencing members, but provided public funds for members to influence the electors. It was in consequence of this state of things that the Disqualification Acts of England came into being. The first Disqualification Act was the Act of George III., of 1782, and since that time these Disqualification Acts have been gradually extended and tightened up. There were Acts before that, but the principal one was the Act of 1782. You, Sir, have referred to a case reported in "May," 12th edition, page 31, known as the Rothschild case, in which Rothschild, the banker, entered into a contract to lend the British Government 16 millions of money for the public service. It was said that Rothschild became a contractor to the Government, and thereby was disqualified. The effect of that decision was that the contract or agreement to lend the money did not bring Lord Rothschild within the purview of the Disqualification Acts. That was in 1855. We come now to 1868-69 when the seat of Sir Sidney Waterlow, a member of the House of Commons was challenged. Another firm had made a contract with the Government for stationery, and Sir Sydney Waterlow's firm shared in the contract. Attention was drawn to this matter. If members will look at "May," 12th edition, page 30, they will see it was held that Sir Sydney Waterlow had vacated his seat by sharing in that contract. I would have liked to bring the law reports to the House, but I was not allowed to take them from the Supreme Court, although I was under the impression that members had a right to use that library. Then as late as 1913 a more important case occurred, the case of Samuel. Samuel was a member of the House of Commons and was a partner of the firm of Sir Samuel Montague & Co., bullion brokers and financiers. The India office wanted silver for India and entered into a contract or bought silver from Sir Samuel Montague & Co., which I believe at that time was the only firm which could supply it. The silver was supplied and the price was paid for it. Mr. Samuel's seat in the House of Commons was challenged by four or five individuals. He was sued for penalties under the disqualification Act amounting to £500 for every day he had sat and voted; the extent of the penalties being £47,500. The reference in "May," page 30, states—

> The matter was referred to a select committee, who were given leave to hear counsel to such an extent as they saw fit. The committee suggested to the House that as they were unable to come to a unanimous decision on the questions of law involved, those questions should be submitted for determination of the Judicial Committee of the Privy Council, under Section four of the Judicial Committee Act, 1833, and in a subsequent report the facts relating to the contracts were detailed. An address was presented to the King praying that the matters of law involved in the case should be referred to the Judicial Committee and that the House should be informed of their decision. The Judicial Committee, whose report was presented as a Parliamentary Paper by the King's command, decided that by reason of the facts which had been reported by the select committee the member in question was disabled from sitting and voting in the House of Commons. The House resolved that the member in question had vacated his seat and a new writ was ordered.

It was thought to be a hard case and a Bill was presented with the object of indemnifying Mr. Samuel, but the House held that it would be too dangerous to pass it and the Bill was not proceeded with. "May" goes on to quote the case which has been referred to by you, Sir, the case of a loan which is a very different thing indeed.

The President: I would like to point out to the hon. member that there is no question whatever as to the right or wrong of any member being mixed up with a contract with the Government. Everybody knows that it is thoroughly illegal. The point is whether there is any contract contained in the Bill before the House.

Hon. A. Lovekin: I have considered this matter and I am trying to present my arguments in proper sequence and meet the points you have raised. You quoted that case and I think it my duty to meet it. The Government of which you, Sir, were a member at one time, referred to the British authorities a case almost on this point. Sir George Shenton, a former President of this House, had sold certain goods, I think, to the hospital, and the question was raised as to whether his seat had to become vacant inasmuch as he had contracted with the Government. The matter was referred by the late Mr. Burt to the British authorities, and they held that where goods were sold over the counter at the ordin-

ary price charged to the general public, or where the person sent freight over a Government railway at the ordinary price charged to the public, it would not bring a member within the purview of these disqualification sections. But the Privy Council in Samuel's case seems to have gone beyond the advice given by the British Crown Law authorities to the Government of this State that time. The Privy Council decided that the selling of silver to the Government was such a contract as brought Samuel within the purview of the disqualification sections. The framers of our institution had in mind past history and what had been taking place in connection with Legislatures all over the world, especially in America, and they very wisely put into our constitution these sections which are referred to in this Bill, Nos. 31 to 34—what I term the bribery and corruption sections. If we by any means whitted away those sections, the people would have very little time for the Parliament of this State. It would open the door to the grossest fraud, and the grossest abuse which crept into Parliament until these disqualification Acts were brought into force. The Constitution must not be whittled away by means of another Bill passed in the ordinary way.

Hon. H. Stewart: Only by an absolute majority.

Hon. A. Lovekin: That is so. You, Mr. President, have ruled, and have given your reasons for so ruling, that Clause 13 of the Closer Settlement Bill does not affect such an amendment of the Constitution as is contemplated by the Constitution Act. Clause 13 reads—

> Sections 32, 33, and 34 of the Constitution Act Amendment Act, 1899, shall not apply to any contract or agreement under and for the purposes of this Act.

That is for the purposes of the Closer Settlement Bill. It is clearly an amendment of the Constitution. It says so. It is contended by you that although it may be an amendment of the Constitution Act, it is not such an amendment as requires to be passed by an absolute majority of both Houses, inasmuch as it does not seek to change the Constitution of either House, and therefore does not come within the purview of Section 73 of the Constitution Act, 1889. This section provides that it shall not be lawful to present for assent any Bill by which any change of the Constitution of the Council or Assembly shall be effected unless the second and third readings have been passed in both Houses by an absolute majority. The Standing Order under which I am moving now, follows this section absolutely. The question arises, does Clause 13 of the Closer Settlement Bill effect a change in the Constitution of the Houses? Turning to the Constitution Act we find that Section 12 says—

> For the purpose of constituting the Legislative Assembly the Governor, before the time appointed for the first meeting of the Legislative Council and the Legislative Assembly, . . . may issue writs . . . for the general election of members to serve in the Legislative Assembly.

We find Section 5, which deals with the Legislature, provides "the Legislative Council shall consist of 30 elected members." Then, turning to Section 46 of the Constitution Act, we find—

> For the purpose of constituting the Legislative Council, the Governor, before the time appointed for the first meeting of the Legislative Council and Legislative Assembly, after this Part shall be in operation, may, in Her Majesty's name, issue writs under the Public Seal of the Colony for a general election of members to serve in the Legislative Council.

It is perfectly clear that the Council is constituted of a certain number of members. What members? If hon. members will look at Section 7 of the Constitution Amendment Act, 1899, they will find, "Subject as hereinafter provided, any man who has resided in Western Australia for two years shall be qualified to be elected a member of the Legislative Council." If it is desired to say that a man shall be qualified after one year of residence, there is only one way in which that can be done, and it is by altering the Constitution in the manner provided by Section 73. You cannot say in an ordinary Bill that a returned soldier, for instance, may be eligible for election after one year's residence. If it is desired to say that, you must go back to the Constitution. It is also provided that a person to be qualified must be of the full age of 30 years. If it is desired to make the age 25 years, the alteration cannot be brought about by means of an ordinary Bill. It is necessary to alter the Constitution. I want hon. members to pay particular attention to this Section 7, which goes on to say, "and is not subject to any legal incapacity." These words are very important. Turning to Section 31 of the Constitution Amendment Act, this sets out the persons who shall not be qualified to be members of the Legislative Council or the Legislative Assembly. Amongst those who are disqualified are clergymen, undischarged bankrupts, or anyone who has been convicted of treason or felony. If we wished a minister of religion to become qualified for membership of this House, there is only one way in which that could be done, and it would be by an alteration of the Constitution. Section 31 provides six disqualifications, or, as they are set out in the Act, legal incapacities. Sections 31, 32, 33, and 34 are those which are mentioned in the Closer Settlement Bill, and in that particular Bill the legal incapacity is contracting or making a contract with the Government.

The President: If it is an incapacity, it is wrong; if it is not, it is right.

Hon. A. Lovekin: I am trying to take this argument step by step and, if you will allow me, I will show you that I consider it to be an incapacity *qua* the Closer Settlement Bill. I am doing my best to advance my arguments as clearly as I can. I suggest that according

to Section 34 a member is subject to a legal incapacity if he enters into a contract, or enters into an agreement with the Government, whether it be for the sale of land or anything else. I may ask, is a contract, contemplated by Clause 13 of the Closer Settlement Bill, such a contract as comes, say, within the ambit of Section 34 of the Constitution Act? If hon. members will look through the Bill, they will see, on the face of it, there is nothing about contracts, agreements, offers, or anything of that kind. One naturally asks, if that be so, why is Clause 15 put into the Bill at all? A closer examination shows this. Clause 12 reads—

> This Act is incorporated with the Agricultural Lands Purchase Act, 1909, and any land so taken as aforesaid may be disposed of under that Act; and the board may, for the purposes of this Act, exercise any of the powers conferred on the Land Purchase Board.

Hon. J. J. Holmes: That is the nigger in the fence.

Hon. A. Lovekin: Yes. I must now incorporate the Lands Purchase Act with the Closer Settlement Bill, because by the clause which I have just read, the Bill and that Act become one. I turn to Section 6 of the Lands Purchase Act, 1909, which says—

> Subject to the provisions of this Act, the Governor may accept surrenders of land to His Majesty, for the purposes of this Act, and any owner of land may offer to surrender to His Majesty any land at a price to be named in the offer, and such offer shall be binding on the owner if the decision of the Minister to purchase the land is notified to such owner by letter posted within three months of the date of the receipt of the offer by the Minister.

Hon. members know that an offer and an acceptance constitute the simplest and one of the best forms of contract. Any person may offer land to the Crown and state his price for it. The Minister may hold up that offer for three months and accept it if he likes, and the owner cannot withdraw. Section 8 of the same Act reads as follows:—

> If it appears from the report of the Lands Purchase Board in any case that the land offered is suitable and is likely to be immediately selected for agricultural settlement and that there is no sufficient quantity of Crown Lands in the neighbourhood available for such settlement, the Minister, with the approval of the Governor and subject to the conditions prescribed by this Act, may make a contract for the acquisition of the land by surrender at the price fixed by the board as the fair value thereof, or at any lesser price.

Hon. J. J. Holmes: And Clause 13 of the Bill will enable members of Parliament to do that.

Hon. A. Lovekin: Yes, it will enable them to offer their land, and will enable the Minister to accept it, and the member may still hold his seat. I do not want to deal with the small point which you, Sir, raised, because it really does not affect the question very much. You suggest that a member of Parliament should be on the same plane as any other member of the community. History has shown that it is not desirable. But if it be desirable, then we must alter the Constitution, which we cannot do by this Bill. This offer and acceptance suggested by the Agricultural Lands Purchase Act is on all-fours with the offer and the purchase of the silver in the Samuels' case and the disqualification and the imposition of the penalties. I submit that the two sections I have quoted from the Agricultural Lands Purchase Act are just the very things which the framers of the Constitution had in mind when they framed Sections 32 and 34 of the Constitution Act. Unless we alter the Constitution Act to enable members of Parliament to make contracts with the Government, no Bill is in order which attempts to bring about that result. There is on this Bill no certificate, as there should be under Standing Order 180, to show that the Bill has been passed by an absolute majority of the other House. I have looked at the journals of another place and found no record that the Bill had been passed by an absolute majority on the second and third readings. Another point raised is that Clause 13 is merely declaratory, and it has been suggested that there are some precedents for it, in that other Bills have amended other Acts. But those precedents do not cover the case of an ordinary Bill amending the Constitution Act. It will be seen that if by bringing down an ordinary Bill we could amend the Constitution Act, we should not require the Constitution Act at all, for that Act would be practically rendered obsolete and ineffectual. It is almost as much as saying that the part is equal to the whole when it is said that an ordinary Bill can essay to amend the Constitution Act, or even to declare it, which means to interpret it. May I go back to a point I have omitted? The Australian States Constitution Act of 1907 which supersedes some of the Instructions to Governors, provides that—

> There shall be reserved for the signification of His Majesty's pleasure thereon, every Bill passed by the Legislature of any State forming part of the Commonwealth of Australia which (a) alters the Constitution of the Legislature of the State——

And so on. Subclause (2) reads—

> For the purpose of this section a Bill shall not be treated as a Bill altering the constitution of the Legislature of a State or of either House by reason only that the Bill concerns the election of the elective members of the Legislature, or either House thereof, or the disqualification of electors or elective members.

It clearly shows what the framers of the Constitution meant when they said "Change of Constitution under Section 73." They regard it as a change of qualification of a member, and I have shown that a member's qualifications will be changed if Clause 13 be

allowed to pass, inasmuch as one of his legal incapacities will be removed, namely his disability to contract with the Government. I do not wish to press this point now, but later, if my motion be not agreed to, I shall have to suggest that Clause 13 is not covered by the Title of the Bill.

Hon. J. Nicholson: Why not strike out the clause and so remove the objection?

Hon. J. Cornell: That is tantamount to saying that it does amend the Constitution.

Hon. A. Lovekin: I am sorry we cannot proceed to that stage. The Standing Order prescribes that we shall not proceed with the Bill at all. I am prepared to meet the difficulty that arises. There is a way of dealing with the Bill. We can lay it aside and introduce another, either getting rid of the clause altogether if it be not necessary, or by passing the Bill with Clause 13 by an absolute majority of the House and then sending it back to another place. That will be following the proper procedure. We can lay the Bill aside and produce another Bill in its place, amend the Title, carry it by an absolute majority, and so send the identical Bill to another place. That would get over the difficulty. But this Bill not having been passed by an absolute majority of another place, we cannot adhere to our Constitution and proceed with the measure any further. It has been suggested that we cannot pass the money clauses if we follow the procedure I have outlined.

The President: We do not need to discuss the provisions of the Bill. The question is whether the Bill is in order.

Hon. A. Lovekin: Very well. I have shown clearly that a change in the Constitution of the House is made by Clause 13, that members have certain qualifications and disqualifications, certain legal incapacities, and that if we change one of them it becomes necessary to alter the Constitution. One of a member's legal incapacities is his inability to make contracts with the Crown. The only way to change that is by a proper alteration of the Constitution, not by a side wind as this Bill seeks to do, which would open up for all time the door to corruption and jobbery.

The Minister for Education (Hon. H. P. Colebatch—East) [5.27]: I have no doubt that your ruling, Sir, is absolutely correct, and I am sure hon. members will not lightly disagree with it. We are not now considering either the merits of the Bill generally, or the merits of this particular clause. If the clause is considered objectionable, it can be knocked out. Mr. Lovekin has said he is not raising a technical point, and that this is the only way in which a great issue can be decided. That is not the case. The issue raised by Clause 13 can be decided on the clause itself. The point raised by Mr. Lovekin can have been raised only for the purpose of preventing a discussion on the merits of the case, because it prevents further consideration of the Bill. We have been told about the corrupt practices that prevailed in the Parliaments of the eighteenth century. I hope those references will sink into the minds of some hon. members; because those corrupt Parliaments were in the good old days, when members of Parliament gave their services voluntarily to the country. We have heard a good deal about the harm which payment of members has done. You, Mr. President, made reference to the Rothschild case. There is in that a point which you did not emphasise as much as you might have done. Here is the paragraph:—

> In June 1855 the attention of the House was directed to the fact that Messrs. Rothschild had entered into a contract with the Government for a loan of £16,000,000 for the public service; and a committee was appointed to inquire whether Baron Lionel Nathan de Rothschild, who was a partner in that House, had vacated his seat by reason of this contract. The committee, after hearing Baron Rothschild by counsel, reported their opinion there was no contract, agreement or commission between Messrs. Rothschild and the Treasury within the true intent and meaning of the 22 George III. c. 45; and a clause to this effect has been introduced into the Acts since passed for raising loans.

That is the important point which you read, but which I think you did not emphasise sufficiently to ensure its sinking into the minds of members of the House. A section to that effect has been introduced into the Act since passed for raising loans.

Hon. A. Lovekin: That is in our Act too.

The Minister for Education: Quite so; but do hon. members see the significance of that? When it was not in the Imperial Act, when it was not in our Act, it was still held that that transaction was not within the true meaning of the disqualification.

Hon. J. J. Holmes: What is the necessity for Clause 13?

The Minister for Education: What was the necessity for putting this in the Imperial Act? It had already been held that such a contract, subscribing to loans, was not within the true intent and meaning of the Act. Why did the Imperial Parliament put that section in? For exactly the same reason as we put Clause 13 in this Bill, purely as a declaratory clause

Hon. J. Cornell: They put it in the Constitution Act, and you put it in this Bill.

The Minister for Education: That makes no difference. I am arguing purely on the point that this is a declaratory clause.

Hon. J. W. Kirwan: The point is this, Britain has no written Constitution and we have a written Constitution.

The Minister for Education: What has that got to do with it?

Hon. J. W. Kirwan: It is very important.

The Minister for Education: Section 1 of the Imperial Act is in the following words:—

> Any person who shall directly or indirectly himself or by any person whatsoever 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 the Commissioners of His Majesty's Treasury, or with any other person or persons whatsoever, for or on account of the public service, shall be incapable of being elected or of sitting or voting as a member of the House of Commons during the time that he shall execute, hold, or enjoy such contract, agreement, or commission, or any part or share thereof, or any benefit or emolument arising from the same.

That is written just as much as it is written in our Constitution, and it is in exactly the same words as Clause 32 of our Act, substituting "House of Commons" for "Legislative Assembly." It was that Act of the Imperial Parliament which was in question when the Rothschild case arose. It was held that under that section of the Imperial Act, which is identical with our own Section 32, this was not such a contract as was contemplated—the subscribing of money to a loan. But although it was so held, that as the Act stood then there was no disqualification involved, another section was put in, of a declaratory nature, so as to prevent actions being brought. We have something of a very similar nature in some of our Acts.

Hon. A. Lovekin: If you read the report of that Rothschild case you will see why that was done, why that amendment was made.

The Minister for Education: The Imperial Act was passed in order to make the matter clear. In 1902 the Parliament of this State passed an Act entitled the Fremantle Harbour Trust Act, Section 18 of which reads—

The office of Commissioner, and the office of any person employed or retained by the Commissioners otherwise than at a salary, shall not be deemed an office of profit within the meaning of the Constitution Act, 1889, or any amendment thereof.

Hon. J. Cornell: What Parliament passed that Act?

The Minister for Education: The Parliament of 1902. There is another instance of a declaratory section in an Act of Parliament, which does not alter the Constitution, but merely sets out that a certain thing does not come within the Constitution Act.

Hon. J. Nicholson: Was that Act passed by the requisite majority?

The Minister for Education: The matter was not treated as an amendment of the Constitution Act.

Hon. H. Stewart: Do you say there was no remuneration attaching to those offices?

The Minister for Education: There was remuneration. It was considered that the remuneration received in connection with those offices should not cause them to be regarded as offices of profit under the Crown.

Hon. J. J. Holmes: What about the case of selling silver to India?

The Minister for Education: The Samuels case was the case of sale of silver. I would ask hon. members to put those cases on the same footing as the case contemplated by this Bill.

Hon. J. J. Holmes: What about the Lands Purchase Act?

The Minister for Education: I noticed when Mr. Lovekin was speaking the hon. member interjected when he thought that Mr. Lovekin had not made a point quite clear, interjected by way of assisting Mr. Lovekin. Now that I am replying, the hon. member wishes to——

Hon. J. J. Holmes: Assist you.

The Minister for Education: I shall deal with the hon. member's point when I come to it. The Samuels case was the case of sale of silver to the Crown. I would ask hon. members to try to put that case on the same footing as the case contemplated by this Bill. Suppose that the Imperial Government, instead of purchasing that silver, had seized it, as they might have done. I do not say they could have done it under the law as it stood in 1913, but a year or two later, under war conditions, they could have done so. Assume that they had seized that silver; that would have set up on behalf of Samuels a claim for compensation—exactly what we propose to do by this Bill. That claim for compensation, of course, would not cause the member to forfeit his seat, or subject him to any forfeiture whatever.

Hon. J. Cornell: That is only supposition.

The Minister for Education: The Samuels case, as Mr. Lovekin puts it, has nothing whatever to do with this Bill, because it refers to the voluntary sale of an article. Now I say, put it on the same footing as under this Bill, by a seizure. A voluntary sale does not enter into this question at all. The Samuels case was a case of sale, and if this were a case of sale under the Bill, the hon. member's argument might apply. But under the Bill it is a case of taking and converting the ownership into a claim for compensation. Had the Imperial Government taken the silver and converted the ownership into a claim for compensation, Samuels could have accepted compensation without bringing himself within the disqualification.

Hon. A. Lovekin: Clause 13 is not wanted at all.

The Minister for Education: Mr. Lovekin told the House just now that the clause itself says it is an amendment of the constitution. It says nothing of the kind, and is not an amendment of the Constitution at all, but is practically on all fours with the section which I read just now from the Fremantle Harbour Trust Act. There are a number of points raised by Mr. Lovekin to which I do not intend to reply, because they have no bearing on the question; but to those points which have a bearing on the question I shall reply. Certain points which he has raised would apply if this Bill sought to amend the Constitution. But the Bill does not seek to amend the Constitution, and therefore those points cannot apply. The hon. member quoted Clause 12 of the Bill. That clause reads—

This Act is incorporated with the Agricultural Lands Purchase Act, 1909, and any land so taken as aforesaid——

That does not mean land taken under the Agricultural Lands Purchase Act, but land taken as aforesaid under this Bill.

may be disposed of under that Act; and the board may for the purpose of this Act exercise any of the powers conferred on the Land Purchase Board.

Hon. A. Lovekin: This Bill is part of the Agricultural Lands Purchase Act.

The Minister for Education: Mr. Lovekin has suggested a number of methods by which we could proceed if this Bill is out of order. Of course we could do all sorts of things, but my contention is that this Bill is perfectly in order, and that there is no need for us to proceed by any of those roundabout methods to consider it. I entirely agree with you, Mr. President, that Clause 13 is not an amendment of the law, but is merely declaratory.

Hon. J. Cornell: What is "declaratory"?

The Minister for Education: I do not think that the word requires definition.

Hon. J. Cornell: Is it mere verbiage?

The Minister for Education: Upon the compulsory acquisition of land taken under this measure, no contract is entered into. I think Mr. Lovekin admits that. I think he admits that only a claim for compensation is set up. Otherwise, I think, he would not attempt to set up Clause 12 as the basis of his argument. He admits that if land is taken compulsorily from a man——

Hon. A. Lovekin: That is no contract.

The Minister for Education: Of course; otherwise a monstrous situation would be created, because it would be competent for the Government to take any member's land, say for a school, and then tell him, "You have to give the land to us, or else we will disqualify you for sitting in Parliament." Clause 13 of the Bill says—

> Sections 32, 33, and 34 of the Constitution Acts Amendment Act, 1899, shall not apply to any contract or agreement under and for the purposes of this Act.

It has nothing whatever to do with the Agricultural Lands Purchase Act. I prefer to deal next with the question of the meaning of the sections in the Constitution Acts Amendment Act of 1899. There can be no doubt that those sections apply to Government contracts. That is the intention. A claimant for compensation for land compulsorily acquired certainly is not a Government contractor, whether the land is acquired under this measure, or acquired under the Public Works Act for public purposes. I do not think that is seriously contested. I have already read the section in point of the Imperial Act, and have told hon. members—they can make a comparison for themselves if they like—that it is identical with the corresponding section of our Act. Therefore, any judgments under the Imperial Act must undoubtedly apply to our Act; and there have been judgments under the Imperial Act. There is the case of Royse, Petitioner, and Birley, Respondent, heard before the Court of Common Pleas on the 6th May, 1869. I quote from the report—

> A contract was entered into in June, 1868, for the supply of goods for the public service of India. The contract was completely executed by the contractors by the delivery and acceptance of the goods by the 23rd of October, 1869; but the contractors did not receive payment from the India Office until the 18th of January, 1869. In the interval, viz., on the 18th of November, 1868, one of the contractors was elected a member of the House of Commons.

It was held that even assuming the contract had been within the provisions which I have read, it did not void the election, and the reasons given were that if the acceptance of money was only in the usual manner after the contract had been carried out, and if it was merely a matter of payment, then disqualification did not apply. That is on all fours with this case, because here what is contemplated is the compulsory acquisition of land and it is merely a question of payment at issue.

Hon. A. Lovekin: If you give me the same advantage as you have had regarding references, I will deal with that contention.

The Minister for Education: Under the Bill, the owner of the land is given the selection of two alternatives. He can subdivide his land for sale or he can pay increased land rents. If he fails to do that, the Government, on the advice of the board, seize his land and it becomes vested in His Majesty, and the interest of the land owner is converted into a claim for compensation. Clause 13 says that when that has happened, the sections of the Constitution Act referred to shall not apply to the compensation paid.

Hon. J. Cornell: And the Minister says that does not amend the Costitution?

The Minister for Education: No, it does not amend it at all. I have no hesitation in saying that that construction cannot be placed upon the clause. If the clause be struck out, however, it will still be open to the Government to take land belonging to members of Parliament and such members will still have a claim for compensation.

Hon. A. Lovekin: If that is so, why did you put the clause in the Bill?

The Minister for Education: For the same reason as the clauses that have been referred to were inserted in the English Act. The clause was merely placed in the Bill as declaratory and to make it abundantly clear. The only element of contract or agreement that can be read into the Bill is in Clause 7. That provides that where land has been compulsorily acquired, the "interest of every person in such land, whether legal or equitable, shall be deemed to have been converted into a claim for compensation under this Act." It also provides that—

> Compensation shall be based on the unimproved value of the land and on the fair value of the improvements assessed at the added value given to the land for the time being by reason of such improvements to be agreed between the owner and any mortgagee or other person having any interest in the land and the board or deter-

mined by arbitration under the Arbitration Act, 1895.

It was chiefly for that purpose that Clause 13 was inserted in the Bill. It was to make it clear that it was open to a member of Parliament to come to an agreement with the board and that it was not necessary that he should go to arbitration. As a matter of fact, there is really no essential difference between compensation under the Bill and compensation in any other direction. For instance, take the case of compensation in respect of land compulsorily acquired for public purposes. Is it seriously to be contended that if land were bought under the Public Works Act, it would be impossible for compensation to be agreed upon between a member of Parliament and the Government? That condition has not been set up, nor yet the case where loss or damage to goods has been caused in transit on Government steamers or railways, nor has it been set up in the case of standing crops damaged by fire, due to sparks from railway engines.

Hon. J. Cornell: You are stretching the long bow now!

The Minister for Education: Agreement as to compensation would not make the matter a Government contract within the meaning of Section 32 of the Constitution Act or of the Imperial Act of George III. which has been quoted.

Hon. A. Lovekin: An agreement for the purchase of land is a different thing; it must be in writing.

The Minister for Education: That is in the case of a sale. There is no sale here. It is specifically stated in the Bill that regarding land taken by the Government the owner loses his interest and the only concern he has with it in the future is his claim for compensation. So far as the application of the provisions of the Bill to the Agricultural Lands Purchase Act is concerned, the wording of Clause 12 makes it perfectly clear. The clause states—

> This Act is incorporated with the Agricultural Lands Purchase Act, 1909, and any land so taken as aforesaid may be disposed of under that Act; and the board may for the purposes of this Act exercise any of the powers conferred on the Land Purchase Board. The Colonial Treasurer may, with the approval of the Governor, expend for the purposes of this Act such funds as under the provisions of the Agricultural Lands Purchase Act are available, or as may be appropriated by Parliament for the purposes of this Act.

Hon. J. W. Kirwan: Read the next clause.

Hon. A. Lovekin: That refers to the Agricultural Lands Purchase Act.

The Minister for Education: This cannot be so interpreted, as to say that the board appointed under the Bill is to be deemed to exercise the functions of the board under the Agricultural Lands Purchase Act!

Hon. A. Lovekin: The construction to be placed on the words "taken as aforesaid" refers to the Agricultural Lands Purchase Act.

The Minister for Education: I cannot follow Mr. Lovekin's reasoning. There are two distinct aspects, one the voluntary sale, and the other the compulsory acquisition. The Agricultural Lands Purchase Act is merely incorporated as far as is necessary to enable the board to dispose of lands.

Hon. A. Lovekin: The clause does not say that.

Hon. V. Hamersley: An advertisement in the newspaper would give you all the land you want.

The Minister for Education: If hon. members will look at the Bill they will see that in Clauses 12, 13, 14, 15, and 17, the last mentioned being one that deals with the duration of the measure, the words "this Act" are used in every case. That only applies to the Act which is being amended and does not apply to the Agricultural Lands Purchase Act at all. Mr. Lovekin apparently based his case on the assumption that under Clause 12 it would be possible, instead of compulsorily acquiring land, to buy it as a voluntary transaction between the owner and the Government, and he would, therefore, exclude the owner under Sections 32, 33 and 34 of the Constitution Act Amendment Act, 1899. To put such a construction on the provisions of the Bill is not only stretching, but absolutely altering, the wording of the section because it says clearly "land acquired under this Act." Clause 13 says—

> Sections 32, 33, and 34 of the Constitution Act Amendment Act of 1899 shall not apply to any contract or agreement under and for the purposes of this Act.

Hon. A. Lovekin: But that means the Agricultural Lands Purchase Act.

The President: Order! Let the Minister make a clear statement.

The Minister for Education: It does not mean any such thing. There is a difference between consolidating an Act and saying that certain things shall not apply to another Act. If we found it necessary to consolidate the Agricultural Lands Purchase Act and this measure we would have it divided into different parts and certain things applying to one measure would be found in one part and things applying to other matters would be found in other parts. By no stretch of imagination can it be said that those conditions which apply to land compulsorily acquired can be made to apply to land voluntarily acquired.

Hon. J. Cornell: Clause 12 says so.

The Minister for Education: The clause says nothing of the kind. It says that the Act is incorporated with the Agricultural Lands Purchase Act. That does not mean that things which can be done under the Bill can also apply to something under the Agricultural Lands Purchase Act as well. The clause goes on to say that any "land so taken as aforesaid may be disposed of under that Act." That clearly shows the whole

object of the clause. I again urge that we are not considering the merits of the Bill or the clause. We can deal with the clause to which particular objection is taken when we are in Committee. If hon. members think there is anything objectionable in the clause they can strike it out, but to refuse to consider the Bill because it contains a declaratory clause, similar to other clauses passed in previous Bills, a clause which certainly does not amend the Constitution, would be taking a very extreme step and would be disagreeing with the President's ruling on altogether insufficient grounds.

Hon. J. W. Kirwan (South) [5.45]: There is no need to apologise to you, Mr. President, for disagreeing from your ruling. One so experienced as yourself in Parliamentary affairs is likely to be more tolerant than others, towards those who do not see eye to eye with you. You will realise that none of us is infallible, not even the youngest amongst us. You, Mr. President, are not the youngest amongst us because in years of experience, you are the oldest Parliamentarian here and I am sure you must be conscious that the older we get, the more we realise that not only can others make mistakes but that we ourselves are not infallible. I can understand the position in which you, and others in similar positions, have found themselves when Bills of this kind have come before them. Your desire is that, as the Government have brought a Bill forward which has been before another place, that Bill shall be accepted or rejected on its merits rather than be imperilled by a technical objection. Hence I think you might be justified in even straining the interpretation of the Standing Orders or the Constitution in order to save any Bill after it has received the sanction of another place. Having given full consideration to that aspect, namely, to your desire not to have the Bill imperilled by an interpretation of the Standing Orders, and having gone into the whole question, I regret that I cannot support your ruling, because I think the issue involved is of far greater importance than the mere Bill before us. It is an issue that involves the whole question of how our Constitution is to be interpreted. The Minister for Education has brought forward certain references to matters which have arisen in connection with the Imperial Parliament. With all due respect, I claim that the references so far as the Constitution is concerned, have nothing whatever to do with the case. The Constitution of the British Isles is an unwritten one.

The Minister for Education: The provision regarding the qualification of members is written.

Hon. J. W. Kirwan: The Imperial Parliament is master in its own household. The British Constitution, although unwritten, is also subject to Acts of Parliament. It can be interpreted or amended by Acts of Parliament. We are quite differently situated here. The Constitution of Western Australia is an Act of the Imperial Parliament, and there is a certain way in which that Constitution can be amended, and certain ways in which it may be interpreted. It is said that the Bill does not contain an amendment to the Constitution. If it is not an amendment, it is certainly an interpretation. The inclusion of a clause in a Bill such as that to which exception is taken, is neither the way to amend the Constitution nor to interpret it. I claim that no possible reasoning can justify our supporting your ruling, because it will create an undesirable precedent. There are three sections of the Constitution involved in Clause 13. What is to prevent a future Government bringing forward a similar Bill that will involve every section of the Constitution? Where is this sort of thing going to end? Either we must stand by our Constitution and Standing Orders, or else we will cease to carry on in that orderly way in which all of us, particularly you, Mr. President, desire. In the course of your statement, Mr. President—if I may comment upon what you said, I will do so with all due respect—you spoke about a Bill coming from another place, where it had the advantage of being before men of experience. You stated that it had come under the purview of the Speaker, of an ex-Speaker, of Chairman of Committees, and a number of experienced men; and yet this point was not raised. Almost every Bill which comes before us from another place contains absolute errors in drafting. There is a Bill on the Notice Paper at present in connection with which I pointed out to the Leader of the House one of the most glaring mistakes, and this is only one of a dozen or 20 mistakes which have been made in it. These mistakes were not noticed elsewhere. No Chamber is infallible, and the mere fact of the Closer Settlement Bill having passed through one Chamber is no convincing argument, nor, in fact, is it any argument at all that the measure is in proper order. The same argument might apply to all those multitudinous errors we constantly have to correct in the Bills coming before us. You, Sir, have said that the question involved is whether Clause 13 of the Bill concerns the Constitution of Parliament. Here we have a clause providing that certain persons shall not be disqualified from being members of the House. If this does not affect the Constitution of Parliament, what does? It undoubtedly affects the personnel of Parliament, and anything that affects the personnel of Parliament undoubtedly affects the Constitution. It is absolutely beyond my powers of reasoning to understand how a question of this kind does not affect the Constitution of Parliament. You have ruled that the statement is merely declaratory If

that is so, why is it that as a declaratory statement it purports to be an interpretation of the Constitution? We of ourselves cannot, in a Bill of this description, interpret our own Constitution. That is not the ordinary, regular or proper way in which to interpret our Constitution. Mr. Lovekin has handed me a legal opinion which he overlooked in the course of his speech. It is a legal opinion by a very highly respected lawyer, Sir Walter James, K.C., a member of the firm of Stone, James & Co. Sir Walter was a former Premier of this State, and served for a long time in this Parliament, and, with all due respect, I submit that his opinion is superior, so far as legal qualification goes, to the opinions hitherto submitted to us.

Hon. R. J. Lynn: That was sumbitted to another counsel for his opinion.

Hon. J. W. Kirwan: The opinion of Sir Walter James is dated the 14th November, 1922, and is addressed to Mr. Lovekin. It reads—

1. Section 73 of the Constitution Act, 1889, provides that the Legislature of the Colony shall have power to repeal or alter any of the provisions of the Act provided that no amending Bill by which any change in the Constitution of the Legislative Council or of the Legislative Assembly shall be effected shall be presented to His Excellency the Governor for Her Majesty's assent unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly, respectively. This Constitution Act of 1889 is a schedule to and was—in substance—enacted by the Imperial Act, No. 53 and 54 Vic., Ch. 26.

2. The Constitution Act, 1889, and its amendment of 1899 provide for two Houses and for the qualification of electors and members and for certain disqualifications of electors and members, and also provide for the various electoral districts and provinces. The disqualifications were set out in Sections 23-33, but the Amending Constitution Act of 1899 (63 Vic., No. 19) repealed these sections and made new provisions which are in Sections 31-40 of the later Act.

3. In my view the Constitution of the Council consists of and includes (a) The number of members; their qualifications and disqualifications; (b) The area of its provinces; (c) The qualification and disqualification of its electors; and (d) The powers of the Council; and any Bill which affects any one of these features is a Bill which attempts to change the constitution of the Council.

4. I know of no case where members have been reduced or increased without involving a change of the Constitution and the need for an observance of the terms of Section 73 of the Act of 1889.

5. The number of members and the area of provinces are usually dealt with on redistribution and are amendments effecting a change in the Constitution of the Council. Similar Acts had been passed prior to 1894 in New South Wales and had been assented to by the Governor. The law advisers in England considered these Acts invalid, and to put matters right, the Colonial Acts Confirmation Act, 1894 (56 and 57 Vic. 72) was passed by the Imperial Parliament. Accordingly our local Redistribution of Seats Act 1904 was treated as amending the Constitution and reserved for His Majesty's consent. The Redistribution of Seats Act, 1911, by Section 6, provided for compliance with Section 73 of the Constitution Act, 1889.

6. The Electoral Act of 1904 was reserved for His Majesty's assent. It made an amendment to Sections 15 and 26 of the Constitution Act. The Electoral Act of 1907 was not so reserved, although by Section 211 it repealed certain sections of the amending Constitution Act of 1899 which dealt with qualifications and disqualifications of electors. In my view the qualification of an elector and equally the disqualification of an elector are fundamental parts of a Constitution and come within Section 73 of the Act of 1889 and that the Act of 1907 should have been reserved as that of 1904 was.

7. Speaking from memory I think that when the Bills (Redistribution and Electoral) of 1904 were presented to the Council they contained provisions to make it clear that in the future similar Bills should not be treated as amendments of the Constitution, but the Council rejected those provisions.

8. The Closer Settlement Bill, 1922, provides that Sections 32, 33, and 34 of the Constitution Act, 1899, shall not apply to any contract or agreement under and for the purposes of that Bill. The sections of the Constitution Act which are referred to, namely, Sections 32, 33 and 34, aim at maintaining the purity and integrity of Parliament. Similar provisions are in the Act of 1889 and will, I think, be found in every Parliament in Australia, and I cannot conceive of any Parliament which is based on our traditions of Parliamentary Government in which these provisions would not be regarded as fundamental, as being not only a part but almost the most essential part of its constitution.

9. The question turns upon constitutional practice which is—in a great many of its phases—outside the ordinary run of the common law, but speaking with all diffidence I am of opinion that legislation which strikes at the purity of Parliament strikes at its Constitution, and that the Closer Settlement Act, 1922, should comply with Section 73 of the Constitution Act, 1889, and its second and third readings passed with the concurrence of an absolute majority as therein mentioned.

The Minister for Education: It does not touch the question at issue.

Hon. J. W. Hickey: It must have cost more than 6s. 8d.

Hon. J. W. Kirwan: It is the legal opinion of an eminent lawyer. If the House considers that the legal opinion of the present Minister for Justice is superior to that of Sir Walter James, K.C., I shall be greatly surprised.

The Minister for Education: I say it does not touch the point. If the point at issue had been submitted to him, he would probably have given a different opinion.

Hon. J. W. Kirwan: But this does touch the point.

Hon. J. Nicholson: What does he say about the Constitution Act?

Hon. J. W. Kirwan: I do not know whether Mr. Nicholson has followed my reading of the opinion. Sir Walter has dealt with every aspect of the case, and his opinion is of considerable value. The Leader of the House says it does not touch the point. If the Leader of the House had read the opinion, I can hardly believe that he would say that every point involved had not been dealt with.

The Minister for Education: You have waited until I have no chance of replying.

Hon. J. W. Kirwan: That was not my fault. It was handed to me to read. Every point involved in the question raised has been dealt with fully. It is a case of whether the legal opinion of Sir Walter James is to be considered or the legal opinion of the Minister for Justice.

The Minister for Education: Nothing of the kind.

*Sitting suspended from 6.15 to 7.30 p.m.*

Hon. H. Stewart (South-East) [7.30]: I do not feel that I can cast a silent vote in connection with this motion. I spoke against the Closer Settlement Bill last session and again this session, and, in recording my vote in this instance, I shall do so only after very careful consideration of the Standing Orders. I call to mind that two sessions ago there was a Bill before this House to which I was opposed—the Shops and Factories Act—and on a technicality that measure was thrown out at the second reading stage. Next day the measure was revived by the Minister, and my vote was the deciding factor which enabled the second reading to be proceeded with. At the present time I am sorry that because of the esteem in which I hold you, Sir, I shall have to support the motion to disagree with your ruling. I realise the peculiarity of your position. The position has been well put forward by Mr. Kirwan, and I further direct attention to the precedent by which the casting vote of the President or Chairman of Committees in this House is generally recorded for the purpose of enabling further discussion to take place. It seems to me that the question before the House is a definite one as to whether the Closer Settlement Bill seeks to amend the Constitution Act. We have two Standing Orders, one of which is 180, which clearly points out—

> If any Bill received from the Assembly be a Bill by which any change in the Constitution of the Council or Assembly is proposed to be made, the Council will not proceed with such Bill unless the Clerk of the Assembly shall have certified on the Bill that its second and third readings have been passed with the concurrence of an absolute majority of the whole number of the members of the Assembly.

One hon. member—I think it was Mr. Lovekin—dealt with the word "Constitution" as though it were taken to mean the personnel of this Chamber or that of the Assembly. Under the heading "Bills amending the Constitution" in our Standing Orders I find that the word "Constitution" clearly implies the Constitution Act, and that it is not a matter of the personnel of either Chamber which really is regulated by the Constitution Act. That, however, is not a matter of great moment. On turning up the "Encyclopædia Britannica" I find that we get this interpretation of the word "Constitution":—

> The word "constitution" (*constitutio*) in the time of the Roman Empire signified a collection of laws or ordinances made by the Emperor. We find the word used in the same sense in the searly history of English law, e.g., the Constitutions of Clarendon. In its modern use "constitution" has been restricted to those rules which concern the political structure of society.

Then we have Standing Order 234 relating to procedure on Bills amending the constitution. There it is expressly laid down that a division shall be taken on the second and third reading of any Bill by which any change in the constitution of the Council or Assembly is proposed, etc. Your ruling, Mr. President, is practically that Clause 13 of the Closer Settlement Bill does not deal with contracts. I contend that Sections 32, 33, and 34 of the Constitution Act, 1899, clearly apply, not only to contracts, but to agreements, commissions, etc., where persons are interested in receiving money from the Government. I was astonished to hear the Minister say that the Bill provided that the properties in question could be seized. That indicates a doubtful ground on which to base an argument because we have to consider very carefully whether, if a measure were put forward to provide for seizing, how it would interfere with the fundamental principles of the British Constitution and of equity. But I will not follow on that line of argument because we see by Section 34 of the Constitution Act that it is not a matter only of a contract. We find that section says—

> If any person being a member of the Legislative Council or Legislative Assembly shall directly or indirectly, himself, or any person by whomsoever in trust for him, or for his use or benefit, or on his account, enter into, accept or agree for, undertake or execute, in the whole or in part any

such contract, agreement, or commission . . . .

I contend that that section covers the case of the taking of the properties referred to in the Closer Settlement Bill. But if we turn to Section 35, which is not mentioned in the Bill, but which cannot be dissociated from Sections 32 to 34 of the Constitution Act, we find that it provides—

> The foregoing provisions shall not extend to any contract, agreement, or commission made, entered into, or accepted by any incorporated company where such company consists of more than 20 persons and where such contract, agreement, or commission is made, entered into or accepted for the general benefit of such company, nor to any contract or agreement in respect of any lease, license, or agreement in respect to the sale or occupation of Crown lands.

There we have it that a lease, license or agreement in respect of any sale or occupation of Crown land is exempted from the three previous sections. That clearly implies that only Crown lands are exempted, so that there is needed an amendment of the Constitution.

Hon. A. J. H. Saw: These are made Crown lands on notice being given.

Hon. H. Stewart: They are not Crown lands until acquired by the Crown, and my argument is not weakened one iota. It is necessary to amend the Constitution to enable these particular lands to be made Crown lands. We are given the Constitution and the Standing Orders to guide us, but if a case were submitted as to the position of a member of this Chamber or the member of another place and it were argued in the Full Court, the High Court or even the Privy Council, as to which would stand, Clause 13 of the Bill or the Constitution Act, 1899, I contend that the decision would be in favour of the Constitution Act and that the Bill would be ruled out as being ultra vires. Consequently I shall have to record my vote against your decision, Mr. President. I do not like to see a Bill thrown out on a technicality, but there rests with us a responsibility to act in accordanace with the law, and certainly to uphold the Constitution Act. I will vote for the motion.

Hon. A. J. H. Saw (Metropolitan): I intend to oppose the motion and to support the ruling given by the Chair. I do so for the reason that in my opinion there is nothing in the Bill that alters the Constitution. It is true that Clause 13 says—

> Sections 32, 33, and 34 of the Constitution Acts Amendment Act, 1899, shall not apply to any contract or agreement under and for the purposes of this Act.

But those sections ordain that persons who enter into any contract, agreement or commission with the Government shall be disqualified from being members of Parliament, and an explanatory note at the side of the sections in the Act says—.

> Persons holding contracts for the public service shall be incapable of being elected or sitting.

Hon. A. Lovekin: The marginal note is not a part of the Act.

Hon. A. J. H. Saw: It interprets to my mind what is considered to be the meaning of the section. Under the Bill power is given to the Governor by notice in the "Gazette" to declare that certain lands have been taken under the Act for closer settlement, and on publication of such notice the land is surrendered to the Crown, subject to certain conditions. By what stretch of imagination can it be interpreted that owners enter into any contract, agreement or commission with the Government as contemplated by Sections 32, 33 and 34 of the Constitution Act? It may be argued that inasmuch as by Clause 7 of the Bill compensation has to be paid on the improvements at a value to be agreed upon between the owner and the board, or determined by arbitration, this might bring the owner within the scope of Sections 32, 33 and 34 of the Constitution Act. But that would involve an interpretation of those sections which cannot be legitimately maintained. A contract or agreement implies that the parties are free agents. But under the Bill the owner is compelled, and only acts under force majeure. That is my main argument. In the Bill there is nothing of the nature of a contract or agreement. The whole thing is one of compulsion, with certain conditions attached thereto.

Hon. A. Lovekin: What do you say to the Agricultural Lands Purchase Act?

Hon. A. J. H. Saw: In my reading, it has nothing whatever to do with the case.

Hon. A. Lovekin: Clause 12 says it has.

Hon. A. J. H. Saw: The interpretation which the hon. member puts on Clause 12 is not borne out, and cannot be maintained by anyone who understands the King's English. As the Leader of the House has pointed out, "as aforesaid" refers to the Bill, and not to the Agricultural Lands Purchase Act. Furthermore it says "is disposed." It has nothing whatever to do with the compulsion exercised on the owner, but deals with what the Government have to do with the land after they acquire it. I maintain that the mover of the motion has discovered another mare's nest. That is my reply to that interjection. Mr. Stewart referred to Section 25 of the Constitution Act. To my mind that section undermines the whole of the case stated by the hon. member. Section 35 expressly exempts any contract or agreement in respect of any lease, license or agreement in respect of the sale or occupation of Crown lands. Under the Bill, as soon as the notice is published in the "Gazette" notifying the intention to resume the land, before any agreement whatever on the part of the owner has been en-

tered into, the land is surrendered to the Crown.

Hon. H. Stewart: No, it provides that it is vested in His Majesty as if it had been surrendered.

Hon. A. J. H. Saw: I cannot see the difference.

The Minister for Education: At the bottom of page 3.

Hon. A. J. H. Saw: That is to say, if any owner fails to notify the board under Section 6 either that he has consented to subdivide or has elected to pay super tax, the Governor may by notice in the "Gazette" declare that the land has been taken for the purpose of closer settlement, and the land therein referred to shall be vested in His Majesty as if the land had been vested in the Crown.

Hon. H. Stewart: The whole clause deals with it.

Hon. A. J. H. Saw: My contention is that as soon as the Governor gives notice in the "Gazette," this land is vested in the Crown and consequently Section 35 of the Constitution Act applies in which Crown lands are expressly exempted from any of the penalties in respect of Sections 32, 33, and 34 of the Constitution Act. But I rely on the main argument that the land is resumed by the Crown by force majeure and, consequently, the owner, not being a free agent, does not enter into any agreement or contract. Now let me deal with Sir Walter James's opinion, for which one has considerable respect. I guarantee that if we obtained opinions from half a dozen leading lawyers, three would be on one side and three on the other. I was interested in listening to Mr. Lovekin. I found him meandering along; and I wondered when he was coming to the point. Apparently the point was in the postscript, which he forgot to read to the House, the opinion of Sir Walter James. I have had but short time by Mr. Kirwan it struck me that all but the last clause was in the nature of a preamble. The last clause was something like this, "If the Bill interferes with the purity of Parliament and members of Parliament, no doubt it is infringing Sections 32, 33, and 34 of the Constitution Act." I can assure Mr. Lovekin it does not require leading counsel's opinion to convince me of that. But there is nothing in the Bill to interfere with the purity of Parliament. No member of Parliament who owns land which is compulsorily resumed by the Crown enters into any contract, and so Clause 13 is entirely superfluous. The Minister says it is a declaratory clause. It may be so, but I think it is quite unnecessary. It does not create offence, nor does it extenuate anything.

Hon. A. Lovekin: Do you suggest that we can declare the Constitution Act by an ordinary Bill?

Hon. A. J. H. Saw: I see nothing in the Bill to alter the Constitution in the slightest degree.

Hon. J. J. Holmes (North) [7.55]: I am sorry to have to support the motion to disagree with your ruling. I look upon myself as one of the bulwarks of the Constitution. Mr. Panton, when he was here, used to claim that he was one half of the bulwark and I the other. Because I deem it my duty to uphold the Constitution I find, much to my regret, that I am in conflict with the ruling given from the Chair. Mr. Kirwan answered, much better than I could, all the points which you, Sir, made. But there were two which he appeared to miss. One was that you said it was manifestly desirable to exclude members of Parliament from the provisions of the penalty sections of the Constitution Act. That may be your opinion, Sir.

The President: Do you say I said that?

Hon. J. J. Holmes: That is so.

The Minister for Education: It is the very opposite to what the President said.

Hon. J. J. Holmes: It is what I took down.

Hon. H. Stewart: The President said it was manifestly desirable that members of Parliament should not be excluded.

The President: That is more like it.

Hon. J. J. Holmes: Well I must have taken it down inaccurately. The fact remains that your opinion, Sir, is quite different from that of the framers of the Constitution. Another point was your definition of "contracts" under the Constitution. I respectfully suggest there are other authorities who adhere to a very different definition. A contract is a contract, some small, some large. There is no necessity for Clause 13. It should never have been included. However, that it not our fault. Standing Order 180 distinctly lays it down that the Bill cannot be proceeded with unless it has been certified as having passed another place by an absolute majority. I agree that land taken compulsorily should not, and would not exclude the owner from a seat in this House. I have the right to make a contract with the tramway people to carry my wife and family over the tram lines. Again, I claim the right, and I have authority behind me, to ship cattle or sheep by a State steamer at schedule rates. Such a contract does not bring me within the four corners of the Constitution. It is only when I attempt to make a special contract at special rates, a contract under which I, as a member of Parliament, might be able to secure better terms than could be secured by ordinary citizens, that I am on debatable ground.

Hon. A. J. H. Saw. Does a man who has his land resumed compulsorily come within that provision of the Constitution Act?

Hon. J. J. Holmes: No.

The Minister for Education: And that is the only case Clause 13 deals with.

Hon. J. J. Holmes: Then we come back to the point that Clause 13 should never have been in the Bill. Except for Clause 12, Clause 13 would have been quite unnecessary. Dr. Saw can claim what he likes with regard to

Clause 12. The measure becomes incorporated with the Agricultural Lands Purchase Act of 1909, "and any land so taken as aforesaid may be disposed of under that Act." With this clause in the Bill, members of Parliament can make any contract they like, and can use their influence to sell their land under the Agricultural Lands Purchase Act.

The Minister for Education: What does Sir Walter James say on that point?

Hon. J. J. Holmes: Sir Walter James can say what he likes. But for Clause 12, there would be no necessity for Clause 13. Clause 12 provides for the incorporation of this Bill with the Agricultural Lands Purchase Act of 1909, and in respect of anything done by him under that Act a member of Parliament would be exempt under Clause 13 of this Bill. Sir Walter James has been referred to. The Leader of the House, as Minister for Justice, has given us his opinion. The Leader of the House has control of the Crown Law Department, and presumably he has conferred with that department on this subject. But he is silent with regard to what his department advised him.

The Minister for Education: Of course, I have conferred with the Crown Law Department.

Hon. J. J. Holmes: The hon. gentleman does not seem to have placed much value upon their opinion.

The Minister for Education: Why not?

Hon. J. J. Holmes: Because he has never mentioned it. I did not hear him refer to it in his speech this afternoon. Not a sound from the Minister for Justice as to the opinion of the Crown Law Department. He criticised the opinion of Sir Walter James.

The Minister for Education: I did nothing of the kind.

Hon. J. J. Holmes: But he has not a single member of the Crown Law Department behind him in the matter.

The President: But the Minister is the Crown Law Department.

The Minister for Education: I did not criticise Sir Walter James's opinion. I said he did not refer to the point at issue; and neither has he done so.

Hon. J. J. Holmes: Dr. Saw referred to land seized under the Bill, but I would point out that under the Bill there is negotiation first, and that after the land has been seized it can, according to Clause 14, go back to the owner. There is a point in respect of which political influence might assert itself.

Hon. H. Stewart: Look at the last proviso to Clause 7.

Hon. J. J. Holmes: Someone else can look at that.

Hon. R. J. Lynn: I rise to a point of order. Is it the second reading of the Bill we are discussing?

The President: I think the hon. member is in order, because he is trying to show that contracts may be made. The whole point depends upon whether Clause 13 empowers anyone to enter into an agreement by which he may profit.

Hon. R. J. Lynn: Every clause of the Bill is being spoken to now.

Hon. J. J. Holmes: Coming back to Clause 13, let me point out that the marginal note speaks of "Exemption of contracts from Constitution Acts Amendment Act." There is a distinct reference to the Constitution Act in the marginal note. Yet we are told that this clause has nothing to do with the Constitution Act, or amendments of that Act. I am sorry my remarks are so disjointed, but two or three members have spoken before me and have stolen all the points, except two or three which need clearing up. One of them is this. The Minister referred to what is done in connection with the Fremantle Harbour Trust. But the hon. member knows perfectly well that two wrongs do not make a right.

The Minister for Education: I was only quoting a case.

Hon. J. J. Holmes: There was one member of this Chamber at that time who possessed all the qualifications for the position; and he became chairman of the Fremantle Harbour Trust Commissioners, and discharged his duties with credit to himself and advantage to the State. Because of that fact this House did not draw attention to the position. However, there is no reason why we should follow a bad example. By this Bill the bulwark of the Constitution is attacked.

The Minister for Education: It suited the House then to overlook the matter?

Hon. J. J. Holmes: I was not here. Possibly if Mr. Lovekin and myself and a few others had been here, the matter would not have been overlooked. It is interesting to learn from the Leader of the House that the Government propose to seize land. The other day he told us quite differently. The other day he spoke of the earth being the Lord's and the fulness thereof. I can quote from the same source, and with a certain degree of relevancy, "Thou shalt not steal."

The Minister for Education: What has that to do with this motion? You are now discussing the merits of the Bill.

Hon. J. J. Holmes: I answered the hon. gentleman's biblical quotation with another biblical quotation. If hon. members will cast back their memories to 1919, they will recall that the Government then tried to amend the Constitution on lines similar to those now proposed. A Bill was then put up to the House for amendment of the Constitution, and it was put up in a proper way. It provided that members of Parliament could make contracts under certain conditions. That Bill, I say, came before us properly. It was laid aside in this House because there was not an absolute majority for it. If we saw fit to lay aside a straight out Bill such as that, surely there is even greater necessity for such action when we find the proposed amendment covered up under a Title which refers to an Act relating to the acquisition of lands for closer settlement. Under this Bill we are presented with a similar clause which is wrongly there.

The Minister for Education: It is not a clause in any way resembling that.

Hon. J. J. Holmes: We laid that Bill aside because it failed to secure an absolute majority in this House. Yet here we have a Bill by which, on a catch vote, not an absolute majority, the Constitution is to be amended. My point is that but for Clause 12 there would be no necessity for Clause 13. Clause 12 opens up a wide scope for anybody and everybody to operate, and therefore Clause 13 becomes necessary. If there is necessity for amending the Constitution as proposed by Clause 13, there is only one proper way of doing it, and that is by a Bill for the amendment of the Constitution, and not under cover of a Bill relating to closer settlement. I find myself reluctantly compelled to support the motion dissenting from your ruling, Mr. President; but if this House upholds you—I am not making any threat, but merely a plain statement of fact—the matter will not rest there. I am satisfied that there are men sufficiently interested in the Constitution of the State, and in the necessity for maintaining that Constitution, to take the question to a higher court. If the opinion of those men is upheld by a court of justice, then the Government will find themselves in the position of not having a Bill at all. I respectfully suggest that the Government withdraw the Bill, and bring forward another measure with that clause omitted. If they do that, the constitutional aspect will be disposed of and the Bill can be discussed on its merits.

Hon. J. Cornell (South) [8.14]: To disagree with the ruling of a President or a Chairman is at any time a matter requiring mature consideration, and one which should be approached from its chief angle. The immediate question before us is whether or not this Bill is properly before the House. A point of order was raised that it did not conform with the Standing Orders on the ground that it was a Bill that amended, or purported to amend, the Constitution. You, Mr. President, have ruled that the Bill does not amend the Constitution. The motion before the Chamber is to disagree with that ruling. It requires grave and mature consideration to lead the members to disagree with the ruling of a President at any time. The position now confronting hon. members is a grave one, inasmuch as the effect of agreeing with your ruling may set up a precedent which may be quoted in the future. I have my own views regarding this Chamber and whether it should or should not be continued. So long as I remain a member of it, I will stand for its privileges and prerogatives as written in our Constitution and any attempt, whether by a side wind or by a direct attack, to alter the Constitution will have my approval only after due consideration of the full facts. The question we are about to decide is one in connection with which members must dissociate themselves from any feeling of sentiment. They must approach it, to use a vulgarism, in cold blood, and make up their minds as to whether they will take a step that may rebound against them in the future. It has been held by the Minister and by you, Mr. President, that the Bill does not amend the Constitution. In common with members who have preceded me, I want to know if the Bill does not amend the Constitution, why is there any reference in the measure to the Constitution? Why is that there, if it is not intended to amend, or at least interpret the Constitution? It has been contended that if the Bill be passed without the clause to which exception has been taken, then, under the law as it stands to-day, if land held by a member of the legislature is taken by the Government, the acceptance of any money by way of compensation or otherwise by that member of Parliament will result in his disqualification under the Constitution from sitting as a member of the legislature. The fact that the Government compulsorily acquired land and paid money to the member of Parliament from whom the land was taken, either by mutual agreement or in accordance with the decision of the board, would constitute an infringement of the Constitution.

The Minister for Education: Then if the Government seized any member's land, they could kick that member out of Parliament.

Hon. J. Cornell That is the point I am raising. That is the position to-day.

The Minister for Education: That is absurd.

Hon. J. Cornell: I am not a lawyer but, from the common sense practical point of view, I cannot see the necessity for Clause 13 unless it is to get over that difficulty. If that is not the purpose of the clause, why is it required? Dr. Saw based his argument on the marginal note. During my life I have only had to visit a legal man on a few occasions, but when I did see a lawyer he did not refer to the marginal note but read the section to see what it contained.

Hon. A. J. H. Saw: I read the clause.

Hon. J. Cornell: But Dr. Saw put faith in the note.

Hon. A. J. H. Saw: I said it interpreted the spirit.

Hon. J. Cornell: Fancy a marginal note interpreting the spirit of a section! If the hon. member went to a lawyer he would not be satisfied if the legal gentleman merely used the marginal note in order to give his interpretation of a section of the Act. I can see only one valid reason for the clause appearing in the Bill. The Minister has said that there is nothing in the argument. If that is so, there is no need for the clause in the Bill. If there is nothing in the clause and it is not required—I believe that if the Minister had his way again the clause would not appear in the Bill—the House is faced with the position of having to decide on its effect in amending or suspending certain sections of the Constitution. The question is not whether we will uphold the President's ruling or delete the clause from the Bill. The question being debated is, according to the wisdom of some members of this Chamber, as to whether the Bill should be before us.

You, Mr. President, as guardian of the rights and privileges of this Chamber, should have exercised your capacity and judgment to indicate whether this Bill does amend the Constitution. It was your prerogative to have challenged the Bill, but it remains for the second reading to be moved and for an hon. member to challenge its right to be here. We are not debating whether or not we should pass the clause or proceed to the further discussion of the Bill, but as to whether it conforms with the Standing Order.

The President: The question is whether the Bill should be before us at all.

Hon. J. Cornell: Exactly. It has been said that the Bill has been passed in another place and that it was evidently not viewed there in the same light as we viewed it here. Having taken that view of the Bill, we can set at naught all that occurred in another place. We are not debating whether hon. members of that Chamber were right or wrong, but whether we would be right in throwing the Bill out because it does not conform with our Standing Orders. The Minister made a point when he referred to a similar provision appearing in the Harbour Trust Act, 1904. Only about three members who were in the Chamber at the time that measure was passed are now members, and, therefore, it should not be quoted by the Minister as something done years ago which constituted a reason why we should pursue a similar course again. If we accept that process of reasoning and later on a Government of expediency should take charge of the Treasury Bench, should such an Administration introduce a Bill to amend the Constitution on the lines embodied in the Bill before us and this Bill not be ruled out of order, our action in that regard will certainly go down in the records of the House and be established as a precedent. Another point has been raised to the effect that the suspension of the three sections of the Constitution only has bearing on the Bill itself and has no application to the Agricultural Lands Purchase Act. Candidly speaking, if there were no reference to that Act, I would not be so particular in my judgment as to what the result of the discussion may be. But if the Minister, by any line of reasoning or logic, can demonstrate that the construction to be placed on the Bill is that the whole of the Agricultural Lands Purchase Act does not come within its provisions, then all I can say is that I have put in 10 years in this House for nothing! It says, "This Act is incorporated with the Agricultural Lands Purchase Act, 1919."

The Minister for Education: That does not alter the terms of the Agricultural Lands Purchase Act.

Hon. J. Cornell: It also says that the "land taken as aforesaid may be taken under that Act and the board may exercise the powers conferred upon the land purchase board." If it was not intended to incorporate the whole of the Agricultural Lands Purchase Act in this Bill, only so much as was required to be incorporated would have been stipulated. There is a dual reason for Clause 13. The suspension of the three sections of the Constitution means that the whole can apply as well as the whole of the Lands Purchase Act.

The Minister for Education: Nothing of the kind.

Hon. J. Cornell: I recognise that the Minister is in an awkward and invidious position. He is the victim of other people who have given very little consideration or care to the measure and, unfortunately for him, he is burdened with a responsibility which no other member would like to carry. But that is one of the exigencies of the position he occupies. I ask members to view the question in this way: It is generally accepted that, if the President's ruling is disagreed with, the Bill will be laid aside. If his ruling is upheld, the Bill will probably be passed and a precedent will thus be established. The proper course for the Government to have adopted, if they thought the provisions of the Bill would conflict with the Constitution Act, was to bring down a Bill to amend the Constitution Act. A short measure would have sufficed and the position could have been made absolutely clear. There would then have been no dispute in this House, because no one could question such a course. Instead of that the Government have adopted a course which is open to question, and which may tie our hands in future.

Hon. J. Nicholson (Metropolitan) [8.34]: I share the regret expressed by many other members in regard to the conflict of opinion which has arisen over a matter of such grave importance. We have to guard very zealously and jealously the provisions of our Constitution and I would have no difficulty in supporting the view expressed by you, Sir, that these sections of the Constitution would be in no way infringed had not it been for the presence of one, if not two, clauses in the Bill before us. Unfortunately there are in those clauses certain words which give rise to contention and which might in future make it possible for reasons to be advanced why Bills of a similar nature, and perhaps of a more extended character, should receive the same interpretation you have given to this measure. The clauses which have created doubt in my mind are Nos. 7 and 12. The Leader of the House has expressed a measure of doubt regarding Clause 7. I do not share with him the interpretation he places upon Clause 12. Subclause 3 of Clause 7 states—

> Compensation shall be based—(a) on the unimproved value of the land, and (b) on the fair value of the improvements assessed at the added value given to the land for the time being by reason of such improvements, to be agreed between the owner and any mortgagee or other person having any interest in the land and the board, or determined by arbitration under the Arbitration Act, 1895.

Reference has already been made to Section 73 of the Constitution Act. It will enable me to make my point a little clearer if I refer to that section. It reads—

> Provided always that it shall not be lawful to present to the Governor for Her Majesty's assent any Bill by which any change in the Constitution of the Legislative Council or of the Legislative Assembly shall be effected, unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively.

It is quite true that Crown lands are expressly exempted by the 1899 Act. A contract relating to Crown lands would not be affected. It is also true that under this Bill certain of these lands, when they come under the operation of the measure, would become Crown lands. But there is the possibility that persons might come to an agreement or enter into a contract which might be an open violation of those sections of the Constitution Act, and which might lead to those acts we do not wish to see perpetrated here, as they were perpetrated in past years in the Mother of Parliaments. There was a reason, as we all know, why those restrictions were placed upon members entering into contracts of this nature. But I think Clause 12 of the Bill contains words even more important than Clause 7. The Leader of the House has suggested that the opening words of Clause 12 are in a measure controlled by some later words. The clause reads—

> This Act is incorporated with the Agricultural Lands Purchase Act 1909.

and the Leader of the House contends that those words are controlled by the following words:—

> and any land so taken as aforesaid may be disposed of under that Act.

That is to say, the incorporation of the Agricultural Lands Purchase Act is intended to be limited to those sections dealing with the question of the disposal of lands as provided in that Act.

The Minister for Education: My point is that the incorporation of this measure with the Agricultural Lands Purchase Act does not amend the Agricultural Lands Purchase Act.

Hon. A. Lovekin: Nobody said that it did.

Hon. J. Nicholson: Of course it does not amend the Agricultural Lands Purchase Act. The way in which this clause is worded leaves it open to very grave doubt as to whether the whole of the sections of the Agricultural Lands Purchase Act could not be brought into operation here by reason of this Act being incorporated with the Agricultural Lands Purchase Act.

The President: Would you mind explaining for my information? It says distinctly that any land so taken as aforesaid may be disposed of. It does not say "acquired under this Act."

Hon. J. Nicholson: Section 9 of the Agricultural Lands Purchase Act reads—

> All land surrendered to His Majesty under the provisions of this Act shall be deemed to be Crown Lands, and after being surveyed into sections, and, if necessary, classified, shall be disposed of in accordance with the provisions of the Land Act, 1898, as modified by this Act.

Hon. H. Stewart: What about the latter portion of Subclause 1 of Clause 12?

Hon. J. Nicholson: That reads—

> and the board may for the purpose of this Act exercise any of the powers conferred on the Land Purchase Board.

This shows that the clause is intended to be confined not merely to the sections of the Agricultural Lands Purchase Act dealing with the disposal of land. I suggest that it extends to every other section and power contained in that Act. The two measures are embodied, and the powers contained in the Act could be exercised under this measure.

The Minister for Education: For the purposes of this Act, the compulsory acquisition of land.

Hon. J. Nicholson: The clause might have simply stated that the sections in the Agricultural Lands Purchase Act, dealing with the disposal of lands should be incorporated. Unfortunately the words state clearly "this Act is incorporated with the Agricultural Lands Purchase Act." If this measure is incorporated with it, it can only mean one thing, namely, that the whole of the powers in the Agricultural Lands Purchase Act, and in this measure, would then become operative. It is as though the whole of the sections of the Agricultural Lands Purchase Act were set out in the Bill now before us, the one being incorporated with the other. There is a grave question at issue, particularly when we bear in mind that our Constitution is at stake. In the future, points may come up for consideration, and the decisions in regard to the matter we are now discussing may have an important bearing on those points. For that reason I venture to suggest that it behoves us to move with great caution.

The Minister for Education: You do not maintain that Clause 12 can apply to land voluntarily sold?

Hon. J. Nicholson: Undoubtedly, that is the point I wish to make. Clause 12 states definitely that the Closer Settlement Bill is incorporated with the Agricultural Lands Purchase Act.

The Minister for Education: It does not amend that Act.

Hon. J. Nicholson: I do not say it does, but it does more, it incorporates it. What does incorporating mean? It means that it embodies. We have to look at the sections in the Agricultural Lands Purchase Act, which give certain powers. Section 7 pro-

vides that the Land Purchase Board shall report, and it sets out the matters on which the report is to be made. Then Section 8 says—

> If it appears from the report of the Land Purchase Board, in any case, that the land is suitable, and is likely to be immediately selected for agricultural settlement, and that there is no sufficient quantity of Crown lands in the neighbourhood available for such settlement, the Minister, with the approval of the Governor, and subject to the conditions prescribed by this Act, may make a contract for the acquisition of the land by surrender at the price fixed by the board as the fair value thereof, or at any lesser price.

If a contract is entered into it must be the result of the two parties coming together, because in the first part of the Agricultural Lands Purchase Act there is nothing dealing with the compulsory taking of the land. The compulsory powers are embodied in the Closer Settlement Bill, and between the two it must be possible for a contract to be entered into quite apart from the particular clauses in the Closer Settlement Bill.

The Minister for Education: Do you contend that the words in Clause 13 of the Bill shall apply to the Lands Purchase Act?

Hon. J. Nicholson: I say it is the way in which the clause is framed. I seriously say——

The Minister for Education: That the words in Clause 13 mean the Agricultural Lands Purchase Act?

Hon. J. Nicholson: Yes. Once it becomes incorporated it is part and parcel of it.

The Minister for Education: That is a most astonishing opinion.

Hon. J. Nicholson: These lands which would be purchased under the Agricultural Lands Purchase Act would not, in the first instance, be Crown lands. They would be privately owned, and perhaps held as freehold, C.P. or otherwise. Still, the contract could be made, or an agreement entered into and the agreement would require to be one between two parties.

The Minister for Education: If we pass the Closer Settlement Bill, shall we limit the duration of the Lands Purchase Act until December, 1924?

Hon. J. Nicholson: It would continue only so long as both held together.

The Minister for Education: You admit that they would be separate.

Hon. J. Nicholson: I can only take the section as it stands. I do not say for one moment that the matter is free from doubt.

The Minister for Education: You will not give an authoritative opinion.

Hon. J. Nicholson: The matter is sufficiently grave, and demands serious consideration, having regard to the fact that we may have to decide in the future other points which may come forward, and when the decision given to-day may be regarded as a precedent. I am merely pointing out a danger which we should guard against. We are naturally jealous of the rights and powers we are given under the constitution, and if there is any likelihood of an infringement of those rights, it is our duty as members to do what we consider proper in the circumstances. If it can be held that a contract would be created under the two Acts, then there would be an infringement of the Constitution, and we would be throwing upon the Government the onus of securing assent to a Bill which had not been passed by the requisite absolute majority in Parliament. The point is of such undoubted importance that time should be taken to consider it. It would not be wise to rush the matter unduly, and I suggest that it be referred to the Standing Orders Committee for their report. I do not know whether hon. members would be prepared to support a suggestion of that description but the matter is of such importance that it should be weighed thoroughly.

Hon. G. W. Miles (North) [8.55]: I regret that I shall be obliged to disagree with your ruling, Mr. President, not only because I do not care about disagreeing with rulings given by the Chair, but also because I wish to see the Closer Settlement Bill go through this session. I hope, however, that should the motion be agreed to, means will be found by which it will be possible to again submit the measure. I have listened to the arguments advanced and to the legal opinions which have been expressed. We are all familiar now with the terms of Clause 13 of the Bill. Clause 12 and Clause 7 have also been quoted. Assuming that Clause 12 does not apply, as indicated by the Leader of the House, we find that Clause 7, Subclause 3, states—

> Compensation shall be based (a) on the unimproved value of the land, and (b) on the fair value of the improvements assessed at the added value given to the land for the time being by reason of such improvements, to be agreed between the owner and any mortgagee.

That paragraph is sufficient to convince me that an agreement will be made. If it is not made for the land it will be made for the improvements. It will be possible for such an agreement to be entered into by any member of Parliament. I agree that members should be brought within the scope of the Bill, but I fail to see how this House can permit the Bill to be proceeded with as we have it before us. We have heard Standing Order 180 quoted. That seems to me to be as clear as daylight, notwithstanding what Dr. Saw said about members being possessed of intelligence to enable them to read the Queen's English.

The Minister for Education: Why not the King's English?

Hon. G. W. Miles: I have sufficient intelligence to enable me to understand the meaning of the Standing Order 180 and Clause 13. In the circumstances I do not intend to take up the time of the Houes. I intend to vote for the motion.

Hon. A. Lovekin (Metropolitan—in reply) [9.0]: I should like to answer the question which you, Sir, put when you stressed the words "for the purpose of this Act."

The President: No, I did not.

Hon. A. Lovekin: I understood you to ask Mr. Nicholson what the phrase meant.

The President: No, I referred to "disposed of under the Act." There is a great difference between purchasing and disposing of.

Hon. A. Lovekin: Clause 12 begins, "This Act is incorporated with the Agricultural Lands Purchase Act, 1909." Thus the Agricultural Lands Purchase Act and the Bill become one. It continues, "Any land so taken as aforesaid may be disposed of under that Act." The Minister fails to realise that when an Act is incorporated with another Act, the two are taken together.

The Minister for Education: Quite so.

Hon. A. Lovekin: What is done under the Agricultural Lands Purchase Act and what is done under the Bill are all one. Clause 13 applies to both. We have had read out to-day His Excellency's assent to the appointment of the Minister as Attorney General.

The Minister for Education: Nothing of the sort.

Hon. A. Lovekin: Well as Minister for Justice with all the powers of the Attorney General. I am going to address him as "my learned friend."

The President: You can only address members as "hon. members."

Hon. A. Lovekin: Very well. The hon. member quoted the case of Royce v. Burley, reported in the fourth volume of "Common Pleas Law Reports." In that case the seat was challenged, but the contract had already been executed and completed.

The Minister for Education: That is what I pointed out.

Hon. A. Lovekin: But if we go on to the judgment in that case and read the final words, they support one of the cases I have quoted, namely, the Waterlow case. Waterlow had to vacate his seat. The Master of the Rolls said—

> I will, however, say the view that the court now takes is not at all inconsistent with the decisions of the Committees of the House of Commons in the case of Waterlow, and the Alminster case, because in both those cases there was at the time of the election something remaining to be done under the contract by the contractors.

In Royce's case there was nothing to be done. Of course that case does not apply at all as do the Waterlow case and the much later case of Samuel. Reference has been made to an opinion given by Sir Walter James. I thrashed out this matter with Sir Walter yesterday, and again this morning. He gave me a written opinion.

The Minister for Education: In which he makes no reference to the whole point of the argument.

Hon. A. Lovekin: I would have shown it to the Minister had I had it earlier. It was not my fault. Sir Walter James is quite emphatic in the summary. He says—

> The question turns upon constitutional practice, which is in a great many of its phases outside the ordinary run of common law. But speaking with all diffidence, I am of opinion that legislation which strikes at the purity of Parliament strikes at the Constitution, and that the Closer Settlement Bill of 1922 should comply with Section 73 of the Constitution Act, 1889, and its second and third readings be passed with the concurrence of an absolute majority as therein mentioned.

We could have nothing clearer than that. I am sorry the debate has taken so long.

Question put and a division taken with the following result:—

| | |
|---|---|
| Ayes .. .. .. .. | 17 |
| Noes .. .. .. .. | 8 |
| Majority for .. | 9 |

AYES.

| | |
|---|---|
| Hon. R. G. Ardagh | Hon. A. Lovekin |
| Hon. C. F. Baxter | Hon. J. M. Macfarlane |
| Hon. A. Burvill | Hon. G. W. Miles |
| Hon. J. Cornell | Hon. J. Nicholson |
| Hon. J. Duffell | Hon. G. Potter |
| Hon. J. A. Greig | Hon. H. Seddon |
| Hon. V. Hamersley | Hon. H. Stewart |
| Hon. E. H. Harris | Hon. J. J. Holmes |
| Hon. J. W. Kirwan | (*Teller.*) |

NOES.

| | |
|---|---|
| Hon. F. A. Baglin | Hon. J. Mills |
| Hon. H. P. Colebatch | Hon. E. Rose |
| Hon. J. Ewing | Hon. A. J. H. Saw |
| Hon. R. J. Lynn | Hon. J. W. Hickey |
| | (*Teller.*) |

Question thus passed.

## BILL—PENSIONERS (RATES EXEMPTION).

### Second Reading.

Debate resumed from 8th November.

Hon. G. POTTER (West—in reply) [9.11]: The Bill has been responsible for very much criticism, mostly of a constructive nature. The primary objections seem to have been that the Bill was not wide enough in its scope, that it was only to benefit a few. It is not the intention of the Bill to benefit a few to the detriment of any other section of the people. Its object is to give relief wherever it can be given, and I submit that is a laudable object. I shall in a few moments outline certain amendments framed to meet the wishes of members who have constructively criticised the Bill. But in the first place I may say I hope members have not been unduly influenced by a certain circular which was addressed to all members; because if they will reflect a moment they will discover that the two chief objections in that

circular have been removed in another place, and therefore the real stumbling block to the Bill has gone. It was stated by Mr. Harris that no sound reason had been advanced for the Bill. To that I reply that the object of the Bill is to benefit those poor, old, helpless people. Surely that is sound enough reason for the Bill. Reference has also been made to altered conditions, and a fear was expressed that Federal departments, chiefly those dealing with taxes and pensions, would take advantage of the benefits to be conferred by the Bill on pensioners. The hope was expressed that I would be in a position to assure the House that no undue advantage would be taken by the Federal authorities. So far as it lies in the power of officers of those departments in Western Australia to give an assurance, I have a positive assurance that no such advantage will be taken. Let hon. members consider for a moment the conditions under which pensions are granted. Members no doubt are aware of the regulations, but it is specially to be borne in mind that the granting of pensions is surrounded with conditions relating to age and infirmity. Here, however, we are concerned more with exemptions given to old age pensioners. A person applying for an old age pension would be ineligible if he possessed accumulated property over a capital value of £310. But there seems to be some little misconception as to the assessment of that capital value. A pensioner with a home of any kind whatever would not jeopardise his application for an old age pension unless he had accumulated property of over £310 apart altogether from his home. If a person applying for an old age pension had only his home, and no property beyond that, and was living in his home, then he would be entitled to a full pension if he was of the required age or if he was afflicted with an infirmity which precluded him from earning a living competency. It is well to remove the misconception, because if a pensioner lives in his home, and has accumulated property over a value of £50, his pension goes on just the same; but as soon as he gets beyond the £50, then for every complete £10 there is a reduction of £1 per annum from the amount of the full pension. Starting from that basis, we have a full conception of the conditions under which the exemptions apply. I desire to make it perfectly clear that the pensioner must reside in the home. The moment he leaves that home, if the capital value of the home is over £310, his pension goes by the board, diminishing on a graduated scale. We have heard something about mortgages. If one could just for a moment imagine a pensioner mortgaging his home and obtaining £310 under the mortgage, the question arises how would he apply that money if he did not wish to jeopardise his pension. If he mortgaged the property and placed the money in the bank, he would lose his pension. On the other hand, if the mortgage amount was under £310, then the pension would be diminished under the sliding scale I have just mentioned. If an old age pensioner raised a mortgage on his property to any amount for the purpose of purchasing, say, furniture or other necessities for a home, his pension would not be affected. If a pensioner raised a mortgage on his home in order to assist someone else, his pension would be affected. If a pensioner raised a mortgage on his home in order to pay just debts dating from a previous period in respect of articles, accoutrements, equipment, or living expenses that he had not at the moment in a tangible manner, things that could not be taken together and assessed at a capital value, then his pension would not be jeopardised. A question arose regarding the position of pensioners who had mortgages on their homes prior to applying for a pension. I am assured by the Federal authorities that that matter is dealt with at the time application is made for the pension, and that any segregations which are necessary, dealing with the applicant's accumulated capital, are secured at that period. Thus there would be nothing conflicting as regards a pensioner in that position. Something has been said concerning certain pensioners residing outside the metropolitan area. In that area, of course, homes are of a more substantial construction, and their value is not likely to be eaten up in deferred rates. This latter disadvantage applies more particularly on the Eastern Goldfields, as pointed out by Mr. Harris. Undoubtedly there is a difficulty in that respect; but I would remind the hon. member that the local governing bodies in those districts are magnanimous to a degree. I am given to understand that even at present they do not in any way enforce rates, preferring to write them off in respect of properties which are low in value and steadily declining.

Hon. E. H. Harris: But this Bill proposes to compel the local authorities to write off the whole lot.

Hon. G. POTTER: If this Bill becomes law, those people who are already so generous as regards writing off will not feel the burden of compulsion, because compulsion does not really apply to the willing.

Hon. E. H. Harris: The Bill says they shall defer.

Hon. G. POTTER: I may now foreshadow certain amendments which I propose to move in Committee to meet the desires of hon. members. There will be provision for stormwater rates, excess water rates, meter rents, and sanitary or pan rates. It has been suggested that if the Bill passes some pensioners might be induced, by the advice of others, to mortgage their properties with a view to entirely escaping payment of rates. To meet that objection I propose to submit an amendment making deferred rates a first charge on the property. Conjointly with that, as has been mentioned, there is the position of the mortgagee who already has security over a pensioner's home. I agree with the Leader of the House that it would be manifestly unfair to deprive any mortgagee of the security

which he has obtained in good faith, and not anticipating such a measure as this. However, such cases would, I think, be few and far between. I propose to move another amendment, which will secure the rights of mortgagees who took security prior to the passing of this Bill. Then the security will remain intact, and no injury will ensue to either mortgagor or mortgagee. As to those pensioners who, unfortunately, do not own homes, but try to eke out a livelihood altogether apart from the pension, seeking to secure for themselves additional necessaries or comforts, I have made really exhaustive inquiries and must admit having failed to ascertain, in quarters likely to be informed on the point, what percentage of pensioners would be likely to have accumulated property over £310, apart from the home, or to be using any utilities subject to rates and taxes. If an hon. member can cite such cases having a direct bearing, I am sure an amendment in point would prove acceptable during the Committee stage. I commend the Bill, with the ameliorations sought to be effected, to the consideration of the House.

Question put and passed.

Bill read a second time.

## BILL—LICENSING ACT AMENDMENT.

In Committee.

Hon. J. Ewing in the Chair; the Minister for Education in charge of the Bill.

Clauses 1 and 2—agreed to.

Clause 3—Amendment of Section 6:

Hon. A. LOVEKIN: I hope members will vote against the clause. The effect of the amendment will be to substitute one-fifth for one-tenth of the maximum penalty that is to be imposed under the Act. My objection to the clause is that it does not leave sufficient discretion in the hands of the bench. Licensing courts should have that discretion without providing for the imposition of the one-fifth penalty. There was a case in the Children's Court the other day in which a boy was charged with selling milk under standard. It was a bad case. Under the Health Act the minimum penalty is one-tenth of the maximum, and that must be imposed for the first offence. There were circumstances in connection with this case which the Bench desired to take into consideration. There were three offences and the child had to be fined £2 for the offence on the first day and £5 for each of the other days. The inspector who prosecuted was very fair and said there was no adulteration, but when the milk was drawn from the can, it was deficient in fats and excessive in solids. The boy's father said that he had been trying experiments with milk and the fats had come to the top and the solids had gone to the bottom. Therefore, when the milk was drawn off the sample had contained an excess of solids and insufficient butter-fats.

Hon. A. J. H. Saw: Do you suggest that the publicans will put forward the same plea.

Hon. A. LOVEKIN: I do not know, but this is an instance that occurred to lend a point to my suggestion. There was no charge of adulteration, but the condition of the milk was the result of experiments carried out by the father. Obviously this case required more investigation, but the Court was precluded from adopting that course and had to fine the child as I have indicated.

Hon. F. A. Baglin: Why do you refer to that? There is no analogy between the two cases.

Hon. A. LOVEKIN: If we have men appointed to courts we must trust them. They may be expected to take due notice of all the circumstances, and we should not stipulate that they must impose one-tenth, or one-fifth of the maximum penalty. The matter should be left to the discretion of the members of the bench themselves. I do not see why the Licensing Court should be limited in the exercise of their discretion in the way suggested.

The MINISTER FOR EDUCATION: I hope the clause will be allowed to stand and if any argument were needed to support its retention, Mr. Lovekin has supplied it. He says that the bench should be allowed full discretion. The fact is that when the bench was allowed the fullest discretion was when milk was adulterated and the customers were robbed day after day. When the vendors appeared before the court and put up much the same tale as that indicated by Mr. Lovekin in the case to which he has referred—I confess the explanation given to the court on that occasion is a new one to me—the bench were impressed by these tales and probably fined the offenders 2s. 6d. The result was that the milk vendors could go out and rob the public again without feeling the fines at all. The public revolted against that position. The result was that it was rectified. A similar position might crop up if offenders against the Licensing Act were to put up such pleas before a sympathetic bench, with the result that their appeal would secure a fine of only 5s. or so. The trade is desirous of having heavy penalties imposed against those who transgress the law. If the clause be rejected it will encourage unscrupulous people to take risks under the Act. It will destroy one of the strongest features of the Bill if we reject the clause.

Hon. J. CORNELL: The Minister has been led into one of his flights of oratory and has not been swayed by common sense regarding this matter. He has made it appear that the offences to which the clause apply only refer to the adulteration of liquor.

The Minister for Education: Nothing of the sort. It applies to all offences.

Hon. J. CORNELL: Exactly, with the result that in some of the country districts some old "hay seeds" may come along and find they are committing offences.

Hon. A. J. H. Saw: Are there any unsophisticated "hay seeds" in the trade?

Hon. J. CORNELL: It is quite possible that people may find that they are committing offences under the amended legislation, and if that be so, the minimum penalty to be imposed will be one-fifth instead of one-tenth of the maximum penalty.

The Minister for Education: That is the position.

Hon. J. CORNELL: The Minister is out for revenue. Is such a provision in other Acts? If it is fair to have such a provision in the Bill, it is fair to have it in other legislation as well. To my knowledge this is the only Bill in which it appears.

The Minister for Education: Not at all.

Hon. J. CORNELL: In 95 per cent. of the Statutes the penalty clause says: "Penalty: so much." In those circumstances, the discretionary power remains with the magistrates to say whether they will inflict the whole or part of the penalty provided. The increase in the clause represents 100 per cent. and people who drink should not be made the target for exploitation in this way. There are people who drink who are just as good as those who do not drink. The clause should be rejected, leaving the minimum penalty at one-tenth.

Hon. A. LOVEKIN: I press the amendment. Take the case of what would happen under Section 165 of the principal Act if liquor was sold in a club. The penalty there is £50, one-fifth of which is £10. If a member of a club takes a bottle of beer or whisky and goes for an outing, he may be fined £10 for the offence. It seems to me that the court should have some discretion. It is monstrous to have such a sweeping clause.

Hon. H. STEWART: Outsiders will think from the reading of various sections that the penalty for the first offence will be £50 and for later offences £100. We know the provisions of the Interpretation Act and that at present the lowest penalty that can be inflicted is £10, which is one-tenth of the £50. There should be some provision that for the second offence the penalty for a breach of the more important clauses of the Bill should be the maximum penalty provided. The Leader of the House has pointed out the necessity for giving the bench discretion within certain limits. I would support one-third.

Hon. A. J. H. SAW: Anyone familiar with the working of the Licensing Act knows that through almost every section horses and coaches have been driven with impunity. The time has come when Parliament should tighten up the penalty for breaches of the Act.

Hon. J. Cornell: And for the breaches of other Acts, too.

Hon. A. J. H. SAW: Mr. Lovekin considers that the penalty fixed under a later clause is too high. We have not yet reached that clause. If, when we do reach it, it can be shown that the penalty is too high, no doubt members will favour a reduction. To start off at the inception of a Bill by moving that the minimum penalty be reduced to what it was under the old Act is merely playing with the Bill.

Hon. J. CORNELL: If a licensee employed a person aged 20 years and 11 months instead of 21 years, he would be liable to a penalty of £20. A person so employed might appear to be over 21 and might be bona fide employed by the licensee.

Hon. H. Stewart: He could get a birth certificate for half-a-crown.

Hon. J. CORNELL: Should everyone carry a birth certificate? The minimum penalty in that case would be £4. People who adulterate liquor should be shot and not fined. When a man is charged with adulterating sugar or other food, the amount of the fine is left to the discretion of the bench. I object to a licensee being made a target in this way while others who adulterate food are allowed to go scot free. I would shoot anyone who adulterated any food. The existing law is reasonable. If we have confidence in our magistrates to administer the law on the facts put before them, that should be sufficient. The object in seeking to increase the penalties is merely to obtain additional revenue.

Hon. H. SEDDON: I support the clause.

Hon. J. Cornell: Of course, you would stop us all from drinking.

Hon. H. SEDDON: It has been said that if the present law were enforced a good many of the evils of the liquor trade would be eliminated. As it is many offences are winked at or dismissed with a minimum penalty.

Hon. E. H. Harris: What would be done under the Factories and Shops Act now?

Hon. J. Cornell: The employer would be warned and no penalty would be inflicted.

Hon. H. SEDDON: In the Government service it is necessary to produce proof of age and the same could apply in other employment. Persons responsible for the trade should be careful, and those who are carrying out the law should be protected against unfair competition.

Hon. C. F. BAXTER: Section 130 of the Act provides that no licensee shall employ any female to serve in a bar for a longer period than 48 hours a week, or on Sunday, Christmas Day or Good Friday, or after 11 p.m. on any night. The penalty is £50. It would be quite easy for the time to be exceeded slightly, and if one-fifth of the penalty were imposed, the amount would be £10. Any similar breach committed under the Factories and Shops Act would be dismissed with a caution. I have no sympathy with those who adulterate liquor, but we should not take this matter out of the hands of the bench. The penalty should not be increased in this way.

Hon. F. A. BAGLIN: Will Mr. Baxter tell us one instance of Section 130 having been put into force? The police exercise their discretion. This clause should be retained. Anyone who tries to evade the law should suffer a penalty which will prove a deterrent. Doubtless Section 130 has been infringed many times, but where has a licensee been fined for that?

Hon. J. Cornell: He could be.

Hon. F. A. BAGLIN: Stringent fines should be provided to protect the licensees who carry on their trade legitimately.

Hon. A. LOVEKIN: Throughout this Bill numerous high penalties are provided and, if there is to be a discussion on each, much time will be involved. It would be better to strike out this clause and leave the minimum as it is, retaining the other penalties as provided.

Hon. H. STEWART: The Royal Commission could not be regarded as having been composed of men who were hard on the trade.

Hon. J. Cornell: They showed lack of vision.

Hon. H. STEWART: On page 10 of their report they recommended this provision to bring about a better conduct of the trade.

Hon. J. CORNELL: There are three classes of people who will be affected by this measure, the licensee, the employee, and the customer. The latter equally with the licensee is bound by the minimum penalty for any breach of the Act. I do not pose as a champion of the liquor trade or of the wowser section, because one is as inconsiderate as the other, but I do speak for the big section of the community who come between the two. If we provide a minimum penalty under this measure, it should apply in all cases. There should be no discrimination against one section of the community. I agree with the hon. member that all persons who deliberately commit breaches of the law should be brought under some penalty and we cannot do better than start on this Bill. Seeing that the honest person would have no desire to commit a breach of the law, I do not see that they should object to the fine being high.

Hon. J. MILLS: The offenders under the Licensing Act are usually tried before a magistrate or a warden, and either is more capable of judging than we are what the penalty should be.

Clause put and a division taken, with the following result:—

| | |
|---|---|
| Ayes .. .. .. | 13 |
| Noes .. .. .. | 11 |
| Majority for .. | 2 |

AYES.

| | |
|---|---|
| Hon. F. A. Baglin | Hon. R. J. Lynn |
| Hon. A. Burvill | Hon. T. Moore |
| Hon. H. P. Colebatch | Hon. J. Nicholson |
| Hon. J. A. Greig | Hon. H. Seddon |
| Hon. E. H. Harris | Hon. H. Stewart |
| Hon. J. W. Hickey | Hon. A. J. H. Saw |
| Hon. J. J. Holmes | (*Teller.*) |

NOES.

| | |
|---|---|
| Hon. R. G. Ardagh | Hon. G. W. Miles |
| Hon. C. F. Baxter | Hon. J. Mills |
| Hon. J. Cornell | Hon. G. Potter |
| Hon. J. Duffell | Hon. E. Rose |
| Hon. V. Hamersley | Hon. J. M. Macfarlane |
| Hon. A. Lovekin | (*Teller.*) |

Clause thus passed.

Clauses 4, 5, 6—agreed to.

Clause 7—Licensing magistrates:

Hon. H. STEWART: Under the existing licensing laws the chairman of the bench has to be a police magistrate. The Bill does not provide that the members of the bench shall hold any special qualification, and I wish to know whether it is intended that the members of the bench should have special qualifications. We have 42 licensing districts and 10 licensing magistrates, and now we propose to have the work carried out by three magistrates who shall have jurisdiction over the whole State, but who shall also have power to delegate their authority.

The Minister for Education: Only in certain cases.

Hon. H. STEWART: Even so, the position will be difficult.

The MINISTER FOR EDUCATION: It is not contemplated that the three members of the court shall be police magistrates, because it is proposed that this shall be a special job. The police magistrates would have other work to do.

Hon. H. Stewart: What would be their qualifications?

The MINISTER FOR EDUCATION: What is the qualification of a police magistrate? I agree that the success of this measure will depend on its administration. It is intended that the court shall be constituted by the appointment of suitable people, but I do not know that we could set out their qualifications.

Hon. J. CORNELL: The clause provides for a term of office, but there seems to be no power to sack. Suppose we get a dud. Must we keep him for three years?

Hon. H. STEWART: At present there are 10 licensing magistrates. The Bill as it stands does not provide that those who are to constitute the court shall possess any special qualification. There should be some such provision.

Hon. J. J. HOLMES: In my interpretation the Government can appoint anybody to these positions. The point raised by Mr. Cornell is worthy of consideration. Subclause 4 provides for the licensing magistrates holding office for three years.

Hon. J. CORNELL: I hope the Minister will postpone the clause. I should like to see Subclause 2 amended to provide that the Governor shall appoint three persons from among the present licensing magistrates, all of whom are experienced and tried men. If this is left entirely open, some of the appointments will occasion surprise, because they will be good jobs with substantial emoluments, and many persons will be wanting them.

The MINISTER FOR EDUCATION: This is one of the most important clauses in the Bill, and I am prepared to postpone it. I move—

That the clause be postponed until after consideration of Clause 131.

Motion put and passed—the clause postponed.

Clauses 8 and 8a—agreed to.

Clause 9—Amendment of Section 27:

Hon. H. STEWART: I move an amendment—

That after "follows," in line 2, the following be inserted:—"(1) By omitting the words '(b) hotel licenses, (d) Australian wine and beer licenses, and (e) Australian wine licenses.'"

The amendment arises from a perusal of the report of the Royal Commission. Of the various licenses in force, only one is a hotel license. There are in all 471 public house licenses, yet the Bill seeks to extend the powers given under the one hotel license. If only in the interests of uniformity, it would be better to wipe out hotel licenses from the Bill. The Minister will probably say that the one hotel license has been in existence for a long time and that no complaint has been received. However, I think it would be better to do away with the one license.

Hon. J. J. Holmes: What about compensation?

Hon. H. STEWART: The licensee can get another form of license. The Bill seeks to remove the restriction placed upon hotel licenses in the principal Act. No hardship would be inflicted by the elimination of hotel licenses, for an equitable arrangement could be made with the holder of the one hotel license in existence. The next clause of the amendment, that for the deletion of Australian wine and beer licenses—

The Minister for Education: We must take one at a time.

Hon. H. STEWART: Very well.

The MINISTER FOR EDUCATION: These amendments should come one at a time. The hotel license is purely a question of whether in the opinion of this Chamber it is a desirable license. To my mind, it is the real thing that we want, instead of so many licenses living purely on the sale of liquor. The hotel license merely authorises its holder to dispose of liquor to boarders or lodgers and their guests, and to persons taking meals at the hotel.

Hon. A. Lovekin: He cannot have a bar.

The MINISTER FOR EDUCATION: No. It is a class of license that should be encouraged. If hotel licenses are to be abolished, we should in justice provide that the holders may take out publicans' general licenses.

Hon. H. STEWART: Under the 1911 Act no further licenses shall be granted. How does that affect the number of licenses issued? So long as requisitions are obtained under this measure, the board will be able to grant either hotel licenses or publicans' general licenses, as the board think fit. Thus hotel licenses may be increased, but there is no indication that they will be increased by substitution for publicans' general licenses.

The MINISTER FOR EDUCATION: We shall come to that point later. Should the Bill pass in something like its present form, an hotel license will be a new license which could be granted if the requisite signatures were obtained and the Governor in Council agreed.

Hon. H. STEWART: I am prepared to withdraw that portion of my amendment. As to Australian wine and beer licenses, I think the spirit merchant's license covers the same ground, with the additional scope of sale of spirits.

The Minister for Education: That is wholesale; this is retail.

Hon. H. STEWART: But there is the Australian wine license as well. That, of course, does not cover beer. However, there seems an unnecessary variety of licenses referring to Australian wine.

The MINISTER FOR EDUCATION: I do not know what the hon. member proposes to do regarding holders of these licenses. This Bill does not propose to take away their livelihood. If we take away their present licenses, what are we going to give them instead? The three licenses are entirely different in character.

Hon. H. STEWART: In view of the explanations which have been given, I ask leave to withdraw my amendment.

Amendment by leave withdrawn.

Hon. H. SEDDON: I move an amendment—

That the following be added to Subclause 3: "By omitting (k) 'eating house, boarding house, or lodging house license.'"

There is no real justification for such a license. It provides merely for supplying liquor with meals, and that purpose is already served by the hotel license. This additional license offers facilities for sly grog selling.

The MINISTER FOR EDUCATION: I see no reason for striking out the words. In my opinion, the right time for a person to have a drink is with his meals.

Hon. J. CORNELL: I agree with the Minister, and fail to see how the license will tend toward sly-grogging, because the holder of the license is not permitted to have drink on his premises. He is merely able to send out for liquor to licensed premises.

Amendment put and negatived.

Hon. H. SEDDON: I move a further amendment—

That the following be added to Subclause 3: "and no license shall be granted to a person who is a naturalised British subject, except with the permission of the Minister, on the recommendation of the licensing court."

The object is to afford means of dealing with undesirable licensees.

The MINISTER FOR EDUCATION: We are tightening up the law and I think it would

be most unwise to make a distinction between a naturalised British subject and other subjects. The hon. member is tackling a much bigger proposition than he seems to think. He is practically saying that the naturalised British subject is not a real Britisher.

Amendment put and negatived.

Hon. A. LOVEKIN: I move an amendment—

That in Subclause 3 after "hotel license or" the word "respectively" be added.

Amendment put and passed; the clause, as amended, agreed to.

Clause 10—Amendment of Section 5 of Act No. 1 of 1917:

The MINISTER FOR EDUCATION: I move an amendment—

That in line 1 "Licensing Act Amendment Act, 1917" be struck out and the words "Sale of Liquor and Tobacco Act 1916" inserted in lieu.

The amendment is merely to correct an error. My attention was drawn to the matter by Mr. Kirwan. The Royal Commission made reference to Section 5 of the Licensing Act Amendment Act, 1917. There is no Section 5 in that Act. The reference should have been to Section 5 of the Sale of Liquor and Tobacco Act 1916. Hence the amendment.

Hon. J. CORNELL: How will the amendment conform to the Title? The Bill provides that the Licensing Act is to be amended by the Bill and now it is proposed to amend the Sale of Liquor and Tobacco Act, 1916.

Hon. J. Nicholson: It is a licensing matter.

Hon. A. LOVEKIN: There are other matters dealt with in the Bill to which the same exception may be taken. I have an amendment to propose later on, to add to the Title "and certain Acts relative thereto."

Amendment put and passed.

Hon. A. BURVILL: I move an amendment—

That in lines 2 and 3 of Subclause 4 "an Australian wine" be struck out and the word "a" be inserted.

I consider that if we are to provide for the removal of partitions from Australian wine shops, the same provision should apply to any bar rooms. The clause was inserted in another place, and if such a provision is to remain in the Bill it should apply to all bar rooms and not be confined to wine shops. If it is necessary to have safeguards against people being in those places who should not be there or against people under age being supplied with liquor, the removal of partitions from all bars will assist in that direction.

The MINISTER FOR EDUCATION: The clause was intended to apply to wine shops and now it is suggested that it shall apply to all licenses where there is a bar. For my part, I cannot see any objection to partitions in bars.

Hon. A. Burvill: There should be the same objection to partitions in bars as there is to wine shops.

The MINISTER FOR EDUCATION: The objection regarding wine shops is that girls may be taken there.

Hon. A. LOVEKIN: In view of the amendment already agreed to, can the Minister say whether the subclauses have any relation to the Sale of Liquor and Tobacco Act, 1916, seeing that these clauses are supposed to amend the Licensing Act?

Progress reported.

## ASSENT TO BILLS.

Message from the Lieut-Governor received and read notifying assent to the following Bills:—

1, Attorney General (Vacancy in Office).

2, Geraldton Racecourse.

3, Wyalcatchem-Mount Marshall Railway (Extension No. 2).

## BILL—AGRICULTURAL SEEDS.

Received from the Assembly and read a first time.

## BILL—NURSES REGISTRATION ACT AMENDMENT.

Returned from the Assembly without amendment.

*House adjourned at 10.54 p.m.*

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# Legislative Assembly,

*Tuesday, 14th November, 1922.*


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