

Legislative Assembly.

Thursday, 13th October, 1938.

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

QUESTION—SHEEP, BLOWFLY CONTROL.

Mr. SAMPSON asked the Minister for Agriculture: 1, Is he aware that Dr. George Watt, of "Balgownie," Maryvale, near Wellington, New South Wales, has been investigating sheep blowfly control, has experimented on his own sheep and developed what is claimed to be a simple solution based on a protective colour, that this has been astoundingly successful, and that Sir Frederick McMaster, of Dalkeith, N.S.W., has paid tribute to its efficacy? 2, Will he cause inquiries to be made and publish the resultant information?

The MINISTER FOR AGRICULTURE replied: 1, Yes. 2, Yes.

QUESTION—RAILWAY SERVICE, SUPERANNUATION.

Select Committee's Recommendations.

Mrs. CARDELL-OLIVER asked the Premier: What action is the Government taking to give effect to the recommendations of the select committee appointed to inquire into the liability of the Government to pay superannuation to railway employees (employed between the 8th August, 1871, and the 17th April, 1905)?

The PREMIER replied: The matter has not yet been dealt with finally.

QUESTION—PREMIERS' CONFERENCES.

Verbatim Reports.

Mr. MARSHALL asked the Premier: Will he have verbatim reports of all Premiers'

Conferences and meetings of the Loan Council, held in the future, submitted to both Houses of this Parliament?

The PREMIER replied: When arrangements are made to take verbatim notes of Premiers' Conferences, a report of the proceedings is usually printed, and copies of such reports can be obtained by the officers of Parliament for the information of hon. members. Proceedings at Loan Council meetings are confidential, and no verbatim notes are taken.

QUESTION—SECONDARY INDUSTRIES.

Loans by Government.

Mr. MARSHALL asked the Premier: 1, What was the sum loaned for the establishment of, or assistance to, secondary industries in this State, from the 1st July, 1921, to the 30th June, 1938? 2, Of this amount, how much has been repaid? 3, What amount does the Government expect to lose?

The PREMIER replied: This information is not readily available, and as certain dissections are necessary it will be some time before a reply can be given. When the amounts have been ascertained, the question will be answered.

QUESTION—BANK OVERDRAFT RATES.

To Discourage Increase.

Mr. WATTS asked the Premier: 1, Are there any indications that rates of interest on bank overdrafts are likely to be increased? 2, If so, in view of the recent falls in the price of primary products will the Government take action to discourage any increase, or failing persuasion being successful, will it take legislative action?

The PREMIER replied: 1, No information is available on this matter. 2, The policy of the Government is to have interest rates as low as possible and every effort will be made to maintain this position.

BILL—MORTGAGEES' RIGHTS RESTRICTION ACT CONTINUANCE.

Second Reading.

THE MINISTER FOR LANDS (Hon M. F. Troy—Mt. Magnet) [4.34] in moving the second reading said: This is entirely a

continuance Bill which re-enacts legislation introduced in 1931. The legislation was introduced then to give protection to persons in certain circumstances, particularly circumstances that were beyond their control. Statements have been made from time to time to the effect that this legislation should not be continued, that the circumstances no longer warrant it. Having reviewed the conditions obtaining in the State to-day, and the possible low prices in future years, the Government feels that this legislation should not be allowed to lapse, but that it should be re-enacted and protection to certain persons continued. The main principle of the Act is to give mortgagors and purchasers of land under contract of sale some protection against losing the property, the subject of the mortgage or contract of sale. The legislation, however, is limited to mortgages and agreements for sale entered into prior to the enactment of the original Act, and mortgages that, although executed subsequent to 1931, are security for moneys secured by a mortgage current at the commencement of the Act. This legislation does not affect mortgages and contracts entered into since 1931 except in the instances to which I have referred. The Act provides that no mortgagee shall be entitled to enforce his remedy under a mortgage without first obtaining the leave of a judge of the Supreme Court. Unless the mortgagee obtains such an order, he is precluded from suing for his principal or interest. Neither can he enter into possession or exercise his power of sale or foreclosure. Similar protection exists in favour of a purchaser of land. A vendor who is selling under contract of sale, which includes a lease with an option of purchase, must obtain an order of the court before he can take any action under this contract. For instance, an application may be brought by a mortgagee or vendor of land. If it can be shown under Section 8 of the Act that—

1. On account of waste and deterioration the security is likely to be seriously prejudiced,
2. The mortgagor could redeem the mortgage out of his own money or by borrowing at a reasonable rate of interest.
3. The conduct of the mortgagor is such that he is undeserving of any protection.
4. The mortgagee is himself in difficult financial circumstances and that refusal by the court to allow him to proceed would cause severe hardship,

then the court may refuse protection to the mortgagor or purchaser, and allow the owner to take whatever action he thinks fit. The court also considers—

1. Whether the granting of leave would inflict great hardship on the mortgagor;
2. Whether the default of the mortgagor has been caused by economic or financial depression affecting the whole State;
3. Whether refusal of the leave would be likely to enable the mortgagor to meet his liabilities under the mortgage within a reasonable time.

All these matters are considered by a judge when applications are brought before him. The decision is made on these principles. Whether the necessity or otherwise exists for the continuance of the Act—the Government thinks the necessity does exist—I think it can be argued that the Act is on equitable lines, and that in certain circumstances it throws the onus on the purchaser of approaching the court for protection.

When a vendor serves notice of his intention to exercise his rights under the agreement of sale upon the purchaser who is in arrears with any payment for a period of 12 months and who has made no payment during any period of 6 months, the purchaser has to make application to the court to restrain the vendor. Unless he can show any real cause for his long delay and default, he does not get any protection. These are the main terms of the Act. I think they are well known to members, but I have stated them again so that their memories may be refreshed. Although prosperity has returned to some industries in Western Australia, the position with respect to mortgagors and purchasers is very little better in the country districts than it was in 1931. If the Act is not continued, farmers and country folk in particular will be deprived of the protection of the Act, and the properties they have mortgaged or are purchasing will be liable to seizure.

I have received one or two complaints of hardship, but in the main the Act seems to have been justified and to have inflicted no great injury upon the mass of the people. It must be borne in mind that the mortgagee and vendor all have their original rights, provided they can satisfy a judge of the Supreme Court that their case is sufficiently strong, or that the mortgagor's conduct is such that he should not be entitled to any

further protection. These are the features of the Act, and I think the occasion calls for its re-enactment. I move—

That the Bill be now read a second time.

On motion by Mr. Patrick, debate adjourned.

BILL—AUCTIONEERS ACT AMENDMENT.

Second Reading.

THE MINISTER FOR JUSTICE (Hon. F. C. L. Smith—Brown Hill—Ivanhoe) [4.43] in moving the second reading said: Under the Auctioneers Act differences have arisen in country towns between auctioneers and clients. Through the provisions of this Bill it is hoped to remove existing difficulties. The Act provides for the issuing of four types of licenses. One is a general license covering the whole State; another a country license covering the whole State with the exception of the metropolitan area, the third a district auctioneers' license which applies only to magisterial districts; and the fourth is a temporary license issued to the deputy of the holder of any of the other types of license. The Bill proposes to add another license, one to be called "an occasional district license." In practice it has been found that in some of the magisterial districts there are no district licenses, so that it is necessary for the person in such district who proposes to have a sale conducted for him to enlist the services of the holder of a district license in an adjoining magisterial district. Under the Act the client in a magisterial district who finds it necessary to enlist the services of the holder of a district license in another magisterial district, would, to obtain the services of that auctioneer, be compelled to pay the costs that would be incurred by that particular auctioneer. Such auctioneer holding a district license would be required to take out another district license covering the district in which the proposed sale was to be held. That could not be done at less than a cost of £5, which would be added to the client's account in connection with the sale. Some of the smaller towns in the State are situated on the boundaries of magisterial districts, the centres of which are larger towns in other magisterial districts. In such instances clients in the

smaller towns often seek the services of an auctioneer from one or other of the bigger centres, which can be secured only at the additional unreasonable cost of £5, to which I have referred.

The Bill proposes to remedy that difficulty where it can be shown to be warranted by circumstances, and provides that the holder of a current district license may apply in writing for an occasional district license to conduct the sale in any district contiguous to that to which his license applies. The license-holder will be able to make application to a magistrate who will be authorised to grant an occasional district license if he is satisfied that there is sufficient reason for the application. The police will be given an opportunity to submit any objection deemed necessary to the granting of the additional license. The fee for the extra license will be one guinea. Under the conditions attached to such licenses, the holder will be permitted to conduct a sale on a specified date at a stated place. No such license will be granted in relation to any auction sale held or proposed to be held within the metropolitan area. While the holder of an occasional district license will possess all the rights and benefits set out in the principal Act, he will also have to conform to all the prescribed obligations and liabilities. The Bill provides that no more than five such licenses shall be granted in any one year, and no more than one at any one time. Often auction sales of house property and furniture cannot be completed in one day, and in such circumstances the magistrate will be empowered to extend the number of specified days to seven. The licenses proposed will not be transferable. Should the applicant represent a firm, his application must be accompanied with evidence indicating that the consent of his firm has been given to his application. The purpose of the Bill is to provide facilities at a reasonable cost for auctioneers in a magisterial district to conduct auction sales at places not far removed from the main centre yet outside the magisterial district in which the centre is located. The measure should receive the support of all members. I move—

That the Bill be now read a second time.

On motion by Mr. Seward, debate adjourned.

BILL—NORTHAM MUNICIPALITY LOAN AUTHORISATION.

Returned from the Council without amendment.

BILL—WORKERS' COMPENSATION ACT AMENDMENT.

In Committee.

Resumed from the 6th September. Mr. Hegney in the Chair; the Minister for Employment in charge of the Bill.

The CHAIRMAN: Progress was reported after Clause 1 had been agreed to.

Clause 2—agreed to.

Clause 3—Amendment of Section 6:

Mr. NORTH: I desire to move some amendments that appear on the Notice Paper in the name of the member for West Perth. The first applies to Clause 3. I move an amendment—

That the following words be added to subparagraph (iii):—"but subject to a set-off of any costs payable by the worker to the employer in connection with any such civil proceedings."

The MINISTER FOR EMPLOYMENT: I do not propose to accept the amendment. Under the Act, costs cannot be deducted from money so received by any worker. The intention and spirit of the Act is altogether against giving to an employer, under the conditions indicated in the clause, a special claim against a worker as against those of other creditors. The employer would have the same remedy at law as any other creditor, and it would be undesirable to alter that position so as to give the employer a prior and special claim upon any money received by an injured worker as a result of action taken by him to obtain damages or compensation.

Amendment put and negatived.

Clause put and passed.

Clauses 4, 5—agreed to.

Clause 6—Amendment of Section 11:

Mr. NORTH: I move an amendment—

That the following proviso be added:—"Provided that this amendment shall not apply in the case of any contract made before the commencement of this Act."

The MINISTER FOR EMPLOYMENT: I do not offer any objection to the amendment. The clause deals with the liability of the principal as well as those of contractors

and subcontractors in relation to contracts associated with the agricultural and pastoral industries. The Bill provides that the principal concerned shall share in the liability with the contractor and subcontractor and the amendment sets out that the provision shall not apply to contracts made before the commencement of this amending legislation. That is quite reasonable.

Amendment put and passed.

Mr. WATTS: In my opinion, neither the clause in its original form nor as amended should be accepted, although the amendment makes it slightly less objectionable. As I understand the position, the clause seeks to delete from the Workers' Compensation Act the exemption conferred upon certain sections of primary industries in reference to taking out workers' compensation policies. The circumstances are well known and have been discussed previously in this House. The contention has been raised that the farmer concerned is not in a position to regulate the actions of the contractor who undertakes work for the farmer. In no sense is the farmer in the position of an employer, and because of that, when the Act first became law many years ago, the provisos to Section 11 were inserted. It seems to me that the reasons that operated then apply equally now and the section should not be altered. So far from warranting any alteration, they are now stronger for the retention of the provisos. In a number of instances the expense entailed in taking out policies has increased, and certainly the present is no time for contemplating the imposition of additional expenditure on primary producers. There may have been instances, as alleged, in which the absence of a policy in which the farmer himself was interested, has occasioned some loss to the worker. I do not think that aspect should be regarded as warranting the proposed amendment to the Act. Little if any hardship has been wrought, and over a long period of years the provisos in the section have not operated to the disadvantage of the worker.

The MINISTER FOR EMPLOYMENT: The principle involved has been debated on more than one occasion. The object of the Act is to provide protection and compensation to workers injured during the course of their employment. It is not a measure to benefit employers nor to give special privileges to any one section

of employers. All the clause asks is that the responsibility for making sure that the particular worker concerned is insured and protected, shall be the responsibility not only of the contractor and sub-contractor concerned, but also that of the principal who would be the farmer or the pastoralist. So I impress upon members of the Committee that the clause simply sets out to make far more certain than is now possible that the particular class of worker concerned shall be insured and protected in the event of his suffering accident in the course of his employment. The proposal is entirely fair and is urgently necessary. It is all very well to suggest that very few cases of hardship have occurred under the section of the Act as it stands, but if only one case of hardship had occurred, if only one worker had suffered injury and had not obtained the rights which the Act sets out to give, that would be sufficient justification for altering the law. Unfortunately, more than one case of hardship has occurred. There have been many cases of hardship. The Bill aims at wider protection and to spread the responsibility for the protection of this class of worker further than exists at the present time. The clause should be endorsed as it has been amended.

Hon. C. G. LATHAM: It is true that this question has been before the House on several occasions, and when the alteration was made to the Act it was pointed out that the Government of the day, which was just as sympathetic as is the present Government, saw the wisdom of the proviso it was intended to strike out. To throw the responsibility upon the person who happens to have no control over a worker seems to be unfair. The first of the two provisos it is intended to delete reads—

Provided that where the contract relates to threshing, ploughing or other agricultural or pastoral work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any worker employed by him on such work.

The old argument may be repeated. A man goes along with a chaffcutter and he may be employed, say, at Toodyay on a farm. The farmer then becomes liable for compensation. The Minister knows how the premium on the insurance is fixed: it is on the amount of

wages. The farmer, however, is not in a position to say what wages are being paid. He could not have any idea. Suppose an accident happened to the worker while travelling from one farm to another. Who is going to carry that liability? It would be impossible to determine whose liability it was. The Minister must see, as his predecessor saw, how difficult it would be to give effect to the proposal. Therefore, it would be wise to permit the section to stand as it is. I do not know whether the Minister has had any experience. I dare say he knows less than any man in the district he represents. A farmer may ring up and ask a contractor whether he can carry out a job, and if the contractor answers in the affirmative, the farmer inquires the price. The farmer then has no control over the men who are engaged on the work.

The Minister for Employment: What more control has any other principal in any other employment?

Hon. C. G. LATHAM: Where a man is directly employed, he can be controlled. Suppose a man had not insured his employees. To what extent would the employer be liable and what premium would he be expected to pay? How would he be able to determine what wages were being paid? The clause affects the farmer in the Minister's electorate probably more than the farmer in any other electorate, except perhaps Avon. Does the Minister know one instance in his electorate where a man has not been covered and has not been able to make his claim against the employer? Surely the Minister knows that the owner of a property does not approach the employees of a contractor. He goes direct to the contractor, because it is the contractor with whom he is having the business relations. We appear to be unnecessarily loading up an industry that is already overburdened, and the proposal is a direct invitation to the contractors not to insure their employees because the other fellow is going to be responsible.

The Minister for Employment: The amendment moved on behalf of the member for West Perth to the clause has already been accepted.

Hon. C. G. LATHAM: I am sorry the member for West Perth himself is not here. I am anxious that necessary amendments to the Act should be made, but the one before

us now is unfair and unreasonable and should not be agreed to.

THE MINISTER FOR EMPLOYMENT: I have not the same opinion as has the Leader of the Opposition upon the inability of farmers and pastoralists to ascertain that workers engaged by contractors are insured against injury in the course of their employment. I have sufficient faith in farmers and pastoralists to know they will take precautions, before letting a contract, to ascertain that the contractor has a policy covering the workers employed, or proposed to be employed, by him. Should a contractor not have enough money to take out such a policy, no farmer or pastoralist would let any contract to him. The farmers in my district make certain that contractors employed by them have their workers insured. Parliament is entitled to say that farmers and pastoralists shall take this necessary precaution.

Hon. P. D. FERGUSON: Never in the history of Western Australia was the time more inopportune to place further responsibility and expense on farmers and pastoralists, who are having a hard time trying to make ends meet owing to bad seasons and the low prices prevailing for their products. To ask them to bear additional expense at this stage is unfair. I ask the Minister for Lands, who is a farmer, what he thinks of the proposal. I also ask the member for Kanowna what he thinks of it. Suppose he let a small contract for clearing or ploughing an area of land on his farm at Salmon Gums, and, without his knowledge, the contractor employed some other men to do the work, would he care about accepting the responsibility? The employer of the worker is the person who should carry the responsibility of insuring his worker, not someone else who is not interested. The Minister, in endeavouring to foist his ideas on members, is going too far. The proposal is unfair and inequitable, and should not be agreed to.

Mr. SEWARD: I shall not attempt to refute what the Minister said about the farmers in his own electorate; but it must be remembered that contractors in a large way are operating there. The position is different in the Great Southern district, where chaff-cutting is carried on as a side-line. Generally speaking, chaff-cutting in that district is done by a contractor with a small travelling plant. He employs a team of workers and may probably change the personnel of the team three times in a month. To ask the farmer to accept the responsibility for the

insurance of those workers is unfair. Of course, I have no desire to prevent the worker from being covered by insurance; nobody would have such a desire, but the responsibility for the insurance should be upon the shoulders of the person who employs the worker.

Hon. C. G. LATHAM: In the case of a large contract, it would be easy to ascertain whether the workers are insured against accident; but that is not so in the case of the employee of some contractor who is in a small way. The farmer would not know the wages to which the worker was entitled. Those workers may or may not come under the provisions of an Arbitration Court award, so it is unfair to expect the farmer to accept the responsibility for their insurance for the period they are on his farm. Why should the Minister stop at the farmer? Why not provide that the mortgagee of the farmer should be responsible also? Many farmers are working their farms with the aid of their sons, and do not take out an insurance policy. A man cannot insure his sons against accident under the Workers' Compensation Act. I do not know of any company that would accept the risk. The State Insurance Office, I believe, will not cover them now; though it did so formerly. A farmer who has no cover at all employs a contractor to do a bit of hay cutting or seeding crop. He will have trouble in securing cover, especially if he is an outback farmer. How can a farmer at Salmon Gums obtain a policy at five minutes' notice? Probably he has to write to the head office of an insurance company in Perth. The result might be that he could not get his hay cut, or other work done. The constituents of the member for Roebourne would be even worse off.

Mr. Rodoreda: I am not worrying about them.

Hon. C. G. LATHAM: As a rule, the hon. member does worry about them. I cannot believe that on this occasion he does not realise how difficult the position of many of his electors may be made.

Mr. Rodoreda: I realise it all right.

Hon. C. G. LATHAM: Having been a back-country man myself, I know the difficulties. If the Minister were an outback man with experience of isolated districts, he would know how impossible it is to give effect to his desires as expressed in the clause. The proposal should be turned down now for the very reasons that caused the Chamber to reject it in years gone by.

The MINISTER FOR MINES: The argument of the Leader of the Opposition ranged all over the State, but got away from the vital point. The hon. gentleman talked about the expense involved to the farmer.

Hon. C. G. Latham: The difficulty, not the expense.

The MINISTER FOR MINES: The member for Irwin-Moore says this is the worst possible time to impose additional expense on the farmer. That argument I have heard ever since I have been a member of Parliament. There is a responsibility, and the farmer should bear that responsibility. If a worker employed by a contractor or sub-contractor is injured, nobody is responsible. The result is that the injured man and his wife and children have to carry the responsibility. The clause merely proposes to put the responsibility on the farmer as well as on the contractor or sub-contractor. If the farmer does not make the contractor or sub-contractor insure, then under the clause the farmer himself must bear the responsibility and the expense. If I employ a gardener named Tom Jones, I do not insure Tom Jones, but the man who does the work—it may be Tom Jones to-day and John Brown to-morrow. The clause aims at compelling somebody to accept the responsibility. It is time somebody did. To-day no one accepts it.

Hon. C. G. Latham: The contractor does.

The MINISTER FOR MINES: No. He lets the work to a sub-contractor, who also repudiates responsibility.

Mr. WATTS: My objection to the clause is that successive Ministers of the Crown, ever since the Workers' Compensation Act was passed, have failed to carry out the intention of the Act, namely to make insurance compulsory on the employer. That is so because successive Ministers of different Governments have failed to approve of any insurance company, so that nobody could take out a policy with the insurance companies. The compulsory provisions for the taking-out of insurance policies have proved a dead letter. If the compulsory provisions were in operation and some effort was made to enforce them, contractors and sub-contractors would have policies and would be in a position to meet claims resulting from accidents to employees. Nobody has taken any interest in applying the compulsory provisions.

The Minister for Mines: The matter has not been lost sight of; it has been brought up every session.

Mr. WATTS: Fifteen or sixteen years have elapsed during which companies could have been approved and the compulsory provisions of the Act applied. If those provisions have not been lost sight of, it might be said they have been totally disregarded. The Minister contends that someone should take the responsibility in the absence of a policy of insurance, and he asks the majority of our farmers to accept responsibility for payment of substantial sums by way of workers' compensation. That would not get anybody very far. I understand that about 75 per cent. of our farmers are receiving assistance in one form or another to put in their crops. Therefore, it is not likely that the average farmer will be able to meet a substantial claim for workers' compensation. The position will not be improved unless the farmer takes out a workers' compensation policy. In many cases the farmer employs no labour at all, doing the work with the aid of his sons, and therefore is not obliged to have any workers' compensation insurance. The day comes when he wants a small job done by contract. He will not take out a policy for that. The minimum amount for which a policy can be obtained is about £3. If the farmer knows the law, he may decide not to have the contract work done at all, in which case the man wanting the job is deprived of an opportunity to work. The farmer who does not know the law will not take out a policy. The existing position has worked out well over the past few years. The contractor should be the man compelled to insure, and no other person should come into it. The only person associated with the farm who is likely to have funds available is the mortgagee, and in thousands of cases the mortgagee is the Agricultural Bank. So the clause practically asks the State to take out a policy of insurance for the benefit of persons who may never have to meet a compensation claim. For the life of me I do not know why the Minister cannot leave the position as it is.

Mr. McDONALD: In order not to be misunderstood, I wish to say that in placing on the notice paper an amendment to this clause to prevent the proposal having a retrospective effect, I do not by that means desire to indicate assent to the proposal in

the Bill. If the proposal is carried out, it certainly ought not to have retrospective effect in regard to contracts already made. I spoke on the matter when a similar clause was in Committee last session. Now I may state briefly that Parliament when making the exception in the case of farmers did so having in mind that workers' compensation legislation is to protect a class peculiarly in need of protection, to protect the right to compensation in case of accident. We all agree on that. But the Act recognises the fact that there is another class of people also needing protection, and in the absence of this exception likely to incur liabilities which it would have great difficulty in guarding against. So Parliament weighed the relative claims to protection of workers and farmers, and decided that in the case of farmers this exception ought to be made. Having regard to the position of our farmers, the exception is not unreasonable.

Mr. HUGHES: The member for Kataning hit the nail on the head as regards the farmers. I do not think the provision will affect the farmers much. Frequently when a worker employed by a farmer is injured, somebody holds a mortgage over the land, somebody holds a bill of sale over the stock, the machinery is on the hire-purchase system, and the farmer is receiving £8 a month sustenance to stay on the land. A judgment might be obtained against the farmer, but that would not get the worker his compensation. I would place the responsibility on mortgagees to see that the men were insured because they are the people for whom the the employees are really working.

Mr. Patrick: This man would not be working for a farmer.

Mr. HUGHES: In 75 per cent. of the cases that would be true; he would be working to preserve the security and enable the interest to be paid to the bank holding the mortgage. That would be a legitimate charge against mortgagees. If men have to work to pay the interest and preserve the security, the mortgagee should be held responsible for the compensation of employees when injured. The farmer is perhaps receiving less by way of wages than is the labourer on the farm. but it is pathetic if, when a worker is injured and seeks to obtain compensation, the employer proves to be a man of straw. Some sub-contractors even in the mining industry have been unable to pay workers' compen-

sation. The farmer would have to take out a policy and could make arrangements for the sub-contractor to pay the pro rata proportion of the insurance. That would not impose any great hardship on the farmer. On the balance of convenience and fairness, the protection given to the worker would far outweigh any disability that may be placed on the principal in respect to a sub-contractor who will not insure and cannot pay.

Clause, as amended, put and a division taken with the following results:—

Ayes	22
Noes	16
Majority for ..				6

AYES.

Mr. Cross	Mr. Rodored
Mr. Fox	Mr. Shearn
Mr. Hawke	Mr. Sleeman
Miss Holman	Mr. F. C. L. Smith
Mr. Hughes	Mr. Styants
Mr. Leahy	Mr. Tonkin
Mr. Marshall	Mr. Troy
Mr. Millington	Mr. Willcock
Mr. Needham	Mr. Wise
Mr. Nulsen	Mr. Withers
Mr. Panton	Mr. Wilson

(Teller.)

NOES.

Mr. Boyle	Mr. Patrick
Mrs. Cardell-Oliver	Mr. Sampson
Mr. Ferguson	Mr. Seward
Mr. Hill	Mr. Thorn
Mr. Latham	Mr. Warner
Mr. Mann	Mr. Watts
Mr. McDonald	Mr. Willmott
Mr. North	Mr. Doney

(Teller.)

Clause, as amended, thus passed.

Clause 7—Amendment of Section 13:

Mr. McDONALD: I have a proposed amendment on the notice paper as follows—

That all the words after "to" in line 8 of paragraph (1a) be struck out, and the following inserted in lieu:—"Provided that the worker commences such proceedings against such other person within a period of three months from the occurrence of the injury and prosecutes such proceedings to judgment with reasonable diligence: Provided further that where the worker is successful in such proceedings to recover damages, the employer's liability to pay compensation under this Act shall thereupon cease and be forever determined to the extent of all such damages actually recovered by the worker from such other person, and any amount paid by the employer to the worker as compensation under this Act, whether voluntarily or by order of the court, shall be a charge upon and shall be refunded out of such damages actually recovered by the worker from such other person liable as aforesaid."

Under the Act a worker may be injured in the course of his employment in circumstances in which he is entitled to claim compensation from his employer and also to obtain damages by way of civil remedy against a third person whose negligence was the real cause of the injury. A man, in the course of his employment, may be run over by a motor car and lose his leg. He would be entitled under the Second Schedule to recover from his employer £600 for the loss of his leg, plus medical expenses, and he would be entitled by civil action to recover damages from the person driving the car. The Act provides that if he elects either remedy, he cannot proceed with the other. If he accepts compensation under the Act, he cannot then sue the third person. If he sues the third person by exercising his civil remedy, he cannot then claim compensation under the Act. The Bill proposes to remedy that by a principle I am prepared to support. It provides that if the worker accepts compensation from his employer, that fact will not debar him from suing a third person for negligence, but if he recovers damages from the third person, he must refund to the employer the amount received by way of workers' compensation.

The Minister for Employment: I am prepared to accept the second proviso of your amendment.

Mr. McDONALD: Then what about the new clauses of which I have given notice?

The Minister for Employment: I am prepared to accept the second one but not the third.

Mr. McDONALD: The amendments of which the Minister approves will, to a large extent and perhaps wholly, remedy the defects. Under the Bill, a worker might recover from a third person £1,000 damages. In the meantime he might receive £600 workers' compensation from his employer. As the Bill stands, unless he recovers from the third person the whole of the £1,000 he would not be under obligation to refund the compensation received from the employer. If he got judgment for £1,000 from the third party and received from him £990, he would be under no obligation to refund anything to the employer in respect to the compensation received. This might be a temptation to a worker to recover not quite the full amount of damages from the third person. Has the Minister considered whether the third person

could be exposed to the risk of being sued by two people for the same injury, namely, by the employer who has paid the compensation and also by the worker? I proposed to exclude that possibility under one of my amendments. I move an amendment—

That all the words after "to" in line 8 of paragraph (1a) be struck out with a view to inserting other words.

The MINISTER FOR EMPLOYMENT: I am prepared to accept the amendment of the member for West Perth if he will delete the first proviso, which reads as follows:—

Provided that the worker commences such proceedings against such other person within a period of three months from the occurrence of the injury and prosecutes such proceedings to judgment with reasonable diligence.

Perhaps he will indicate his willingness to strike out that portion of his amendment. The right of the worker to take action against the third party should not be restricted to a period of three months from the time the injury takes place. A person may be so badly hurt as to be unable to do anything within three months, or may be unable to ascertain the extent of his injuries or the expense incurred in connection with them. He, therefore, would not know how much to claim. He might also be too ill to give instructions or evidence. No time limit should be imposed in such circumstances. The employer of the worker would not be prejudiced. It would benefit him as well as the worker that action of this kind should lie against the third party. To the extent that the worker recovered damages from the third party the employer would be relieved of his obligation to pay compensation.

Mr. McDONALD: I am in agreement with the principle, but am seeking to put the Bill into a form that will be logical. The three months' period is only a repetition of what the Minister himself inserted in Clause 3. If a worker obtains compensation from his employer he is debarred afterwards from suing the employer for damages by way of civil remedy. The Minister has overcome that by providing that the payment of compensation by the employer will not debar the employee from suing him for damages by way of civil remedy. The clause in question states that the employee must act within three months of the accident if he proposes to sue the employer in a civil court. The same period is embodied in my proposed amendment. I will agree to move the amend-

ment without the first proviso, and later on will move for the insertion of a new clause numbered five on the notice paper. I will not move for the insertion of the new clause numbered four. This I will do provided the Minister will undertake, after the Bill has passed through Committee, to recommit the measure should it be found that some error has been made in the draftsmanship.

The Minister for Employment: Very well.

Amendment (to strike out words) put and passed.

Mr. McDONALD: I move an amendment—

That the following words be inserted in lieu of the words struck out:—"Provided that where the worker is successful in such proceedings to recover damages the employer's liability to pay compensation under this Act shall thereupon cease and be forever determined to the extent of all such damages actually recovered by the worker from such other person and any amount paid by the employer to the worker as compensation under this Act whether voluntarily or by order of the court shall be a charge upon and shall be refunded out of such damages actually recovered by the worker from such other person liable as aforesaid."

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

Clauses 8, 9—agreed to.

Clause 10—Amendment of Third Schedule:

Hon. C. G. LATHAM: This clause includes the words "furunculosis dermatitis." In plain English these words mean "yolk boils." The trouble is supposed to be caused through the yolk from the fleeces setting up an irritation of the skin. There is, however, difficulty in determining what are yolk boils. A person going to a shearing shed may easily develop ordinary boils, and afterwards claim compensation against the employer on the ground that he has contracted "yolk boils."

Mr. Styants: Would not a doctor be able to tell the difference between them?

Hon. C. G. LATHAM: I understand they are practically identical.

Mr. Raphael: Doctors themselves get boils.

Hon. C. G. LATHAM: Yes, and cannot cure them. These words ought to be deleted from the clause.

The Premier: The doctors know what these things are.

Hon. C. G. LATHAM: Some members of the medical profession are building up a decent income out of workers' compensation. We ought to be able to exercise better control over the situation than we do to-day. I suppose the Minister will not agree to the striking out of these words. He shakes his head. Will it be safe to leave them in?

The Minister for Employment: Quite safe!

Hon. C. G. LATHAM: Then we have no alternative but to leave them in.

Clause put and passed.

Clause 11—agreed to.

New clause:

Mr. McDONALD: I move—

That a new clause be inserted as follows:—Section thirteen of the principal Act is amended by inserting a new paragraph in the section as follows:—" (3) If the worker has been successful in such proceedings to recover damages as is mentioned in paragraph 1 (a) of this section and does not recover the full amount of such damages and any portion of the compensation under this Act paid by the employer to the worker has not been refunded to the employer out of such damages then the employer shall be entitled at his own expense and in the name of the worker and upon giving the worker an indemnity against all costs and expenses to take any proper steps for the purpose of enforcing payment by such third person of the amount of the damages awarded to the worker or any balance of such damages then remaining unpaid. Provided always that any damages so recovered from such third person in excess of the amount of compensation paid to the worker under this Act shall be payable to and received by the worker."

The MINISTER FOR EMPLOYMENT: I have no objection to offer to the new clause.

New clause put and passed.

Progress reported.

House adjourned at 6.17 p.m.