

Legislative Council,

Thursday, 21st September, 1922.

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

SELECT COMMITTEE—FISHING INDUSTRY.

On motion by Hon. F. A. Baglin, leave granted to the Select Committee appointed to inquire into the fishing industry to adjourn from place to place.

LEAVE OF ABSENCE.

On motion by Hon. J. CORNELL, leave of absence for six consecutive sittings of the House granted to Hon. J. W. Kirwan (South Province) on the ground of urgent private business.

BILLS (2)—THIRD READING.

- 1, Light and Air Act Amendment.
 - 2, State Trading Concerns Act Amendment.
- Transmitted to the Assembly.

BILL—FEDERAL REFERENDUM.

Second Reading.

Debate resumed from the 6th September.
Point of Order.

Hon. E. H. Harris: I rise to a point of order. This Bill provides for the issuing of ballot papers. This will necessitate the expenditure of public funds, under Clause 3. I ask your ruling, Sir, as to whether there can be initiated in the Council legislation of this nature.

The President: I rule that this is not a money Bill. Section 46 of the Constitution Act as amended last year reads as follows:—

Bills appropriating revenue or moneys, or imposing taxation, shall not originate in the Legislative Council; but a Bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand of payment or appropriation of fees or licenses, or fees for registration or other services under the Bill.

In these circumstances I rule that this is not a money Bill.

Debate resumed.

Hon. A. SANDERSON (Metropolitan-Suburban) [4.40]: It is very fitting that such a point of order should have been raised. My hon. friend will have ample opportunity in the course of the discussion both inside and outside of Parliament to raise innumerable points of order and points of constitutional law. I regret that Mr. Lovekin, who introduced this Bill, is not present. It would be with hesitation that I would differ on any measure of great public importance from Mr. Lovekin. We have worked together for many years in connection with public matters in this country, and, speaking generally, I have been able to see eye to eye with him upon these questions. I doubt if there is any matter of equal importance to that dealt with under this Bill. It is true that in the memorandum prefacing the Bill we are told that this measure does not in any way raise the question of the merits or demerits of the Federal compact. I do not know what Mr. Lovekin means by that. The essence of the Bill raises this question in a most direct form. We, the people, are called upon to say "yes" or "no" on this matter. I have been twitted with wearying members by my insistence, in season and out of season during the last six or eight years since I have been a member of this House, that until we have settled the Federal problem we cannot begin to put our own house in order. Every day confirms that view. I take it we need not go into anything but the outline of this story. There is no occasion to go into the huge mass of material that is now available on the Federal question. One would be ill advised to go to the public and attempt to deal with it in detail. Any question that is submitted to a referendum must be given in outline and no more, so that the people may have a clear idea of what the main issues are. Are we or are we not to continue this Federal compact?

Hon. J. Cornell: Are we satisfied?

Hon. A. SANDERSON: If it means anything at all it means that the people of the State are to be called upon to say whether they are or are not satisfied with that compact, and that if they are dissatisfied, then we are going to get them out of it. I took down a remark in Mr. Lovekin's speech which contains a curious suggestion. I will ask members specially to note that when they are dealing with the question. Mr. Lovekin said:—

If the people by an overwhelming majority declare in favour of a dissolution we shall have a better opportunity of enforcing the demands of this State upon the Federal Government, and of bringing about an amendment of the Federal Constitution more equitable than the existing one.

My comment on that is that this is a very dangerous policy to suggest. If we are to

raise the interest, the passions and the excitement of the people, which will be raised if such a question is put to them, and then say we intend to do this in order to work some point upon the Federal Government, it does not appeal to me. I do not think that method of procedure, in view of the fundamental constitutional attitude of the people here and of the Federal people as well, is anything but a dangerous method of negotiation. There was another point which was made by Dr. Saw by way of interjection, and which was replied to by Mr. Lovekin. Dr. Saw said that it was like matrimony and we could get a divorce. Mr. Lovekin replied to that interjection by saying, "That is a very apt illustration." Let us take it as an illustration. No one was more opposed than myself to Western Australia entering into the Federal compact, which might be regarded as an improvident marriage. It is one thing, however, to oppose an improvident marriage and to do one's best to stop it, and another to turn round, after opposing the marriage, and say one will get a divorce. If that is the way to conduct our social and political affairs in Western Australia nothing that the Bolsheviks propose can be more disastrous to Western Australia, from an Australian point of view. If we could put the clock back, too, and get a decision again as to whether Western Australia should enter Federation or not, we would be in an entirely different position. That, however, is impossible now. The question is, what are we to do to-day? Are we to raise the question in Australia now? Looking at the condition of affairs both inside and outside Australia at the present time, one may ask, is this the time for us to put such an issue before the public of this country? I do not intend to deal with this subject at any length but it will be dealt with at considerable length from the public platforms if the Bill becomes an Act. Mr. Lovekin had an extraordinary method of argument when he said, "This Bill cannot do any harm and the expense will be trivial. In any case I will be prepared to defray the cost myself."

The Minister for Education: Another form of referendum!

Hon. A. SANDERSON: Yes, a private referendum. I do not want to deal in personalities but is this the plane on which we shall discuss a question? The Bill cannot do any harm! The very proposal to bring forward the Bill has already done an immense amount of harm. It has done harm, as Mr. Cornell indicated when he pointed out that he would support the Bill but he would take care that the cost would not be trivial, either in cash or energy expended, to ensure that the issue was put clearly before the people. If the Bill were a Government measure, or a popular measure, introduced in another place, we could not treat it with contempt. To introduce a Bill of this nature appears to me like the cables coming from

London to Melbourne to-day regarding supposed hostilities. People all over the country are protesting and asking whether we will not deal with this matter in a constitutional manner. Is this question to be dealt with on the ground that the Bill cannot do any harm and that the mover will defray the cost? Why, Mr. Lovekin would not pay the cost of the meetings alone. Cast your mind back, Mr. President, to what happened 20 odd years ago. I would be very sorry to have to foot the bill in blood or treasure, as the military people say. Let me ask the hon. member: "Is this the House, and is he the man, to introduce a Bill of this character, striking at the very fundamental roots of our constitutional peace? Mr. Lovekin is a fledgling in political life and in this Chamber. I would be the last to say anything derogatory about this Chamber. I view it with every respect and admiration, but we must face the position. We all recognise that our Chamber is not the popular House, and even in our most enthusiastic elections, it has been most difficult to get any percentage of the electors to come to the poll. That is common ground and common knowledge. We are told that the Bill will do no harm and, therefore, it is introduced here. Do we wish to hold ourselves up as a laughing-stock to the people of Australia and the people we represent, by the introduction of such a measure? It could be fairly introduced by the Government, who could say that they had examined with minute care the position confronting the State, and that they were convinced we could not go on until the problem was solved. The Government adopting that attitude could say that the only solution of the difficulty was to get out of the Federation. I could understand that attitude, but even that argument could be entirely destroyed by anyone who had examined the position closely.

Hon. J. Cornell: It might be the same as with the trading concerns. The Government might not be game to face the hurdle.

Hon. A. SANDERSON: I do not wish to introduce any personal reflections or personal gibes regarding the future government of Australia or of Western Australia. The analogy of the divorce could be introduced here again. That is an analogy which the public at any rate, and all sections of it, would be able to understand. The analogy would be between that of the improvident marriage and the divorce and the proposal which is included in the Bill. That would be very illuminating criticism which every man and woman, and even every child, would be able to stand and it would be a very fair analogy. I am obliged to Dr. Saw for his interjection.

Hon. A. J. H. Saw: Of course, it was ironical.

Hon. A. SANDERSON: Yes, but it was not taken in that light by Mr. Lovekin. He said it was a very apt illustration.

Hon. J. J. Holmes: If you succeeded with the referendum, how much better off would you be.

Hon. A. SANDERSON: I will not pursue any argument on that point. I wish to give merely a broad outline of the position. Although the public cannot hear or read what is said in this Chamber, it will not prevent me from expressing my views on the question.

Hon. T. Moore: In any case, the public do not take much notice of what is said here.

Hon. A. SANDERSON: We had columns of Parliamentary reports in the evening Press a little while ago and we were assured that this House was to be given due attention. What was the result?

Hon. J. J. Holmes: It brought about a strike.

Hon. A. SANDERSON: When I heard that, I thought that here was the opportunity to make this epoch-making utterance regarding Western Australia and the Federation. When I reached that point, however, the Press closed down and no one knows anything of what is said here, except by word of mouth.

Member: You will hear enough about it later on.

Hon. A. SANDERSON: There will be criticism. I put this to hon. members from the party point of view. Mr. Lovekin says that he would take this vote at the time of a general election. That is a very nice election cry with which to go to the country! I take it that Mr. Lovekin will act as the spokesman for the Nationalists.

Hon. J. Cornell: I think he speaks for himself.

Hon. A. SANDERSON: Do not let us be under any misapprehension regarding this question. If we agree to the Bill, it will speak for us. We cannot get rid of our responsibilities in such a manner, any more than the Leader of the House and the Government generally can escape from their responsibilities when they bring forward a Bill.

Hon. J. Cornell: He will find that he will start his trouble if the Bill is passed.

Hon. A. SANDERSON: This is our responsibility. There is to be a referendum taken when there is a general election held. From a tactician's point of view, it does not strike me as a clever move.

Hon. E. H. Harris: Hear, hear!

Hon. A. SANDERSON: I am not surprised at the interjection from the hon. member. The Nationalists are the master tacticians in this instance at any rate. The Labour Party have openly declared for unification and the Country Party have openly declared in favour of smaller States. As for the Nationalists, I will refer to what the Federal Treasurer, Mr. Bruce, said in delivering his Budget speech last month. He said—

I do not believe that any thoughtful person is satisfied with the present financial relations between the Commonwealth and the States, and it seems inevitable that in

the near future the whole question will come up for discussion by representatives of the Commonwealth and the States.

Hon. J. J. Holmes: Cannot we have a referendum on the local option question?

Hon. A. SANDERSON: I ask the hon. member to be calm. I ask him to carefully consider his attitude on a question of this kind. I would ask him not to commit himself in any rash manner on this point until he has examined it carefully. I can tell him there are very few members in this Chamber to whose judgment I would defer more readily than to his, on one condition, and that is that he will give himself time and give himself an opportunity to examine the position as a whole.

Hon. J. J. Holmes: The Bill is a waste of time; that is my opinion.

Hon. T. Moore: A pretty good opinion too.

Hon. A. SANDERSON: Do not let us have any misrepresentation on the point. This question has been raised. If we refuse to let it come before the people, there is something to be said for the hon. member's attitude. Take the position of himself and myself. Do we refuse the public the right to decide on this question?

Hon. J. J. Holmes: The public have decided it already.

Hon. A. SANDERSON: The hon. member knows there is a feeling not only in this State but throughout the Commonwealth on this point. There is a school of thought right throughout Australia that is in favour of breaking up the Constitution.

Hon. J. J. Holmes: You can only break it up in one way.

Hon. A. SANDERSON: Fancy the hon. member talking like that! He knows as well as I do that things can be broken up in an unconstitutional manner as well as in a constitutional manner.

Hon. J. J. Holmes: The constitutional method is the only one, namely by a majority of the people in a majority of the States.

Hon. A. SANDERSON: Does not the hon. member realise that there is a difficulty regarding constitutional methods in Australia at the present time? No one knows better than himself that there is in Western Australia and in Australia, and throughout the world, an indulgence in unconstitutional methods at the present time. Therefore, I say it is all the more important that we should be very wise in any action that may be started constitutionally. There is a constitutional method furnished for the settlement of strikes and are we to use that as an illustration? The beginning, foundation and end of constitutional government is the will of the people. If that is denied, I do not know where we will land ourselves. Some of us were strongly, even violently if you will, Mr. President, opposed to Western Australia entering Federation, but we were compelled to accept the will of the people. I accepted it. What is the position to-day? Having gone in, having gone through this marriage and with an enormous issue too, are

we going to have a divorce? I am strongly opposed to that. The conditions are entirely changed, but one thing is not changed and that is the right of the people to decide this question. I would not be afraid to face the public on this question, however hostile they might be to the Federal Government and the Federal situation, and say, "I refuse and will use all my endeavours to prevent the public from breaking up this constitution at present or in the future." When I am asked to reject a Bill of this kind, what is the argument with which I am met—"You are afraid the public are against you." There is a line of argument which may and could be raised by anyone in favour of the Bill. What is my answer? "I am not afraid to let the Bill go through and go to the public if you so desire." I would be intensely interested, as indeed all would be, to see the result. Has anyone attempted to figure this matter out for himself? I have, and I find that there are a considerable number of people in all parts of the country who are in favour of getting out of the Federal compact. I do not think half of them realise what is involved or how we can set about it. If we could have this referendum with or without education, the importance of the vote would be very great from every point of view, the constitutional, the Federal and the State point of view. It would be difficult to exaggerate the importance of such a vote. But is it to be used as a lever to extract from the Federal Government some better concessions?

Hon. T. Moore: I do not think they would worry about it.

Hon. A. SANDERSON: It is like the war cloud—it might be brushed aside as the most ridiculous thing suggested during recent years. But dare anyone in a responsible position or any ordinary member of the public, after the incredible things which have happened, brush anything aside and say it is of no importance? I would be prepared to toss it aside and treat it as a very inferior joke.

Hon. A. J. H. Saw: That is the only way.

Hon. A. SANDERSON: That is a pretty clear statement. The hon. member is prepared to thrust this proposition aside. But let him go on the platform as a Federal candidate and see if he is prepared to toss aside anything by what would be registered the opinion of the people. You, Sir, and I are about the only people in this Chamber who can speak with some personal knowledge and authority of what a Federal campaign means. Let my colleague desert the delights of Osborne Park and even of Claremont and travel the country from Esperance to Roebourne, from Meekatharra to Fremantle, not forgetting the Fremantle wharf, and see if he would dare reject any proposal which unquestionably would register the decision of the people on a measure of first class public importance. That is the difficulty in which I find myself. Having faced those electors and pledged myself to the decision of the people, who after all are supreme, this Bill asks this

sovereign public to give a decision on a matter of first class importance.

Hon. T. Moore: Have the people asked for it? Has anyone save the one hon. member?

Hon. A. SANDERSON: It is known to everyone that there is a strong section of the community, strong at any rate in vocal power, who have demanded separation, but if this Chamber is going to toss the Bill aside—

Hon. T. Moore: That is what it will do.

Hon. A. SANDERSON: It is a very fortunate thing for some of us that there is no publication of newspapers at present, and that the public will not know what has happened.

Hon. J. Cornell: It will keep.

Hon. A. SANDERSON: I do not wish to labour the question. Confronted as we are with the importance of the Federal problem, it would help enormously in one's work to know the considered opinion of the public.

Hon. T. Moore: Then you are in favour of the Bill?

Hon. A. SANDERSON: I do not see how I can vote against the second reading. What does the Bill ask? That the public shall decide whether Western Australia is in favour of the Federal compact. Is there anyone here who is not prepared to listen to the public on that particular point?

Hon. T. Moore: That was decided years ago.

Hon. A. SANDERSON: The method of appealing to the public is a different matter, but the main issue of this Bill is to let the people of Western Australia decide whether they will stand by the Federal compact or reject it. I do not see how we can deny them that right.

Hon. T. Moore: I thought you did not believe in divorce.

Hon. A. SANDERSON: I do not wish to be drawn into that question again. Mr. Lovekin touched on the Imperial factor. We have had many amazing constitutional authorities in this country and in this Chamber, but I do not think I have ever listened to anything more amazing than this proposition—"The Imperial Government, having issued the proclamation to put us into Federation, could issue another proclamation to put us out." Is that a serious contribution to this complicated, important and vexed question? Does the hon. member, whose absence I regret, really think that the method of the government of the British Empire is quite so simple as that? I am surprised at my colleague's attitude. But the responsibility is first of all on the hon. member for having introduced a Bill of this kind, and the responsibility is now on us.

Hon. J. Duffell: He stated in making that remark that Western Australia did not go in with the original compact.

Hon. A. SANDERSON: I am acquainted with the exact position, which was very curious as regards Western Australia, but we have to deal with the main issues, and one of the main issues is that Western Australia was one of the original States. I do not care what

quibble is made on legal or constitutional grounds—I understand and appreciate what was meant—as far as practical politics are concerned, Western Australia was an original State.

Hon. F. E. S. Willmott: Yes, after the "West Australian" somersaulted.

Hon. A. SANDERSON: That is history and very interesting history, but I do not think it throws much light on this particular Bill, although I frankly admit that knowledge such as the hon. member has of the personal and political circumstances in connection with the "West Australian's" performance 20 years ago may assist him as it would assist me if called upon to face the public in dealing with the main issue. But do not let us drag in the "West Australian" too often. I feel, since the Bill has been introduced and the question has been raised, just as Mr. Cornell feels, compelled to support the second reading. If the Bill passes this House and becomes an Act, he has indicated what steps he will take to explain and defend his view, and I reserve to myself a similar right. I shall be prepared to vote for the second reading, and shall be very glad to have the considered opinion of the people of this country, but I am strongly opposed to Western Australia attempting to do any such thing as getting out of Federation. When we analyse the constitutional difficulties which have been pointed out by Mr. Holmes and when we consider what the other States would say and do and what the Imperial authorities—who are to be specially invoked by the hon. member—would say, even assuming, which I do not think is possible, that we have a majority opposed to the Federal compact, I cannot see that even then we would be able to get out of it. What we would do would be enormously to complicate and disturb this machine which is working only with great difficulty now. It would be a great danger to the public and I would urge with all my power that Western Australia should not get out of the Federal compact. As the hon. member himself confessed, once that decision was given he would be satisfied. It would be a troublesome and expensive way of settling the question, but perhaps it would be a great deal better to do that than have unconstitutional method. I trust the people of Western Australia will have a sufficient realisation of their obligations and their duties to reject the proposal to get out of the Federal compact.

Hon. A. J. H. SAW (Metropolitan-Suburban) [5.13]: I must congratulate my colleague, Mr. Sanderson, on his admirable speech, not that I regard it altogether as admirable because, although the major part of his argument was extremely good, it was unfortunately vitiated by a lame and innoent conclusion that he was going to support the second reading of the Bill. I intend to put this question to the hon. member—"Are we to vote in favour of a referendum to the people on any subject whenever the question

may be raised, whether or not we are in favour of the issue being raised or in favour of the issue which may be decided by that referendum?" For my part I emphatically say "No," and I would have no hesitation in facing my own electors or the wider electorate of the whole State if I were a Federal candidate and saying, "I will not submit to the people any referendum on a subject of which I do not approve." That is my attitude on this question, and I intend to vote against the Bill which would permit of this subject being referred to the people. When on the opening day of Parliament the originator of this measure gave notice that he would ask leave to introduce this Bill, in view of the audience we had—the galaxy of beauty and fashion; a most unusual occurrence save on the opening day of the session—I took it in the way of a joke, that the hon. member was animated very much like a little wanton school boy, who throws a cracker into some assemblage of people, to the alarm of a section and the astonishment of the rest. I candidly thought that was his motive, to provide a little amusement for the spectators on that occasion. But from his speech I gather that that was not his motive. From the extracts which Mr. Sanderson read from that speech, and which I noted at the time, it appears that really the hon. member's motive was a piece of political bluff. I know that the hon. member is a very good bridge player. I have had the good fortune to play bridge with him on several occasions. I do not play poker, nor do I know whether the hon. member does; but I can tell him that if he attempts a game of political poker with the Prime Minister of the Commonwealth, I am perfectly certain who will get the worst of it. I would go so far as to say that if the Prime Minister had only a couple of pairs while the hon. member had a straight flush, the hon. member before the betting was over would throw in his hand. Consequently, I do not advise the hon. member to attempt any political bluff with the Prime Minister. I would ask members this question, do any of them seriously advocate secession? And, if they do not, do any of them wish it to go abroad that this House favours secession? I believe the answer will be in the negative.

Hon. J. Cornell: In that case, why do not they hold their peace?

Hon. A. J. H. SAW: I will come to that presently. What will be the effect of taking a referendum? Surely the effect would be to throw this country into a state of turmoil, into the very vortex of political passion. I do not know any question which is likely to prove so absorbing to the public as a question of secession. Is that a desirability at the present moment, when we are anxious that our population shall settle down and get back to work? The question cannot be disposed of in the airy way the hon. member suggests, by his issuing ballot papers and taking on the expense. When the question is raised, if it ever is raised, hon. members will have to be prepared to stump the country, and it

will involve a great deal of effort and energy and money; or, as my colleague said, "blood and treasure." Perhaps while the referendum is being taken it might be expressed by the words "sweat and treasure"; the blood would come later. Now, is such a proposition as secession likely to be carried if a referendum is submitted to the people? I have travelled amongst all sections of the community, and candidly, I do not believe that if the question were submitted to them 20 per cent. of our population would vote in favour of secession. There is no serious agitation in favour of secession—nothing more than a little idle talk by a few disgruntled people. If secession were carried here, would the other States agree to it? Would the rest of the Commonwealth agree? We all know what happened in the United States more than 50 years ago, when the question of secession was raised there. We know what was the result. We know that the country was swept by three years of civil war, and that at the end of the war over a million lives had been lost and America was almost on the verge of ruin. We know, again, that the action of Abraham Lincoln and the other leaders of the North has been endorsed by history. I say emphatically that if we attempted to secede and the rest of the Commonwealth resisted our attempt by force, that use of force would be entirely justified. The mover went even further, saying that if the rest of Australia attempted to coerce us, Great Britain would step in and prevent it. I lived for 10 years in the Old Country, and I have paid four visits there since, and have been a close student of English politics; and such an argument proves to my mind that the hon. member knows absolutely nothing whatever about English thought.

Hon. A. Sanderson: Hear, hear!

Hon. A. J. H. SAW: It would never enter into the heads of the men who are directing the British Empire to interfere with the internal destinies of Australia. But, if they did, what a terrible condition does the hon. member wish to draw Australia into? He is not satisfied with creating internal dissension in Western Australia and civil war in Australia, but he wants us to embark on a war of independence with the Old Country. But from that, I am glad to say, we would be preserved by what I am perfectly sure would be the attitude of English statesmen. The question of the merits or demerits of Federation is not supposed to be raised by this measure; but I do not see how we can avoid thinking of them, at any rate. I know there are certain demerits. I know that we have suffered certain disadvantages as the effect of Federation. But, on the other hand, I know also that the gain from Federation has been incalculable. I go so far as to say that had it not been for Federation I do not believe that at the present time the name of Western Australia would be on the map. I will tell hon. members why. If there is one thing for which Federation was responsible, it was the great effort that Australia was able to put into the great war. Without a

Federated Australia, I do not believe it would have been possible for the individual States to accomplish anything like that which was accomplished by the Australian Commonwealth. I am not so foolish as to claim that Australia won the war, but I know enough of the conditions to say that had Australia not been able to put forth the great effort she did, it is quite possible that the war would not have been won, because we know that for a long time the result of the war trembled in the balance. Very often the balance was down against us, and had it not been for the 400,000 men that Australia sent away, I firmly believe that the war might not have been won, that we would have lost it. And what was one of the issues? A very well known writer in England has said that the main issue of the war, so far as it affected the British Empire, was, are the British colonies to remain British? I believe that that is true. Had the war not been won, it is, in my opinion, very probable that the name of Western Australia would not be on the map to-day. I regret that I have had to discuss this Bill seriously. I personally look upon it as a perfectly futile, ridiculous, and unnecessary measure for the hon. member to have introduced into the Chamber. If at any time such a question as secession should be raised, there is only one authority that should raise it, and that is the responsible Government in charge of the destinies of this State at the time. I shall cast my vote against the second reading.

Hon. J. J. HOLMES (North) [5.26]: It will take but a few words to explain my position on this Bill. I am entirely opposed to it. First of all let me say that at the time the Federal referendum was taken I was entirely opposed to Federation. I was then a member of another place, and as a public man I deemed it my duty to express my views against Federation. At that time it took a fair amount of courage to face an audience and speak against Federation. However, that fact did not deter me. I could not see where we as a State were likely to have any chance at all in the partnership. I looked upon Federation as a big partnership in which we were to be the junior partners. I know what a junior partner's position usually is, and I know what a senior partner's position is; and, so far as I could see, Victoria and New South Wales would be the senior partners in the Commonwealth. In other words, those two States would be the dog, and we would be the tail. It may be that events have proved my view to be right. However, the fact remains that this argument was put up to the people of Western Australia at the time. I could not see in what way we were going to derive any benefit whatever from Federation. When I asked a question on the subject, the only answer I could get was the answer of "One destiny, one flag, one people." However, with a full knowledge of the facts, and with a full knowledge that once in we could only get out in a certain way, the Western Australian people

voted for Federation. The only way they can get out now is by attending the Federal Constitution, by getting a majority of people in a majority of States to agree to the necessary amendment. In the face of that fact, what is the use of a referendum for Western Australia? Having made the contract, there is the moral aspect that we have to keep the contract. In addition to the moral aspect, there is the financial aspect. If we dissolve the Federation, we shall have to take over our share of the liabilities. Will any man of common sense say that Western Australia can take over the liabilities incurred on our behalf by the Federal Government. Why, when we want to put a few additional settlers in the South-West, we have to go to the Commonwealth for the money to settle them. And yet we have men coming to ask us whether we will take a referendum to get out of Federation! The financial aspect alone proves it. Every day, primarily owing to the politicians, we are getting further into the Federal compact. Presently there will be only one difficulty, and that is unemployment. However, I am not responsible for that. I do not claim to be gifted with anything more than ordinary common sense, but at the very inception I saw the pitfall. I can deal with a partnership on my own behalf, and I claim that I am able to deal with a partnership on the State's behalf. In the matter of Federation, I could not see at all where this State was going to come in. Still, a large majority of our people decided in favour of the Federal compact; and so far as I am concerned that ends the question, unless we proceed in a constitutional manner. This measure is not constitutional. How can we claim to take a referendum on this question in Western Australia? A majority referendum would be a majority referendum taken over the whole partnership, the whole Federation. The Bill seems to me absurd, and I shall vote against the second reading.

On motion by Hon. F. F. S. Willmott debate adjourned.

BILL—PROPERTY.

Second Reading.

The MINISTER FOR EDUCATION (Hon. H. P. Colebatch—East) [5.30] in moving the second reading said: The Bill is very formidable in appearance, containing 183 clauses, and a number of schedules, and covering 105 pages, but it is really a very much simpler measure than would appear from its size. The Bill is to amend and consolidate the law of property, and simplify and improve the practice of conveyancing. It does not materially affect the Torrens system of registration of titles under the Transfer of Land Act, or dealings in land which have been brought under the operation of that Act. So far as the Bill deals with the subject of conveyancing, it relates mainly to land not under the Torrens system. Land under the Trans-

fer of Land Act system can be simply dealt with at the present day, but there is in Western Australia a great deal of land that is not under the Transfer of Land Act, and transactions in regard to that land are difficult and complicated. The land can be brought under the Transfer of Land Act, but not without a considerable amount of expense, and at present a week never elapses without quite a number of titles coming before the Crown Law Department with the object of bringing the land under the Transfer of Land Act. During the last 50 years the law of property and the practice of conveyancing have been the subject of reform in England as the result of many pieces of legislation, beginning with that introduced by Lord Cairns in 1881, known as "Conveyancing and Law of Property Acts," and continuing from time to time until the introduction, during the last session of the Imperial Parliament, of the Bill drafted by the Lord Chancellor, Lord Birkenhead. The tendency of the introduction of the Torrens system has been to neglect the law applicable to unregistered land; so, not only in this State but in Australia generally, the statutory law relating to property has lagged behind the reforms enacted in the United Kingdom. We have not kept pace with the reforms which from time to time have been introduced in the Old Country. In recent years, however, in New Zealand, Victoria and New South Wales, the law of property and conveyancing has been brought into line with Imperial legislation. But little has been done in that direction in Western Australia. The latest Australian legislation is the Act of 1919, passed in New South Wales, bearing a title similar to that of this Bill. It will be found on examination that there is very little of a controversial character in the Bill. The marginal references indicate to what extent its provisions are adopted from the Imperial legislation, mainly commencing with Lord Cairns' Act of 1881. The provisions, although technical, can for the most part be readily understood. I may say that I have already taken opportunity to discuss the matter with Mr. Nicholson, and I am sure he is willing to give the House all the information at his disposal and to assist in the consideration of the Bill. Part II. deals with general rules affecting property. With one or two exceptions, these are either already enacted by legislation in force in England, or are contained in Lord Birkenhead's Bill passed last session. Clause 8 is the law in New South Wales and Victoria. The effect is that a limitation, by will for instance, of an estate tail, will pass the fee simple. The idea is to do away with the necessity for going all through the present procedure. It becomes automatic, and so saves a great deal of expense and inconvenience. Entailed estates are little known in Australia, but nevertheless occasionally are to be met with, usually from the posthumous pride of a testator, with the result that in due course the tenant-in-tail proceeds to bar the entail, which he can readily do, but neces-

sarily at some expense. Subject to the saving rights of persons expectant on the death of an infant proprietor, which is contained in subclause 2 (b), Parliament will probably approve of the adoption of this reform which is already in force in Victoria and New South Wales, so as to render the expense of barring the entail unnecessary. Part III. deals with the operation and construction of deeds and other instruments, and, although as regards land which is not under the operation of the Transfer of Land Act the responsibility will still rest upon the solicitor for a purchaser to investigate the title of the vendors, nevertheless the actual conveyance will be a simple document, following in this respect the reforms brought about by Lord Cairns. Legislation in this direction was introduced in the early days of Western Australia by an Act passed in the reign of William IV. to facilitate and simplify the transfer of real property, but the provisions of the present Bill incorporate the modern reforms on the subject. Parts IV., V. and VI. deal with sales, mortgages and leases respectively, and will be the subject of consideration in Committee, rather than on the second reading of the Bill. As regards mortgages, facilities for the redemption in the absence of the mortgagees from the State, which apply in the case of land under the Transfer of Land Act, are extended to unregistered land, and the procedure has been revised in view of the Official Trustee Act of last session. This amendment is of considerable importance, because difficulty frequently arises in this matter of mortgagees of land under the Transfer of Land Act and where the mortgagor may be absent from the State. In Clause 82 it is provided that foreclosure, while barring the equity of redemption, extinguishes any right of action by the mortgagee for the mortgage debt. Clause 85 provides for the registration of a mortgage under the Transfer of Land Act on a decree of foreclosure of mortgaged land partly under the operation of the Transfer of Land Act and partly not. Division 2 of Part V., Sections 87 and following, deals with the leasing powers of a mortgagor and of a mortgagee in possession. The powers generally which are incidental to the interest of a mortgagee are set out in Division 3. The provisions relating to leases in Part VI. apply generally to land, whether under the operation of the Transfer of Land Act or not, and are based mainly on the Imperial legislation referred to in the marginal notes. Division 3 of that part relating to relief against forfeiture, incorporates the existing provisions of the Landlord and Tenant Act of 1912. In Part VII., relating to debts charged on land, the provisions of the Imperial Acts mentioned in the margin are adopted. Part VIII., relating to powers of attorney, adopts the provisions of the Imperial Act, particularly as to the continuance in force of the power of attorney and the validation of acts done by the attorney in good faith until notice of the death of the principal or a revocation of the power has been received. The Trans-

fer of Land Act has already been amended on these lines, but this will give general application. Part IX. places the law as to easements, profits and restrictive covenants, particularly as regards land under the operation of the Transfer of Land Act, on a more satisfactory footing. It is in that portion of the Bill that the amendment which Mr. Nicholson sought to place in the Light and Air Act Amendment Bill before the House last night might very properly find a place. Part X. enacts certain necessary provisions as regards the application of the Bill to land under the Transfer of Land Act. Part XI. contains provisions relating to the registration of writs of execution and orders affecting land adopted from the New South Wales Act of 1919. The schedules set out short forms of conveyances, mortgages, etc., and the interpretation of the covenants to be implied in those instruments in the absence of any stipulation to the contrary. The provisions are almost entirely similar to those in the Transfer of Land Act. The Bill as a whole does not, it seems to me, require any treatment at length on the second reading, because it is a Bill that will be mainly dealt with in Committee, the object being to bring the law of property in line with amendments which, for the most part, have been approved by the Imperial Parliament, and in other respects have been enacted elsewhere, particularly in New South Wales, Victoria, and New Zealand. Where it does amend the existing law, the amendment is entirely necessary and desirable in the public interests. I have no doubt Mr. Nicholson will confirm that view.

Hon. J. Duffell: Can you give us any information about Clause 106, Subclause 4?

THE MINISTER FOR EDUCATION: It would be quite impossible for me to give that information now. I am moving the second reading in order that the Bill may be fully in the hands of hon. members before they are called upon to deal with it, when I shall have the fullest possible information. I move—

That the Bill be now read a second time.

Hon. J. NICHOLSON (Metropolitan) [5.43]: I have pleasure in supporting the second reading of the Bill because I believe it is in the interests of the general public that we should keep pace with the trend of events and the progress being made in other parts of the world in relation to dealings in land. As the Minister has pointed out, we have lagged considerably behind other countries, and have failed to make that progress made elsewhere in the way of facilitating dealings with land. The general trend in other countries has been to facilitate transactions between buyer and seller, mortgagor and mortgagee, lessee and lessor and others interested in land dealings. Difficulties have arisen in this State, particularly with regard to dealings in connection with land, which were required to be brought under the pro-

visions of the Transfer of Land Act. From a cursory glance through the Bill, which I received only yesterday, I consider it will be advantageous, and it will enable us to reach a stage which will reduce costs, a very desirable thing from the standpoint of the general public. I have had instances during my years of practice where great difficulty has been experienced over land dealings, sometimes in connection with the bringing of land under the provisions of the Transfer of Land Act, when it has been subject to certain trusts, or was entailed, and where difficulties have arisen and heavy expense incurred. The difficulties I believe will be minimised and the expense reduced by a measure such as this. It is unnecessary to go into the details of the Bill at this stage, in view of the statement by the Minister that he had no wish to unduly rush the measure through. It is desirable, however, that a copy of the measure be sent, say, for example, to the Barristers' Board, and their opinion sought.

The Minister for Education: That will be done.

Hon. J. NICHOLSON: It will certainly be an advantage to have an expression of opinion from that board. Speaking generally, I believe they will endorse the principles of the Bill. I have pleasure in supporting the second reading.

Question put and passed.

Bill read a second time.

ADJOURNMENT—SPECIAL.

The MINISTER FOR EDUCATION: I move—

That the House at its rising adjourn until Tuesday, 10th October.

Question passed.

House adjourned at 5.50 p.m.

Legislative Assembly,

Thursday, 21st September, 1922.

PAON

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QUESTION — WYALCATCHEM-MOUNT MARSHALL RAILWAY (EXTENSION No. 2) BILL.

Advisory Board's Report.

Mr. JOHNSTON asked the Premier:—1, Has any report been received from the Railway Advisory Board in regard to the proposed extension of the Mount Marshall railway, a Bill for which is now before the House? 2, If so, will he lay the report on the Table of the House? 3, If not, will he refer the proposal to the said board?

The PREMIER replied: 1, Yes. 2, Yes. 3, Answered by No. 1.

QUESTION—RAILWAY ADVISORY BOARD, PERSONNEL.

Mr. JOHNSTON asked the Premier:—1, Who are the members of the Railway Advisory Board? 2, When were they appointed? 3, Are Messrs. A. G. Hawby (Manager of the Agricultural Bank) and A. Despeissis, who were members of the Railway Advisory Board when the Narrogin-Armadale and Narrogin-Dwarda railways were recommended for construction, still members of the board? 4, If not, why not? 5, Is it the intention of the Government to endeavour to secure proper continuity of policy and co-ordination in new railway proposals by restoring to the board the experienced officials upon whose reports so many railways have been built?

The PREMIER replied:—1, The Surveyor General, Director of Agriculture, Chief Traffic Manager, and R. J. Anketell. 2, 3rd February, 1920. 3, No. 4, Mr. Hawby is not now available for this work, and Mr. Despeissis is not in the Service. 5, The constitution of the board as at present is satisfactory.

QUESTION—ALLOWANCES TO WITNESSES AND JURORS.

Mr. JOHNSTON asked the Premier:—1, Is it true that under the official "scale of allowances to witnesses and jurors," approved by the Governor in Executive Council, farmers are paid from 11s. to 15s. per day for loss of time attending court, whilst schoolmasters, bank managers, inspectors, auctioneers, commission agents, and others following similar clerical occupations are paid from 16s. to 21s. per day, under section (c) of the regulation? 2, Will the Government have the scale amended so as to place those who follow the occupation of farmer on at least the same plane of remuneration as the other occupations mentioned?

The PREMIER replied: 1, Yes, excepting where special loss or other extraordinary circumstances are shown, when the case is dealt with under clause 14. 2, The scale is now under review in the Department, and

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