

50 per cent. loss. We cannot expect men to continue taking any interest in the land unless they are given a chance to recover. This Bill represents one of the methods by which it is hoped to protect them, their assets and their heritages. I move—

That the Bill be now read a second time.

On motion by Hon. J. Nicholson, debate adjourned.

### ADJOURNMENT—SPECIAL.

The MINISTER FOR COUNTRY WATER SUPPLIES: I move—

That the House at its rising adjourn until 2.30 p.m. to-day.

Question put and passed

*House adjourned at 12.28 a.m. (Friday).*

## Legislative Council,

*Friday, 7th August, 1931.*

	PAGE
Bills: Financial Emergency, further recomm., 3r.	4325
Constitution Acts Amendment, Com. report, 3r.	4326
Trustees Protection, 2R., Com., 3R. ...	4331
Trustees Powers, 2R., Com., 3R. ...	4332
Mortgagees' Rights Restriction, 2R., Com. report, 3R. ...	4332

The PRESIDENT took the Chair at 2.30 p.m., and read prayers.

### BILL—FINANCIAL EMERGENCY.

#### *Further Recommital.*

On motion by the Minister for Country Water Supplies, Bill again recommitted for the further consideration of Clause 22.

#### *In Committee.*

Hon. J. Cornell in the Chair; the Minister for Country Water Supplies in charge of the Bill.

Clause 22—Effect of order:

The MINISTER FOR COUNTRY WATER SUPPLIES: I move an amendment—

That in the new Subclause 1 inserted at the previous sitting, after "this" where it first occurs, the words "part of this" be inserted.

The new subclause reads—

The obligation of any mortgagor to pay interest, accruing or to accrue, due and payable during the operation of this Act, at any higher rate than that allowed by or under this Act is hereby extinguished.

On the other hand, Clause 18 provides that this part of the measure shall have effect only as from the date of proclamation, while Clause 19 stipulates that this part of the measure shall apply to all mortgages existing at the commencement of this part of the Act. The amendment is necessary to ensure that the subclause operates only as from the date of proclamation and not from the 10th July.

Amendment put and passed.

The MINISTER FOR COUNTRY WATER SUPPLIES: I move an amendment—

That the following proviso be added to new Subclause 1:—"Provided that for the purpose of this part of this Act interest shall be deemed to accrue due and payable from day to day."

Interest may fall due a few days after the proclamation, and then it might be contended that the reduction should apply to the interest for the whole of the previous 12 months. The amendment will make clear the intention that the reduction of interest shall date from the proclamation of this part of the measure.

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

Bill again reported with further amendments and the report adopted.

#### *Third Reading.*

Bill read a third time and returned to the Assembly with amendments.

# **BILL—CONSTITUTION ACTS AMENDMENT.**

*In Committee.*

Hon. J. Cornell in the Chair; the Minister for Country Water Supplies in charge of the Bill.

Clause 1—agreed to.

Clause 2—Commencement and duration:

The MINISTER FOR COUNTRY WATER SUPPLIES: I move an amendment—

That the word "ninth" be struck out and "tenth" inserted in lieu.

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

Clauses 3 to 5—agreed to.

Schedule:

Hon. G. W. MILES: I move an amendment—

That the words "twenty-two pounds and ten shillings per cent." be struck out, and "thirty-three pounds six shillings and eightpence" be inserted in lieu.

This Bill applies principally to judges and Ministers of the Crown, and others receiving £1,000 a year. It is the duty of members of Cabinet and those receiving high salaries to make greater contributions from their pay in this time of crisis than it is now proposed they shall do. They can better afford to lose 33½ per cent. of their incomes than those who are receiving only a small salary, and are losing 18 per cent. The Government must give the lead. If they fail to do so now, they will be forced into it very soon. Twelve months ago members of the Government should have reduced their salaries by 33½ per cent., and they then could have asked members of Parliament to agree to the same reduction. We are only at the beginning of the crisis. Every month the Government have to go to their bankers for the issue of Treasury bills to enable them to pay salaries. It is time Parliament gave the people a lead. The only way the salaries can be paid is by means of overdrafts. This leads to a restriction of credit, and to the creation of more unemployment. The money the banks have to find for these advances to finance the deficit each month prevents them from giving it to other clients, and that in turn tends to throw more people out of work.

The Minister for Country Water Supplies: The hon. member tested the feeling of the Committee last night, on the question of members' salaries, and he found there was too much opposition to his suggestion.

Hon. G. W. MILES: I did not test the Committee on the question last night. I was merely beaten as to the 16 per cent. reduction. The suggestion I advanced is the only equitable form of distribution that can be made. The Minister has not replied to my statement that the Government have to get an overdraft each month in order to pay salaries. I am sure that judges would willingly sacrifice a third of their salaries if they were given the lead. The head of one department told me he was prepared to forego two-thirds of his salary to assist in getting us out of this crisis. It is time Ministers woke up to the fact that the banks cannot for ever finance them. It is absurd to think that a man drawing £250 a year must sacrifice 18 per cent. of it, while Ministers drawing £1,500 a year are asked to sacrifice only a paltry additional 4½ per cent. How can the Government expect to balance their Budget and restore confidence by this means?

The MINISTER FOR COUNTRY WATER SUPPLIES: I do not know what the hon. member means about Ministers not making any sacrifices. Every Minister is making a sacrifice, not only in the matter of his Ministerial salary, but also in the matter of his private affairs.

Hon. G. W. Miles: And so is every private citizen.

The MINISTER FOR COUNTRY WATER SUPPLIES: Ministers are not able to look after their own affairs. They have to give up the whole of their time to their Cabinet work.

Hon. G. W. Miles: I know that.

The MINISTER FOR COUNTRY WATER SUPPLIES: The hon. member does not know. There is the 22½ per cent. cut off the salary, which means a loss of £300 a year.

Hon. G. W. Miles: A paltry £300 a year. Where will you get money?

The MINISTER FOR COUNTRY WATER SUPPLIES: The amount of money Ministers are losing in other respects is greater than that which the general community is asked to sacrifice. I do not have a Saturday afternoon or a Sunday to myself because of the necessity for carrying on the country's work. I am not complaining,

and most willingly do the work. I glory in being able to do something for the country, but I do take exception to the hon. member's remarks that we are not making any sacrifice.

The CHAIRMAN: I hope that members will refrain from any personal remarks. My interpretation of the Schedule is that it will not touch the salaries of Ministers.

Hon. G. W. MILES: I do not know whether it touches Ministers' salaries or not. I do know that they are drawing a total salary of £1,500 a year, and that the Premier receives £1,700.

The CHAIRMAN: Ministers as ordinary members of Parliament come under the Bill we have just passed.

Hon. G. W. MILES: Private people who are in business, and are at the same time members of Parliament, are attending to the country's work just as well as are Ministers.

The Minister for Country Water Supplies: And to their own business also.

Hon. G. W. MILES: They have very little time to devote to their businesses. The Minister has not told us where the money is to come from for the salaries of Ministers or members. I want members put in the same category as Ministers. Some private citizens have lost all their income, while Ministers are still drawing both a salary and a Parliamentary allowance. Anyone who is drawing a salary is better off than the rest of the community. Mr. Scullin says that if we do not follow out the Plan the country will soon be paying 12s. in the pound as a composition. Ministers will have to be prepared to accept less than they are now receiving. Probably there will be a reduction of 50 per cent. in the higher salaries before the crisis is over. The Government should give a lead to the public.

Hon. Sir EDWARD WITTENOOM: I cannot support the amendment. At a time like this we want the best men we can get both as Ministers and judges. The work of members of Cabinet is very arduous just now. I am sure the Government have sense enough to know that if the case was as bad as Mr. Miles suggests, and there was no money forthcoming, they would forego their salaries of their own volition. As it is they cannot be expected to work for nothing. If possible it would be as well not to amend the Bill.

Hon. J. J. HOLMES: I do not think Mr. Miles will achieve the object he is aiming at.

Ministers draw a salary of £1,000 a year, and £500 a year as members of Parliament. The amendment deals only with salaries exceeding £1,000 a year; therefore the only persons who would be affected would be the Premier and the judges. If we could bring in Ministers as a whole I would vote for the amendment. I have already pointed out that before Federation we had all manner of big departments to administer, and engaged only five Ministers at £1,000 a year, and the Premier at £1,200 a year. Now we have lost those big departments we have eight Ministers of the Crown, seven drawing £1,500 a year and the Premier receiving £1,700. There are additional Ministers now; and as so many departments have been transferred to the Commonwealth, too much money is being spent on Ministerial salaries. There should be fewer Ministers at the present salary, or else the rate of salary should be reduced. However, the amendment will not achieve what Mr. Miles wishes.

Hon. E. H. HARRIS: In the present circumstances I feel inclined to support Mr. Miles, but Mr. Holmes has pointed out that the net which is to be thrown will not bring in those whom Mr. Miles wishes to catch. Only one Minister out of eight will be caught. The salaries of judges and of members of Parliament were increased some time ago, but have since been reduced by 10 per cent. Had yesterday's Bill been brought into conformity with this amendment, I would be inclined to support Mr. Miles; but it would not be fair to single out the Premier now. I tip that in 1932 there will be a further reduction. Perhaps the Premier's Conference thought it would cause an upheaval to attempt a reduction of, say, 40 per cent. straight away.

Hon. G. FRASER: I oppose the amendment for the reasons advanced by Mr. Harris. Were the reduction general throughout the service, I might be prepared to support Mr. Miles; but it would be unfair to single out certain persons for a cut of 33½ per cent. as against the 22½ per cent.

Hon. J. NICHOLSON: The views expressed by Mr. Miles appeal to several members. Speaking on the Financial Emergency Bill I expressed views of the same nature, and suggested that members of Parliament should give a lead by making a larger reduction in their allowances. I favour the idea of returning to the allowances previously received.

The CHAIRMAN: I cannot allow a general discussion along those lines. The discussion can only be on salaries exceeding £1,000 a year.

Hon. J. NICHOLSON: What has been said regarding private members' salaries applies with greater force to Ministerial salaries. Probably it would assist if Ministers of their own volition agreed to reduce the payments made to them by one-third.

The Minister for Country Water Supplies: Then we shall need time to attend to our private businesses.

The CHAIRMAN: I hope the hon. member will reserve the line of argument as to voluntary giving until the amendment has been disposed of.

Hon. J. NICHOLSON: This Bill is not to amend members' salaries, but to amend the Constitution Act, which provides for the payment not only of judges but also of Ministers. The amount now paid to Ministers is £8,200, as against £6,200 paid in earlier years. Mr. Miles's amendment would apply to other salaries besides Ministerial salaries.

The CHAIRMAN: I have already said it would not apply to Ministerial salaries.

Hon. J. NICHOLSON: The difficulty is one Mr. Miles cannot overcome at this stage, and it would produce certain inequalities. Therefore, while sympathetic towards the principle of the amendment, I cannot support it.

Hon. G. W. MILES: My object can be achieved if I am permitted to withdraw this amendment and to ask the Committee to delete the 20 per cent. from the Schedule and substitute 33½ per cent. I ask leave to withdraw my amendment.

Leave refused.

Hon. E. H. GRAY: Mr. Miles and those who supported him yesterday are now in a curious position. Those who supported his former amendment must support this one. It is impossible for the country to carry on, we are told, unless drastic reductions are made. I am anxious that the man on the basic wage should escape the heaviest burden, but financial experts state that in his case a drop of 1 per cent. means over £18,000. It is the worker who really carries the burden, he being already on the bread-line. If the scale cannot be lowered for the worker, something more should be taken off the man able to stand a heavier reduction.

The CHAIRMAN: The defeat of the amendment will only show that this Chamber is not prepared to differentiate between the Premier and the judges on the one hand, and other sections of the community. The Premier and the judges are the only individuals in the balance at the moment.

Hon. E. H. GRAY: That is not the fault of the mover of the amendment.

The CHAIRMAN: I do not want a misconception to arise and spread outside to the detriment of the officers whose positions are now in our hands.

Hon. E. H. GRAY: I am not discussing individuals, but a principle. An attempt was made to deal with this position earlier by way of amendment, but it proved unsuccessful. No one can convince me that those in receipt of the higher salaries are to be called upon to make a sacrifice equal to that of the men on the lower rung of the ladder. The Bill is an emergency measure that will last for 12 months only, and in view of the existing position, those able to bear the burden should be expected to do so.

The MINISTER FOR COUNTRY WATER SUPPLIES: The hon. member loses sight of an important fact when he talks about those who are carrying the load to-day. The people he alleges are carrying the burden are not doing so.

Hon. E. H. HARRIS: Is it not a fact that 13 per cent. of the people pay all the taxation?

The MINISTER FOR COUNTRY WATER SUPPLIES: That is so. The people Mr. Gray has referred to are exempt from taxation and other imposts, and get the advantage of all the free services. Yet Mr. Gray can talk about those people carrying the load! In addition to the imposts under emergency legislation, the people in receipt of larger incomes have to shoulder a heavy burden in the form of income tax, and there is talk of an increased Federal income tax for a start. We do not know where this will end.

Hon. G. FRASER: If they are to be consistent, those who supported an alteration in the schedule last night with a view to increasing the percentage deduction must support the amendment. As that move was defeated last night, we still leave the greater proportion of civil servants free from the burden we are now asked to impose.

Hon. Sir William Lathlain: How many of them receive over £1,000 a year?

Hon. G. FRASER: I do not know.

Hon. Sir William Lathlain: I understand there are 43.

Hon. G. FRASER: If the amendment be agreed to, it will affect a few persons, and nearly 40 will still be untouched although they are also receiving salaries in the higher grade. In view of the fact that a mere handful will be asked to shoulder the burden proposed, I shall not support the amendment.

Hon. G. W. MILES: Would I be in order in asking leave to withdraw the amendment with a view to amending the second line of the schedule by altering 20 per cent. to 33½ per cent.?

The CHAIRMAN: The hon. member has already asked leave to withdraw the amendment, and leave has been refused. The simplest way would be to allow the amendment to go to a vote forthwith and complete the consideration of the Bill, upon which the hon. member can move to recommit it for the further consideration of the schedule. He can then move the amendment he desires.

Amendment put and negatived.

Schedule put and passed.

Preamble, Title—agreed to.

Bill reported with an amendment.

#### *Recommittal.*

On motion by Hon. G. W. Miles, Bill re-committed for the further consideration of the schedule.

#### *In Committee.*

Hon. J. Cornell in the Chair; the Minister for Country Water Supplies in charge of the Bill.

Hon. G. W. MILES: I move an amendment—

That in line 2 of the second column of Part 1 of the Schedule, "twenty" be struck out and the words "thirty-three pounds, six shillings and eight pence" inserted in lieu.

If the Committee agree to the amendment, it will mean that Ministers of the Crown will have to submit to a reduction of 33½ per cent. I have nothing personal in mind, but I think now, as I did 12 months ago, that the head of the Government and his Ministers should give a lead to the people. They should have done it last year

and should not have waited until practically forced to take action. In consequence of the delay that has taken place, unemployment has been increased, and if we do not take a definite stand even at this stage and make a bigger sacrifice, more unemployment will be created. If the amendment be agreed to, I hope the Government will introduce further legislation to reduce the salaries of members of Parliament by 33½ per cent. The people will then see that members of the Government and of Parliament are prepared to make a sacrifice in the interests of the community. Sir Edward Wittenoom remarked that if we wanted good men, we had to pay for them. We know that is quite correct, but in these days it is not a question of how much a man is worth, but how much we can afford to pay. We must appreciate the fact that the money paid to Ministers, members and civil servants has, to some extent, to be advanced by the financial institutions, and the money so advanced increases the deficit each year. My amendment will affect Ministers and judges. I believe if the judges were approached, they would be quite willing to accept the reduction.

Hon. Sir Edward Wittenoom: What about the next range in the rate of reduction?

Hon. G. W. MILES: That will have to be altered too. My object is to cover Ministers and, of course, judges.

The CHAIRMAN: Before the amendment is further discussed, I would draw the hon. member's attention to the fact that Schedule IV. of the Constitution Acts Amendment Act of 1899 shows that at least two officers covered by that measure are in receipt of £350 per annum, and they will be affected also.

Hon. J. NICHOLSON: I was about to draw attention to that fact myself. The officers concerned are the Private Secretary to the Governor and the Clerk of the Executive Council. If the amendment be agreed to, those officers will suffer a reduction of one-third of their salaries. The unfairness of the position will appeal to Mr. Miles.

Hon. G. W. Miles: Cannot we recommit the Bill and exempt them?

Hon. J. NICHOLSON: No, there is no power to enable us to do that. The object of the legislation is to apply the reductions

as much as possible on lines of equality of sacrifice. Assuming it would be possible to provide the exemption suggested by Mr. Miles, what would be the result when we consider the provisions of the Financial Emergency Bill, to which we have just agreed?

Hon. G. W. Miles: Does not the Clerk of the Executive Council receive another salary?

Hon. J. NICHOLSON: This amendment deals entirely with amendments to the Constitution Act. It does not matter what that clerk may receive from any other source. But what I want to point out is this: Under the Financial Emergency Bill, the third reading of which went through a few minutes ago, persons in receipt of a certain income will suffer a reduction on the basis of 22½ per cent., whereas under Mr. Miles's amendment other persons drawing the same salary would lose 33⅓ per cent. So Mr. Miles, instead of accomplishing what he desires, would be imposing a grave injustice. Therefore I cannot support the amendment.

Hon. E. H. GRAY: I will support the amendment. Since there is no Governor at present, presumably there is no private secretary to the Governor.

Hon. E. H. Harris: What is paid to the Clerk of the Executive Council?

Hon. E. H. GRAY: I believe, £120. Mr. Miles's argument is perfectly sound, and I will support the amendment. It would be a proper gesture to make since so many people have been severely reduced under the Financial Emergency Bill.

Hon. G. FRASER: Mr. Gray thinks it would be quite in order to reduce by 33⅓ per cent. persons in receipt of over £250. I ask him whether, if a similar provision had been moved in the previous Bill, his attitude would have been the same.

Hon. E. H. GRAY: I am prepared to carry out the principle to the full, even if it affects myself. If for 12 months members of Parliament worked for nothing in order to save the workers being saddled by a big reduction, we should be prepared to do it.

Hon. G. Fraser: That attitude is not consistent with the hon. member's attitude in respect of members of Parliament when we were discussing the previous Bill.

Hon. E. H. HARRIS: I should like to hear from the Minister whether there would

be affected by this amendment any persons other than those already enumerated, namely, judges, Ministers, the Governor's private secretary, and the Clerk of the Executive Council.

The Minister for Country Water Supplies: No, that is the full list.

Hon. G. W. MILES: When I moved the amendment I overlooked the fact that it would affect the private secretary to the Governor and the Clerk of the Executive Council. However, if that is the only impediment in the way, it can easily be overcome by the bringing down of an emergency Bill exempting those two officers. Sir Edward Wittenoom has referred to a man being worthy of his hire. But the director of one of the Australian banks who is also the director of another big business in Australia, voluntarily reduced his own salary by 50 per cent. 12 months ago, before asking his co-directors and staff to make any sacrifice. Also the Commissioner of Railways in New South Wales last year voluntarily reduced his salary from £5,000 to £2,500.

Hon. J. M. Macfarlane: What did Judge Lukin do?

Hon. G. W. MILES: I don't care what Judge Lukin did. It is not a question of what a man is worth. Personally I should like to see Ministers paid double what they are paid, if the country could afford it. Nobody wants to see reductions made if it can be avoided, but we cannot find the money to pay these wages and salaries. So it is the duty of the Government to give a lead.

Hon. Sir EDWARD WITTENOOM: If the amendment were carried, the Government would not be setting a good example; it would be Mr. Miles setting the good example by forcing Ministers, through the amendment, to accept reduced salaries. If the Government wished to set a good example, they would voluntarily reduce their salaries.

Amendment put and negatived.

Schedule put and passed.

Bill again reported without further amendment, and the report adopted.

### *Third Reading.*

Bill read a third time and returned to the Assembly with an amendment.

**BILL—TRUSTEES' PROTECTION.***Second Reading.*

Debate resumed from the previous sitting.

**HON. J. NICHOLSON** (Metropolitan) [3.43]: I moved the adjournment of the debate at an early hour this morning in order to have opportunity to consider the measure and certain other measures which I understand are all part of the Plan. The Bill is necessary because trustees stand in a position altogether different from that in which an ordinary individual stands in regard to his investments and property. The powers of a trustee are regulated by the powers and authorities which may be conferred upon him by the deed of trust under which he operates. Unless that deed gives him power to do certain things, he will be unable to give effect to even what is contemplated in the Debt Conversion Agreement Bill. There are many trusts in existence at the present time which, for example, might not be wide enough in their powers to enable trustees to carry out the scheme that is embodied in the Debts Conversion Act. Accordingly it is made clear in the Bill before us that trustees will be enabled to carry out conversions. If the power were not sufficiently wide, then the scheme of conversion might be delayed and as we all know, it is essential that the conversion should be effected within a certain time. For that reason this legislation is being rushed forward somewhat hastily. In ordinary circumstances I would have hesitated to agree to the Bill being put through so quickly, but hon. members may have noticed in to-day's paper that the Federal Government have proclaimed the Debt Conversion Act, and the fact of that proclamation appearing in the newspaper now gives only a limited time for the conversion under the scheme proposed to be carried out. The conversion is said to be the largest that has ever been carried out in any part of the world, amounting as it does to £556,000,000. Consequently there is need for haste in the passage of this and kindred measures. I might point out, to save time later, that when the Trustees' Powers Bill is before us it is my intention to move to insert in that Bill a clause similar to Subclause 2 of Clause 3 contained in the Bill now before us, the object being to make the position clear to safeguard trustees in the exercise of their powers. An amendment such as that is neces-

sary in the Trustees' Powers Bill. I support the second reading.

**HON. SIR EDWARD WITTENOOM** (North) [3.48]: I recognise that this is an important Bill, and that the others associated with it are just as important, but I do object to the way in which the Bills are being rushed through the House. There is no justification for the Bills being brought along at this speed without our being given time to study them. We understood the need for haste with regard to the financial emergency measure, because that was of the first importance, but there should be no need to rush through the others. It is impossible to give them proper consideration in the short time at our disposal. Amendments are submitted at a moment's notice, and often we find that they are not in accordance with what should be done. I desire to enter this emphatic protest, but will support the second reading.

**HON. E. H. HARRIS** (North-East) [3.50]: I understand that this is one of the Bills that formed part of the emergency Plan. The other measures have been limited to a fixed period, and I wish to know whether this measure also should not be limited to the same period as the others. If there are reasons why that should not be so, I should like to know them.

**THE MINISTER FOR COUNTRY WATER SUPPLIES** (Hon. C. F. Baxter—East—in reply) [3.51]: I assure Sir Edward Wittenoom that this measure is just as important as any of the others that have been submitted. The Debt Conversion Act has been proclaimed and if this Bill is not passed promptly, trustees will be in an unenviable position.

Hon. Sir Edward Wittenoom: But how do you expect us to give the Bills proper consideration, when you rush them through like this?

**The MINISTER FOR COUNTRY WATER SUPPLIES**: This is a very simple Bill and does not require to be studied. Regarding Mr. Harris's query, it is not possible to limit the period of the operation of the measure, because conversions will be carried on all the time.

Hon. J. Nicholson: Yes, almost for ever.

The **MINISTER FOR COUNTRY WATER SUPPLIES**: The conversions will not end in December, 1932.

Question put and passed.

Bill read a second time.

*In Committee.*

Bill passed through Committee without debate, reported without amendment, and the report adopted.

*Third Reading.*

Bill read a third time, and *passed*.

## **BILL—TRUSTEES' POWERS.**

*Second Reading.*

Debate resumed from the previous sitting.

**HON. J. NICHOLSON** (Metropolitan) [3.56]: This Bill follows somewhat on the lines of the Bill we have just disposed of. In the previous instance it authorised and empowered trustees to carry out a scheme of conversion as provided in the Debt Conversion Act. Now we are met with the further position that arises in connection with the emergency legislation. There are instances, as I mentioned earlier, where trustees may not have express powers to do certain things. Accordingly in Clauses 3, 4 and 5 these powers are provided so as to make up for the deficiencies in deeds of trust under which trustees act. There is power in Clause 3 to vary leases. Ordinarily a trustee would be bound to exact the full terms of the lease created by the man who is responsible for the trust. Say, for example, a man died last year, leaving someone as his trustee. That trustee, unless he had power to vary the lease which had been created by the deceased, would perhaps require to go to the court and apply for permission to make the variation. That would all involve expense. To get over that difficulty power is given by the Bill to do this. Similarly other powers are given in Clause 4. Take as an example where a lease is granted by a trustee: unless the trustee had the actual power in his trust to grant an option of purchase to a lessee or tenant, that option of purchase, if given, would be invalid because the trustee would be doing something he had no power to do. The trustee is in a position very different from that of the owner. An owner can lease

land, and as is done very frequently, he can import into that lease an option of purchase to the lessee or the tenant. The trustee stands in a different position. It is my intention to move, in Committee—I have already mentioned this—to insert a clause similar to the clause appearing in the Bill we have just disposed of, my object being to protect the trustee as fully as possible. I support the second reading.

Question put and passed.

Bill read a second time.

*In Committee.*

Hon. J. Cornell in the Chair; the Minister for Country Water Supplies in charge of the Bill.

Clauses 1 to 6—agreed to.

New clause:

Hon. J. NICHOLSON: 1 move—

That the following be inserted to stand as Clause 7:—"No action, indictment, information or other proceedings shall be commenced, presented, prosecuted or maintained against any trustee lawfully exercising the power conferred upon him by this Act."

A similar provision appears in the Trustees' Protection Bill, and it is necessary that the protection be afforded under this measure.

The **MINISTER FOR COUNTRY WATER SUPPLIES**: I see no objection to the new clause, which will merely protect trustees.

New clause put and passed.

Title—agreed to.

Bill reported with an amendment and the report adopted.

*Third Reading.*

Bill read a third time and returned to the Assembly with an amendment.

## **BILL—MORTGAGEES' RIGHTS RESTRICTION.**

*Second Reading.*

Debate resumed from the previous day.

**HON. J. NICHOLSON** (Metropolitan) [4.5]: The multitude of these Bills necessitated by existing conditions is rather staggering. This is another example of the measures required under the general Plan.



But there is rather more in this Bill, which may be said to be the outcome of our conditions and which partakes somewhat of the nature of a moratorium, because it seeks to restrain the powers of mortgagees to exercise the rights they would possess but for the restrictions imposed by this measure. A mortgagee has certain powers which he may exercise when the mortgagor commits default, that is, when the mortgagor fails to pay his interest or principal, or commits any breach of the other covenants. After certain procedure the mortgagee is entitled to go a step further and foreclose. The Bill extends also to leases and agreements for sale. In Clause 7 is set out the various restrictions on a mortgagee. He shall not call up or demand payment from the mortgagor of the whole or any part of the principal moneys secured by the mortgage without first obtaining the leave of the Supreme Court, and he must obtain similar leave if he wishes to exercise any of the other rights competent to him. Paragraphs (b) and (g) contain provisions that require consideration. Paragraph (b) stipulates that a mortgagee shall not commence or continue any action or proceeding for the recovery of any principal moneys due under the mortgage, or the enforcement of any judgment for such moneys. Similarly, paragraph (g) provides that a mortgagee shall not commence or continue any application, proceeding, or application for foreclosure, or exercise or attempt to exercise any right or powers of foreclosure.

Hon. Sir William Lathlain: How can a mortgagee continue an action if it is not commenced?

Hon. J. NICHOLSON: I have no objection to restraining a mortgagee from commencing, but cases have already been commenced and have been proceeding for some months. Those cases would come under the heading of actions continuing. Hardship will be inflicted in those cases, in that considerable expense has been incurred in exercising the powers that were legitimately competent to the mortgagees. A mortgagee may have been forced, through the default of the mortgagor, to take action some months ago. The mortgagee may have felt that he must get his money on account of his being pressed by creditors. Expense would have been incurred in advertising his intention to sell the property and in holding the sale. If he was fortunate enough to sell a few months ago, that would be the end of the

business. Owing to the conditions that have existed recently, however, sales have not been effected in many instances, and the mortgagee has been forced to step in and take possession of the property. In order to foreclose, which is another step in these legal proceedings to determine the rights of the mortgagor to his equity of redemption, further expense would have been incurred. Members will have seen in the "Government Gazette" and in the daily Press notices by the Registrar of Titles of the intention of mortgagees to foreclose. Applications for foreclosure are lodged and anyone may tender for the property. If a tender is received by the Registrar sufficient to pay off the debt and the expenses incurred, the matter is settled. If no tender be received by the date mentioned in the advertisement, the Registrar issues to the mortgagee an order of foreclosure. The consequence of the issuing of that order is finally to determine the right of the mortgagor to claim any equity of redemption that he had in the property. There are many actions just on the verge of final foreclosure and mortgagees would be stopped at the last lap, so to speak, because of the inclusion of the words forbidding the continuing of any action. Let the measure date from now, by all means, to prevent mortgagees from commencing such proceedings, but where proceedings have been commenced, a mortgagee should not be prevented from continuing them to ultimate finality. A further hardship inflicted is that the Bill takes no notice of the expense that will have been incurred up to the present by the mortgagee on his taking action to recover his money or his property. No provision is made for the repayment to him as a condition of ceasing any action. If anyone went to a mortgagee, and put up the principal sum with interest and expenses up to date, he would certainly not refuse to accept the money. I think every mortgagee would be only too delighted to get his money back. To stop a mortgagee from concluding proceedings, which he legitimately started, would be entirely wrong. In Committee I shall move to strike out the words "or continue" from paragraphs (b) and (g). In Clause 8, which is a necessary consequence upon the restrictions embodied in Clause 7, I find that an application for leave to take any of the measures or proceedings mentioned in the previous clause shall be made in the manner prescribed by rules of the

court, and in dealing with such application the court will consider various matters. It will consider whether the wasting nature of the security of the mortgagee is likely to be seriously prejudiced by the continuance of the mortgage, and paragraph (b) says, "whether a mortgagee is able to redeem a mortgage property by his own money or by borrowing at a reasonable rate of interest." The latter seems a curious paragraph.

Hon. J. Cornell: A very necessary one.

Hon. J. NICHOLSON: Naturally the court would take everything into consideration. The paragraph implies that the burden is going to be thrown on the mortgagee to prove to the court whether or not money can be borrowed by the mortgagor from some other person. That reverses the position. If the mortgagor can say, "I can or cannot get money from another source," that will be all right. It is apparently implied that the mortgagee has to see whether the money can be borrowed from some other source or not. There are cases where trust funds are invested in mortgages. When the time arrives for the distribution of the assets of which such trust funds form a part, the beneficiaries are naturally anxious to get their money. They may have to wait until the youngest child reaches the age of 21. In the case under review, they will be held up. Under the conditions prevailing, wise discretion will have to be exercised. When we come to paragraph (d), I am going to move an amendment to give the court a further direction in addition to what is already set out, and covering moneys invested in mortgages, which moneys represent trust funds. The court would then be able to ask questions relative to such funds. The inquiries that are detailed here may limit the court in the scope of its investigations. By the Bill specifying and detailing the special lines of inquiry, the court may say it is limited to those things and nothing else. In order to make it clear, my amendment will enable the court to make inquiries on other lines. Subject to these remarks, I will support the second reading.

**HON. J. CORNELL** (South) [4.21] I do not set myself up as a legal authority, but I am hard put to it to follow Mr. Nicholson's arguments as to the meaning of the words "commence or continue." Mr. Nicholson said the Bill as it stands will prohibit the further continuance of any action al-

ready started. From that he infers that the Bill is retrospective. I have yet to find any clause which gives it that effect. It will not be effective until it is proclaimed.

Hon. J. Nicholson: To continue proceedings suggests the retrospection.

Hon. J. CORNELL: The whole thing hinges on the point the hon. member has raised, that the provisions of this Bill are retrospective. I submit they are not. The inclusion of the words "commence or continue" has no bearing on the cases that are now, not pending, but partly heard. Surely members are prepared to trust the Supreme Court in a matter of this kind. If we are not prepared to do so, I do not know what tribunal we can trust. Our highest courts will determine the whole issue that comes before them. I expect the Bill has been drafted after careful consideration, and with due reference to existing legislation. I hope we shall not tinker with this measure. If we do, I trust the Minister will defer the third reading until next Tuesday, so that we can have the advice of the Crown Law officers against the advice that has been afforded by Mr. Nicholson this afternoon.

**HON. W. J. MANN** (South-West) [4.25]: I join with other members in protesting against Bills of this nature being passed into law without receiving reasonable consideration. This is an important Bill. Many aspects of it require to be considered, but members have not had the time in which to do so. For that reason, it would be unwise to rush the Bill through. It might be stood over until next week to permit its being more closely examined. I have not had much experience with mortgages, but latterly I have heard some rather serious allegations that have made me think. If some of the stories of unfortunates who are in the hands of certain bodies corporate—

Hon. E. H. Harris: Shylocks!

Hon. W. J. MANN: And avaricious persons, are true, and if their experience is at all general, we should see to it that a measure of restraint is placed upon such mortgagees. Mr. Nicholson referred to legal processes which might have been commenced and continued, and suggested that the Bill should not be made to apply to them. Up to a point I agree with him. This morning, however, a man spoke to me and wanted to know what chance there was of the Bill becoming law. He then calmly told me that

he intended to foreclose on a man to-morrow. He said the man was a good fellow, but was very short of cash. As he did not think he would get his money, he intended to foreclose upon him. Although I do not stand for retrospective legislation as a rule, I do suggest that we date this Bill back to the time when it was first introduced in another place. If we did that, we would catch this particular gentleman as well as many others. I have had one or two letters lately showing how soulless some of these gentry are. I have in mind a case in this city—the case of a widow with six children. She had a son aged 20, who was practically the breadwinner, and who unfortunately fell ill at Christmas and died. Following upon that, her own health broke down and she had to undergo an operation which cost a good deal of money. The only revenue coming into the home was a few shillings earned by a boy and a girl working in one of the drapery emporiums in the city. Foolishly, with perhaps more pride than good sense, the unfortunate woman refused to let her friends know the actual position. She owns a little home, which, I suppose, in the depressed circumstances of to-day would be valued at £600. Accepting the advice of another woman, she approached one of the money-lending firms in the city with the idea of borrowing £75 with which to pay medical expenses and an undertaker's account. The money was lent to her on mortgage. I have examined the mortgage, and I find that in order to obtain an advance of £75 she was required to pay, in the first place, £15 for 12 months' interest, with repayments at the rates of 25s. per week.

Hon. J. Nicholson: Hefty interest!

Hon. W. J. MANN: I shall state what the interest amounts to. The woman was liable for £90, representing £75 principal and £15 interest. At the end of 12 months she will have paid £65, representing 52 weeks at 25s. per week, and will still owe £25. Then, if she cannot pay the £25 down immediately, she is to be charged 20 per cent. interest until repayment has been completed. Any man with any decency at all would blush to have anything to do with a transaction of that description. I feel certain that the persons responsible for it would not have dared to put it over a man. They pick marks like this unfortunate woman, and bleed them of all they have. I have

had the actual results of the transaction worked out, and I find that taking into consideration that the mortgagee has had the advantage of the woman's repayments from week to week, by the time she repays the whole advance with interest, she will have been charged 22.6 per cent. per annum. It is time we had some legislation dealing with that kind of thing. I do not know whether the case is covered by the Money Lenders Act, but I intend to make some investigation in that direction. If there is anything I can do to bring firms of that sort to book, I shall do it with a great deal of pleasure. As I have said, we have not had much opportunity to examine the Bill, and I would have liked to look into it a little more; but if the Minister and the House desire to bring the measure to finality to-day, I shall support it.

Question put and passed.

Bill read a second time.

#### *In Committee.*

Hon. J. Cornell in the Chair; the Minister for Country Water Supplies in charge of the Bill.

Clause 1—agreed to.

Clause 2—Interpretation:

The MINISTER FOR COUNTRY WATER SUPPLIES: I move an amendment—

That in line 9 of the definition of "Mortgage," between "instalments" and "whether," there be inserted "or otherwise."

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

Clauses 3 to 5—agreed to.

Clause 6—Application of Act:

The MINISTER FOR COUNTRY WATER SUPPLIES: I move an amendment—

That Subclause 2 be struck out, and the following inserted in lieu:—" (2) Nothing in this Act contained shall in any way invalidate or otherwise affect any order obtained by any mortgagor or tenant under the Tenants, Purchasers, and Mortgagors' Relief Act, 1930."

The wording of the amendment is much more suitable.

Amendment put and passed.

The **MINISTER FOR COUNTRY WATER SUPPLIES**: I move an amendment—

That in line 2 of Subclause 3, "lessor" be struck out, and "lessee" inserted in lieu.

The necessity for this is obvious.

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

Clause 7—Mortgagee not to enforce security without leave of court:

Hon. J. NICHOLSON: I move an amendment—

That in paragraph (b) of Subclause 1, the words "or continue" be struck out.

I explained my reasons for this on the second reading.

The **MINISTER FOR COUNTRY WATER SUPPLIES**: Proceedings might have been commenced before the passing of this measure, and the striking-out of the words would mean that such proceedings could not be continued. That is the advice given by the Crown Law Department.

Hon. J. NICHOLSON: When you, Mr. Chairman, were speaking on the second reading, you drew attention to the retrospective phase. I think the view of the Crown Law Department is quite right. Mr. Mann's suggestion is the wisest one—to strike out the words "or continue" and to insert a clause similar to that embodied in the Hire-Purchase Agreements Bill, making the operation of the measure retrospective to the date of its introduction in another place. That would catch the type of gentlemen alluded to by Mr. Mann. But a man who has an honest action should not be stopped, as he might be under the subclause, if he were right on the point of completing his procedure, say in foreclosing. He would have been put to all his expense for nothing. The Government would not repay him what he had spent. He could not recover his expenses out of the property, as to do that he would have to put it up for sale. Moreover, he would suffer the loss of his interest. We could agree to the amendment, and perhaps the third reading of the Bill could be held over while the position was examined. Some limitation could be provided restricting the rights of persons. It could apply as from the time the Bill was introduced in the Legislative Assembly, and that would overcome the difficulty.

Hon. J. M. DREW: From my reading, the Bill does not deal with future mortgages, but to those already in existence. In effect, it represents a partial moratorium. It is well known that when it was first announced that such a Bill was to be introduced, action was promptly taken by many people to call up their mortgages. If the amendment be agreed to, action taken in that respect could be pursued to the end, and there might be hundreds of mortgages affected. That would have the effect of defeating the object of the Bill.

The **MINISTER FOR COUNTRY WATER SUPPLIES**: I hope the amendment will not be pressed; it is wiser to leave the words in the clause.

Amendment put and negatived.

Clause put and passed.

Clause 8—Applications for leave to proceed:

Hon. J. NICHOLSON: I move an amendment—

That at the end of paragraph (d) of Subclause 1, the following words be added:—"and where the money secured by the mortgage is the whole or part of moneys belonging to a trust fund, whether such refusal would unreasonably delay the mortgagee or trustee of such fund from distributing same amongst the beneficiaries or persons entitled thereto."

I have already explained the position fully.

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

Clauses 9, 10—agreed to.

Clause 11—Restriction on rights of creditors to issue execution against land:

The **MINISTER FOR COUNTRY WATER SUPPLIES**: I move an amendment—

That the following new subclause, to stand as Subclause 4, be added:—" (4.) Notwithstanding the foregoing provisions of this section, any such process as aforesaid may be issued in any proceeding in the ordinary form, provided it is endorsed with the words "Not to be executed against land except by leave of the Supreme Court," and such process may be registered, as against land under the Transfer of Land Act, 1893, by entry made in the register book after lodgment of a copy of the process as provided in section one hundred and thirty-three of the said Act, and, as to land not under the said Act, by registration of such process in manner provided by the Ordinance 19, Victoriae No. 14."

Amendment put and passed.

**THE MINISTER FOR COUNTRY WATER SUPPLIES:** I move an amendment—

That the following new subclause, to stand as Subclause 5, be added:—“(5.) For the purpose of calculating any period of time fixed by section ninety or one hundred and thirty-three of the Transfer of Land Act, 1893, or fixed by statute or otherwise as the period after the expiry of which a writ cannot be enforced against land or any particular piece of land, any period during which such writ has been prevented by this Act from being so enforced shall not be taken into account.”

Unless the new subclause be agreed to, the process to be taken would, under the provisions of the Transfer of Land Act, hold good for a period of four months only. That would not enable the legislation to be effective.

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

Clauses 12 to 19—agreed to.

**THE MINISTER FOR COUNTRY WATER SUPPLIES:** I shall report progress at this stage, and the sitting can be suspended for half an hour or so, while the point raised by Mr. Nicholson regarding the retrospective application of Clause 7 is considered.

Progress reported.

*Sitting suspended from 4.55 to 5.30 p.m.*

New Clause:

Hon. J. NICHOLSON: I move—

That the following be inserted to stand as Clause 19:—“No person shall be prevented by this Act from continuing any action or proceeding which he has commenced before the first day of June, 1931.”

In another place the Bill was read a first time on the 9th June. Consequently, to make it clear that the Bill is operative to cases which might have occurred at the time this class of legislation was contemplated, the 1st June will meet the case. Hence the date in the proposed new clause.

**THE MINISTER FOR COUNTRY WATER SUPPLIES:** Dr. Stow, the Parliamentary Draftsman, agrees that this proposed new clause is quite in order.

New clause put and passed.

Title—agreed to.

Bill reported with amendments, and the report adopted.

*Third Reading.*

Bill read a third time and returned to the Assembly with amendments.

*House adjourned at 5.33 p.m.*

**Legislative Council,**

*Tuesday, 11th August, 1931.*

Obituary: Hon. H. Stewart, M.L.C. ... .. PAC 431

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

**OBITUARY—HON. H. STEWART, M.L.C.**

**THE MINISTER FOR COUNTRY WATER SUPPLIES** (Hon. C. F. Baxter-East) [4.33]: At our last meeting, although we knew that Mr. Stewart was very ill, we believed that surgical skill would restore him to health, and we fondly hoped that he would soon be with us in vigorous health, participating in our discussion. But he was not to be, and to-day we are saddened by his death. The deceased was a very earnest member, and will always be remembered for his devoted service to the cause of the primary producer. Mr. Stewart was elected to the Chamber in 1917 and for 14 years faithfully represented the South-East Province. Of a studious nature, he diligently examined all legislative proposals and his scholastic attainments greatly helped him in his membership and endowed him with a wide vision and capacity for depth of inquiry. Those characteristics often enabled him to secure necessary amendments and the House was indebted to him on many occasions for exposing the weaknesses of proposed legislation. The late Mr. Stewart was unswerving in his friendship and his sincerity and honesty were evident in his actions. He possessed a noble character.