There is a linking up with the Department of Agriculture; but if the people in the North-West want a new hospital, a new jetty or something else, I have to go to the Minister concerned. In the circumstances, I do not think that the Ministry for the North-West is a successful one. If I were given £500,000 or £250,000 to play with, it might be a different matter.

Hon. R. M. Forrest: There should be a department of the North-West.

The MINISTER FOR AGRICULTURE: There may be something in that; but on the other hand, if a department were created, there would be a lot of over-lapping with other departments. However, there may be something in what Mr. Forrest says and at the moment I am not very happy about being Minister for the North-West because I cannot do the things I would like to do.

When I was in the North, a little over a year ago, I saw things that needed doing and I had to go to the various Ministers concerned to see whether something could not be done. It was the same old story. I could not control the Minister for Works or the Minister for Health. So I point out to representatives of the North-West the difficulties that face a Minister in charge of that part of the State. I could, of course, ask the Government to lower or raise freights, or something like that, but actually I have very little control over North-West matters.

Hon. R. M. Forrest: Give us some doctors.

The MINISTER FOR AGRICULTURE: I have much pleasure in supporting the motion.

On motion by Hon. A. L. Loton, debate adjourned.

House adjourned at 9.2 p.m.

Legislative Assembly

Tuesday, 4th September, 1951.

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

QUESTIONS.

RICE.

(a) As to Shortage of Local Supply.

Hon. J. T. TONKIN asked the Minister for Supply and Shipping:

(1) Why is the supply of rice so short in Western Australia compared with the amount available elsewhere in Australia?

(2) If it is possible to improve the supply here, will she take immediate steps to bring this about?

The MINISTER replied:

(1) Fifty per cent. of Australia's rice crop is exported oversea. One thousand six hundred tons was allocated to Western Australia by the Rice Equalisation Association for the year 1950-51, but I have not yet been able to ascertain whether we have received the full quantity allocated; neither Commonwealth nor State have control over the distribution in Australia.

(2) Yes.

(b) As to Minister's Opinion.

Hon. J. T. TONKIN (without notice) asked the Minister for Supply and Shipping:

As it is possible to purchase rice in Melbourne by ordinary inquiry at retail grocers' shops, is the Minister satisfied with the position as explained in her answer to my question No. 1 on the notice paper?

The MINISTER replied:

No, I am not satisfied and I am still making investigations. But I would like to point out that no wholesale merchant in Perth has approached me regarding the shortage.

EDUCATION.

(a) As to School Bus Services and Milage.

Hon. J. T. TONKIN asked the Minister for Education:

(1) What is the total number of school bus services in operation?

(2) How many routes being traversed by school buses exceed 30 miles in length?

(3) How many exceed 40 miles?

(4) What is the milage involved in a single trip on the longest school bus route being traversed?

(5) Where is this bus route?

The MINISTER replied:

(1) Three hundred and eighty-eight school bus services.

(2) (a) One hundred and twenty-seven terminal routes;

(b) seventy-three circuitous routes.

A distinction is drawn here because, on a circuitous route, the child only travels the distance of the route each day, e.g., on a 40-mile route he travels 30 in the morning and 10 in the afternoon, if he lives, say, 10 miles from the school.

(3) (a) Twenty-one terminal routes;

(b) forty-three circuitous routes.

Regarding 21 terminal routes exceeding 40 miles, very few of the children travel such distance, the extra length usually being the result of extensions to serve some child or children living further out. Only these children travel the extra distance either way.

(4) Forty-seven miles.

(5) Coorow-Marchagee service; and Brookton West service. The remarks on question (3) have particular application to such routes as these. For instance, the Coorow-Marchagee route was 34 miles, but one parent—although many miles beyond the terminus—was anxious for his children to be transported, and they are the only ones affected by the extra travel. The department, notwithstanding the considerable additional expense, agreed so as to give such children better educational opportunity.

(b) As to New School, Mt. Pleasant.

Hon. J. T. TONKIN asked the Minister for Works:

When is work likely to be commenced on the erection of a new school at Mt. Pleasant for which Treasury approval has been given?

The PREMIER replied:

Tenders will be called in one month.

FREMANTLE HARBOUR.

As to Dredging and Effect on River.

Mr. GRAYDEN asked the Minister for Works:

(1) Will it be necessary to dredge the river between Point Brown and the present railway bridge in order to extend the Fremantle harbour upstream?

(2) If this area is to be dredged, will it not be necessary to build some form of retaining wall upstream to prevent silting-up of the dredged section?

(3) If such a wall is built, will it not impede the flow of seawater upstream?

The PREMIER replied:

(1) Yes.

(2) No.

(3) Answered by (2).

FREMANTLE BRIDGES.

As to Removal and Reconstruction.

Hon. J. B. SLEEMAN asked the Minister for Works:

(1) Is he aware that in "The West Australian" of the 6th June, 1951, the subleader stated that the Minister for Transport had said that the re-alignment of the traffic bridge would be deferred, if necessary, until about 1966, and would be completed in 1972; and that in "The West Australian" of the 7th June, 1951, a photo. was published with the statement that the traffic bridge would not be disturbed until the end of its useful life?

(2) Is he further aware that in the Legislative Council on Tuesday last, the Minister for Transport said that next year, after the completion of surveys by the consulting engineering firm, the actual and urgent work of moving the existing road and railway bridges would be commenced and completed as soon as possible?

(3) In view of these conflicting statements, will he tell the House which of the two reports is correct?

The PREMIER replied:

(1) Yes.

(2) Yes.

(3) Subject to review after the surveys have been completed, it is proposed that immediately after the designs have been completed a new railway bridge will be constructed at Point Brown, and the railway crossing over the river diverted to Point Brown. The existing railway bridge will then be demolished and berths will be extended upstream. Construction of a new road bridge at Point Brown will be so timed that it will be completed when expansion of the harbour will require the removal of existing road bridge in order to provide additional berths.

BRICKS.

(a) As to Reduction in Supplies to Small Builders.

Hon. J. T. TONKIN asked the Minister for Housing:

(1) What is the explanation of the very serious reduction in supplies of bricks to builders in a comparatively small way of business during the past two months?

(2) As the Government refused an inquiry into the production and distribution of bricks, what action, if any, does it propose to take to prevent these builders from being forced out of business?

The MINISTER replied:

(1) The reduction in supplies of bricks to contractors during recent months has been general and is partly due to winter conditions which seriously affect production and drying. The position has been further aggravated by the ever-increasing demand for bricks for house building and industrial and other works.

(2) The Government is giving the question of increased brick production constant attention. A new State wire-cut works, with an estimated production of six million bricks per annum, is being established at Armadale and will be given a trial run within the next week or two.

New works for the production of pressed bricks are being erected by the State Brick Works and should come into operation next year.

In addition, technical and financial assistance is being rendered brickmakers to encourage the expansion of brick production and the establishment of new works.

(b) As to State Works, Release and Delivery.

Hon. J. T. TONKIN asked the Minister for Housing:

(1) On what date was the order for bricks lodged with the State Brick Works for the supply of bricks on the "release" dated the 4th August, 1950, in the name of R. W. Stevens?

(2) What was the time-lag in deliveries at the State Brick Works when the above order was lodged?

(3) On what date was the first delivery of bricks made against the "release" of R. W. Stevens?

The MINISTER replied:

(1) The 7th August, 1950.

(2) Six to eight months.

(3) The 28th May, 1951.

(c) As to Quality and Price.

Hon. J. T. TONKIN asked the Minister for Housing:

(1) Has he received any complaints about the extremely poor quality of bricks being supplied by some brickyards?

(2) If so, what action has been taken to have improvement effected?

(3) Has any consideration been given to the idea that the price of bricks should have some relation to their quality?

The MINISTER replied:

(1) Yes.

(2) Every possible assistance has been rendered by the Commission with a view to improvement of quality and production. Arrangements have been made for advice by the Commission's technical officer and by technical officers of the C.S.I.R. organisation who have on several occasions, and as recently as last month, visited and advised the various brickworks on problems associated with brick production.

Assistance has also been rendered in the location of suitable clay deposits. Requests for urgently-needed materials, plant and equipment have been sponsored by the Government and the Commission and finance has been provided for the greater mechanisation and improvement of the industry.

(3) Yes, in conjunction with other factors.

(d) As to Trade Allowances by State Works.

Hon. J. T. TONKIN asked the Minister for Housing:

(1) Have the trade allowances of bricks which were established for certain clients of the State Brick Works during the period of decontrol been maintained?

(2) How many contractors are in this privileged position, and what quantity of bricks per month is so allocated?

(3) If T. W. Lees was able to build a house with bricks obtained under a trade allowance and without having to draw bricks on the permit issued for such house, why was his name not included in the list of established clients which the Minister supplied to Parliament on the 14th August?

(4) What are the names of other established clients omitted from the aforementioned list?

(5) What percentage of the monthly output of bricks from the State Brick Works for the months of May, June and July was distributed to clients such as self-help and other builders who are unprivileged as to allocation and are entitled to draw supplies only according to date of lodgment of orders?

The MINISTER replied:

(1) During the non-control period, orders were accepted by the State Brick Works on production of permits only.

(2) Answered by (1).

(3) T. W. Lees is a client of the State Brick Works who obtains delivery of bricks strictly on releases.

(4) As far as is known, there were no established clients omitted from the list.

(5) May, 30.558; June, 33.614; July, 30.718; average, 31.556 per cent.

GAS AND ELECTRICITY.

As to Tabling Graph of Comparative Costs.

Hon. E. NULSEN asked the Minister for Works:

Will he table a graph showing the comparative cost of gas and electricity to ordinary householders in Perth and suburbs and in other capital city areas in other States?

The PREMIER replied:

Yes. The necessary information is now being obtained.

TOWN PLANNING.

As to Impediments to City Council's Scheme.

Mr. TOTTERDELL asked the Chief Secretary:

(1) In view of the reply made by him to the member for Canning (Mr. Griffith) that a notice had been served on the City Council in June, 1939, in connection with town planning, would he agree to table the papers in connection with this matter?

(2) Is he aware that there are factual impediments to the council's preparation of a planning scheme because of the proposals of the Railway Department to triple the size of the present railway station after the goods marshalling yards have been removed?

(3) Can he advise the House whether the Government has expressed any objection to the council's zoning proposals, apart from the desire to constitute the Minister for Local Government as a controlling authority?

The MINISTER FOR EDUCATION replied:

(1) No, but I would point out to the hon. member that the question he refers to was asked by the member for North Perth. The document referred to in answer to that question was written by Hon. Mr. Millington in November, 1938, and confirmed on the 27th June, 1939.

(2) This department knows of no such proposal and, in any event, there was no such proposal in 1939.

(3) Yes, because zoning by bylaw is open to the serious objection that it does not provide the safeguards for ratepayers which are available under a town planning scheme. Zoning proposals, in respect of which objections by ratepayers were not upheld and approved by the Minister, could be work No. 1 under a town planning scheme.

WATER SUPPLIES.

As to Use of Attadale Bore.

Hon. J. T. TONKIN asked the Minister for Works:

When the bore which is being put down at Attadale is completed, will the water drawn therefrom be caused to flow through the mains which take the supply to the wharves at Fremantle?

The PREMIER replied:

Yes. The water supplied to the wharves at Fremantle from Melville service reservoir will be a mixture of hills and bore water. The water now being supplied to the wharves at Fremantle in the summer months at certain periods from Mt. Eliza service reservoir is a mixture of hill and bore water.

CEMENT.

As to Establishment of Additional Works.

Hon. A. R. G. HAWKE asked the Premier:

(1) Is the Government taking any action to establish, or to encourage the establishment of, another industry in Western Australia for the production of cement, with a location outside the metropolitan area?

(2) If not, does the Government intend to make any effort in that direction?

The PREMIER replied:

(1) and (2) The position in regard to the production of cement is now under consideration.

HEALTH.

As to Infection from River Bathing.

Hon. J. B. SLEEMAN asked the Minister for Health:

(1) Is she aware that numbers of children who swim in the river during the dry season contract throat and ear troubles, but are not troubled when bathing is confined to the beaches?

(2) If she is not aware of this, will she have inquiries made through the medical profession in the Fremantle district with a view to ascertaining the cause of infection?

The MINISTER replied:

(1) To my knowledge there is no indisputable evidence that throat and ear trouble is more prevalent in river bathers than sea bathers.

(2) If the hon. member will produce such evidence, I will endeavour to have the matter investigated.

COMMONWEALTH-STATE FINANCIAL RELATIONS.

As to Report of Treasury Officials.

Mr. NEEDHAM asked the Premier:

(1) Have the Treasury officials of the respective States yet completed their inquiries into the problem of the financial relations between the Commonwealth and the States?

(2) If so, when will the proposed conference between the Prime Minister and the Premiers be held to consider their report?

The PREMIER replied:

(1) Yes.

(2) The report was discussed at the recent Premiers' Conference, but another conference will be necessary to consider the report more fully. Such a conference will have to be convened by the Prime Minister.

AVON RIVER.

As to Dredging at Northam.

Hon. A. R. G. HAWKE asked the Minister for Works:

What progress has been made to date with the manufacture of the dredging plant to be used for the purpose of improving the Avon River at Northam?

The PREMIER replied:

A contract was let in May last to Hume Steel Ltd. for construction of dredging plant pontoon and floating pipeline. Construction is proceeding.

HOSPITALS.

As to Northam Regional Site.

Hon. A. R. G. HAWKE asked the Minister for Health:

(1) Has a final decision yet been made regarding a site for the proposed new regional hospital at Northam?

(2) If not, when is a decision likely to be made?

The MINISTER replied:

(1) No.

(2) I am informed that investigations by the Public Works Department are almost complete, and I expect to receive a report upon several sites within the next few weeks.

COAL.

(a) As to Development Work, Collie.

Mr. MAY asked the Minister representing the Minister for Mines:

(1) Will he advise the cost to date of driving the new Neath tunnel at Cardiff?

(2) Will he also advise the cost of all new buildings adjacent to the Neath tunnel?

(3) What is the cost to date of driving the new tunnel at the Co-operative Mine?

(4) What is the cost to date of the new 21 locomotive road, Proprietary Mine, also the cost of the stone drive to the bottom seam at the same mine?

The MINISTER FOR HOUSING replied:

(1), (2), (3) and (4) This information is of a confidential nature between supplier and purchaser.

(b) As to Open-cut Costs, etc.

Mr. MAY asked the Minister representing the Minister for Mines:

(1) Will he give a comparison of the costs and tonnage of coal won from the Black Diamond and Stockton open-cuts?

(2) Is it his intention to approve another open-cut site to Western Collieries Ltd., before that company produces coal from its proposed deep mine at Shotts?

The MINISTER FOR HOUSING replied:

(1) As indicated in reply to the question asked by the hon. member on the 14th August last, costs of producing coal from individual mines or open-cuts are not available to the Government.

(2) When consideration is given to this matter, a decision will not be made without prior consultation with all parties concerned.

LATE SIR JAMES MITCHELL.

As to Suggesting Commemorative Postage Stamp.

Mr. HOAR (without notice) asked the Premier:

In view of the fact that a number of new stamps have recently been issued, has he made any progress with the Commonwealth Government in his effort to have a stamp issued in honour of the late Sir James Mitchell?

The PREMIER replied:

I have written to the Prime Minister in regard to the stamp as suggested by the hon. member.

BUTTER.

As to Price Over-charging.

Mr. GRAHAM (without notice) asked the Attorney General:

Is he prepared to submit a statement to the House in connection with the flagrant over-charging for butter which

took place on Saturday and which probably continued yesterday, with particular reference to what action it is proposed to take against the people who over-charged?

The ATTORNEY GENERAL replied:

The Prices Branch is investigating and checking up these complaints, and prosecutions will follow where breaches of the Act are discovered.

HOUSING.

As to Error in Home-building Figures.

Hon. J. T. TONKIN (without notice) asked the Minister for Housing:

In "The West Australian" of the 3rd September there appeared this big heading, "Rise of 68 per cent. in Home-building Figures." There immediately followed some figures which indicated that the arithmetic was sadly astray. The Minister hastened to correct that the following day and there appeared this statement—

> Housing Rise Percentage.
>
> The Minister for Housing expressed regret yesterday that an increase of 68 per cent. instead of 47 per cent. had been announced in the number of houses completed in the State for the 12 months ended the 30th June last.

As the mistake was so obvious and it appeared in the first instance as though the statistician had been responsible for the percentage, could the Minister state whose error it was—an error on the part of the statistician; or on the part of the Minister; or on the part of someone in the Minister's department?

The MINISTER replied:

It was the Minister's error and I corrected it immedately the matter was drawn to my notice.

BILL—PROTECTION OF TRADE.

Introduced by Mr. Grayden and read a first time.

BILL—PUBLIC BUILDINGS ACT (VALIDATION OF PAYMENTS).

Second Reading.

THE PREMIER (Hon. D. R. McLarty—Murray) [4.51] in moving the second reading said: The purpose of this Bill is to validate the payment into Consolidated Revenue of certain moneys which, under the Public Buildings Act, 1937, should have been paid into a special fund. The Public Buildings Act of 1937 was passed with the object of enabling the Government to borrow money from the State Government Insurance Office to finance the erection of Government offices. The Act provides that certain Government lands in the metropolitan area may be leased and the rentals from those leases paid into a fund known as the Government Buildings Leasing Revenue Account, out of which would be met interest charges on the sum borrowed from the State Government Insurance Office.

Mr. Marshall: In what year was that Bill introduced?

The PREMIER: It was introduced in 1937 by Hon. J. C. Willcock. But for that Act the rentals would be paid to Consolidated Revenue. The lands which were to be the subject of leasing are set out in the schedule to the Act. The Public Buildings Act, 1937, also provides that the Governor may appoint a committee of five officers of the Public Service to advise him in relation to the leasing of the lands and the location of the erection of the buildings for public offices of the Government.

When the Act was passed it was understood that until the committee was appointed any revenues from the leasing of the lands listed in the schedule would be paid to Consolidated Revenue in the ordinary way. A subsequent communication from the Solicitor General revealed that after the passing of the Act all revenues from the leasing of the lands had to be paid into a special account that has already been referred to. The purpose of the Public Buildings Act of 1937 was to provide money for the erection of public offices at a time when loan moneys were difficult to obtain, and it was felt that this method would enable use of about £300,000 of reserve moneys belonging to the State Insurance Office to be made without such money being deemed to be borrowings within the meaning of the Financial Agreement.

With the advent of the war it was not possible to proceed with the erection of those Government buildings and now, on account of the extreme urgency of meeting the housing shortage, it will not be possible to proceed with the erection of large Government offices for some years to come. In the meantime it has been necessary to lease some of the lands listed in the schedule to the Public Buildings Act.

The State Insurance Office money has since been invested in Commonwealth bonds and, as the Government does not intend to finance the erection of the public buildings according to the methods contemplated by the Public Buildings Act of 1937, it has been decided to repeal that Act and the Bill necessary for that purpose will be introduced after the present Bill has been disposed of. In the meantime it is necessary to validate the payment to revenue of the lease rents of properties listed in the schedule to the Public Buildings Act, and to authorise the payment of such rents into revenue until such time as the Public Buildings Act has been repealed.

Mr. Marshall: Then you have given up all hope of having these public buildings erected?

The PREMIER: No, the introduction of this Bill does not convey that meaning.

Mr. Marshall: I think it does.

The PREMIER: No. We still have the reserve—as the hon. member knows—which is part of Government House land and it is expected that one day Government buildings will be erected on that land. As the hon. member also knows, the conditions that apply today make it extremely difficult to go ahead with such building. When the then Premier, Hon. J. C. Willcock, introduced this legislation, the sum of £300,000 was mentioned as the amount to be borrowed from the State Government Insurance Office. In those days a considerable amount of accommodation in public buildings could have been provided for that sum.

Hon. A. H. Panton: It would not build garages for them today.

The PREMIER: As the member for Leederville has indicated, it would not go very far today, but I assure the member for Murchison that this Bill will in no way prevent public buildings being erected on that reserve if the Government of the day considers the time opportune to build them.

Mr. Marshall: But if this Bill becomes and remains law, it will not be possible for you to build up a reserve of funds with which to construct the public buildings when labour and material are available. You will have to take this money into Consolidated Revenue and use it. When you are ready to build, you will not have the money.

The PREMIER: The reason for the introduction of this Bill is that these moneys are now being paid into a reserve fund which cannot be touched and where no interest is being earned. It is not much use to have dead money lying there, and it would be better for it to be used. The member for Murchison says that when the time comes we will not have any money for these buildings, but, as he knows, public buildings are now provided from loan funds and I presume we will have to go on borrowing as long as the hon. member or I are on this earth.

Mr. Marshall: There is no doubt that you will have to borrow.

The PREMIER: There should not be any trouble in regard to future building, on account of loan moneys.

Mr. Styants: What sum is in this fund?

The PREMIER: I asked for that information but have not received it yet. I will obtain the figures for the hon. member. It is a comparatively small sum. I think only two pieces of land have been leased, one at Irwin-street, where the R.S.L. headquarters building is, and the other at the corner of Hay and Colin-streets, where a girls' school has some tennis courts.

Hon. A. H. Panton: I think the Government gave the R.S.L. the land for Anzac House.

The PREMIER: That is so; that is the land adjoining that site.

Mr. Marshall: Would it not be more wise to invest this money in Government securities and let it grow until the time comes when you are ready to build Government offices, rather than pay it into Consolidated Revenue?

The PREMIER: The £300,000 which was held by the State Government Insurance Office has been invested, as I have already stated, in Commonwealth bonds.

Mr. Marshall: It was taken out of the mining industry in the first place.

The PREMIER: There was pressure on Governments of those days to subscribe to Commonwealth bonds and where there were funds accumulated in relation to superannuation and so on or funds such as this, it was thought desirable that Governments which had money on hand should put it into Commonwealth bonds. That is what happened in the case of this £300,000.

Mr. Marshall: That is earning money now.

The PREMIER: Yes.

Mr. Marshall: But you want to take it into Consolidated Revenue and use it under the provisions of this Bill.

The PREMIER: It would take an extremely long time to accumulate much from the interest on bonds.

Mr. Marshall: If it goes into Consolidated Revenue, it will never accumulate anything.

The PREMIER: By going into Consolidated Revenue, it will be put to some use. If it is not taken into Consolidated Revenue, it will remain where it is at present earning nothing and no use being made of it.

Mr. Marshall: You can make it earn interest; there is nothing to stop you doing that.

The PREMIER: The amount available is so small that it would go no distance at all in providing for this work.

Mr. Marshall: Once it goes into Consolidated Revenue—right in the chest! God send you back to me!

The PREMIER: I suggest that the hon. member should obtain the adjournment of the debate because I think I have fully explained the reasons why the Bill should be introduced. I move—

> That the Bill be now read a second time.

On motion by Mr. Marshall, debate adjourned.

BILL—PUBLIC BUILDINGS ACT REPEAL.

Second Reading.

THE PREMIER (Hon. D. R. McLarty—Murray) [5.2] in moving the second reading said: I have said all I can say about this Bill in introducing the measure preceding it.

Mr. Marshall: They are cognate matters; they should have been introduced together.

The PREMIER: That is quite true, and there is nothing I can add to the comments I have already made on the previous Bill.

Mr. Marshall: You could have introduced the two together.

The PREMIER: Could I? I did not know that.

Mr. Marshall: Mr. May could have told you.

The PREMIER: The reason why I introduced the Bill is that it is necessary to repeal the Public Buildings Act of 1937. I move—

> That the Bill be now read a second time.

On motion by Mr. Marshall, debate adjourned.

BILL—INCREASE OF RENT (WAR RESTRICTIONS) ACT AMENDMENT AND CONTINUANCE.

Message.

Message from the Administrator received and read recommending appropriation for the purposes of the Bill.

Second Reading.

THE MINISTER FOR EDUCATION (Hon. A. F. Watts—Stirling) [5.3] in moving the second reading said: Acting on behalf of the Chief Secretary, I propose to move the second reading of the Bill. At the outset I would like to say that the measure introduced in 1950 and subsequently passed in an amended form to become an Act, aimed at four major things. The first, and I think the most important, was to provide the owner of a dwelling-house, who was in need of it for his own residence or for his married son or daughter, the power to obtain possession easily. This was, of course, conditional on residence in Australia for two years and ownership of the premises for a specified period.

The Government believed at the time that this was belatedly returning a fundamental right to a number of people, who, in many cases, had suffered more inconveniences and hardship than the tenants who had occupied their homes, and this Bill, so far as the owner himself is concerned, does not seek to abrogate or diminish that right of repossession to any degree. As I said, the Bill, as introduced in 1950, was intended to restore certain rights and the Government is not prepared to abandon the principle which was intended to be laid down by that measure.

The second thing that the 1950 Bill, as introduced, sought to do, was to clarify the definition of what is known as "shared accommodation" and to ensure that an owner sharing premises with another person should, on certain conditions, automatically be able to evict such tenant. I think the third proposition was to include leave and license to occupy in the meaning of the term "lease." If members will look at the front of the Bill which was introduced in 1950, they will find that there were a couple of paragraphs which dealt with that aspect of the matter. I think item number four, which was of most major importance, was to enable the standard rent to be increased by a reasonable percentage. There were also provisions to adjust the rights of protected persons, namely, certain ex-service men and their dependants or those on active service.

For the purposes of this Bill the question of increase or otherwise of the standard rent and the question of protected persons can be quite disregarded because they are not mentioned in the measure. There are provisions in the Bill, if it becomes an Act, which will not in any way affect the provisions of those two matters which were inserted in the 1950 Act. I would also remind members that the 1950 Bill, as introduced, made no provision for the easy repossession of premises that were not dwelling-houses, for example, shops and business premises.

I would say, too, that had the Bill been passed as it was introduced, it is unlikely that some of the needs which have given rise to the present measure would be so apparent, but perhaps I can deal with those aspects better later on. I think members will agree, too, that in normal circumstances the provisions of the Act, even as amended by the 1950 statute, would also certainly not be on the statute book at all, for, in those normal circumstances, the Government would be anxious to restore the normal conditions which existed between landlord and tenant prewar and permit their ordinary relationship to be restored.

So it is due to circumstances over which no member of this Parliament—I think I can truthfully say—has any control, that in some ways there exists today an abnormal state of affairs. Perhaps I can make some reference to those points so that members will understand more clearly what I have in mind. The first is the rate of population increase which last year in Western Australia rose to 52 per thousand or 5.2 per cent. as against an Australian average, I understand, of 3.8 per cent. The next was some quite unanticipated court rulings which have put a new complexion on some of the phraseology of the 1950 Act.

Those unforeseen rulings are, I think, the major reason why this important legislation is before members, because they have given us unpleasant probabilities as a result. I think we must also take into consideration the effect of the amendments which were inserted by members of Parliament after the 1950 Bill had been introduced; some of them after it had left this House; some of them as a result of the conference between the managers from the two Houses. I suggest that all those three factors have to be taken into consideration. On the one hand, we must consider the necessity for the continuance of this type of legislation—and I refer there more particularly to the population increase phase—and, on the other hand, we must consider what type of amendments should, or can, be made to the legislation as it now stands, primarily with a view to restoring the position—as I see it—to what was intended by Parliament when the 1950 Act was passed.

But before I go on I think I might give members the figures which have been supplied to me in regard to the population increase and contrast them with the prewar figures, which I have also obtained. Prewar, that is 1928, the natural increase gave us an added 4,925 persons and migration 1,130, making a total of 6,055 for the year, or about 1.2 per cent. of the then population. Last year, 1950, the natural increase gave us 9,170 persons, and migration 19,686 persons; a total of 28,856 persons, or about five times as much as the prewar rate.

Hon. J. T. Tonkin: When you say "last year," do you mean the calendar year?

The MINISTER FOR EDUCATION: Yes. Those are the figures supplied to me. The reason why the figures for the financial year were not supplied was, I think, because the information was not to hand for the months between March and June. I suggest that, on the one hand, we pay due regard to the needs of the owners deprived of their normal rights and ensure them the means to obtain their rights in every appropriate case, and at the same time ensure that the best use is made of the housing accommodation available, as we aim to ensure the best use of our other resources. In the present very strenuous times these are very considerable difficulties.

It is perhaps desirable, too, to see that individuals do not unduly profit by reason of these abnormal facts and at the expense of the public. When I use the word "public," I refer not only to the people but also to the Government which acts for them and represents them, because there can be repercussions associated with these problems which would have a very substantial effect upon the resources of the State itself and the expenditure which any Government might be obliged to contemplate in order, to some degree, to provide a remedy if the situation got out of hand.

As I think will readily be observed, it will take me some little time to explain to the House the amendments and the problems which have given rise to the necessity for those amendments, and the close and careful attention given by the Government to them in an effort to hold the scales of justice fairly between two extremely conflicting points of view—and unquestionably there is a considerable divergence of opinion regarding some matters at any rate which are associated with the problem. I think, too, that Parliament should endeavour to the utmost of its ability to ensure that practical legislation is placed upon the statute book. We must recognise that the problem bristles with difficulties; at the same time, I feel that a well-balanced judgment should be brought to bear on some of these questions. If we are not prepared to apply that to the whole of this legislation, I am satisfied that no reasonable solution will be found for one or two of the difficulties involved in this equation.

I should like to say again, though I think I have made some reference to it, that the Government proposes that the spirit and intention of the 1950 amending Act, as introduced here more particularly, should be adhered to. It has no intention of going back on what I call the spirit and intention of that legislation.

Hon. E. Nulsen: The amendments will not in any way have retrospective effect?

The MINISTER FOR EDUCATION: I shall explain the details. There is one item of semi-restrospectivity without which, in my opinion, it will be almost useless to pass it. With one exception, the amendments are directed towards the state of affairs to which I have just referred.

The exception relates to business premises where some peculiar conditions apply. By various means and by lawful means, so far as the different interpretations are concerned, I think it can be stated that the spirit and intention of the 1950 Act has been departed from. For example, I venture the suggestion that every member of this House had formed the opinion that the word "requires," as used in the Act in relation to the obtaining by an owner of premises for his own use or for the use of his married son or daughter, reasonably acknowledged the need on the part of the owner to obtain that possession.

Cases were cited at the time that owners kept out of possession of their dwellings were obliged to live with their families in rooms or a hotel or something of the sort, but the interpretation placed on the word "requires" by the court was to give it merely the effect of a wish to have possession, and this, of course, enabled many demands to be made for repossession which were by no means on all fours with the cited cases. If members accept my postulation in the matter, then those demands were not on all fours with what Parliament intended.

When the first court ruling was given as to the meaning of the word "requires," the Government was approached to ascertain whether it would be prepared to support an appeal to the Full Court for a determination by that superior authority on the meaning of the word, and it will be remembered that we agreed to do so. I think it will be realised that, at that time, in the opinion of the Premier and of the Government, there was justification, as in my opinion there has been all the time, for the belief that the word "requires" meant more than the mere wish to obtain.

As everyone knows, the result of the application to the Full Court was merely to confirm the judgment of the inferior court. So there we have one difficulty with which Parliament must now be prepared to deal—whether the interpretation by the court of the word "requires" carries out what Parliament believed it was doing in 1950, or whether it goes further. Parliament believed that the word, as used in the 1950 Act, implied a considerable measure of need, and the Bill now before us, in my opinion, takes action accordingly.

The next matter that exercises my mind is this: The Act contemplated the relationship of lessor and lessee. While it may be true that the layman's conception of "lease," and perhaps even the professional conception of "lease," involves a formal written document, and although the parent Act and last year's amendment disposed of that idea and permitted oral arrangements to be termed leases, nevertheless, they all preserved the relationship of landlord and tenant or, better still, of lessor and lessee.

What is the particular qualification that a lessee has in relation to premises he takes from a lessor? Surely it is the right of exclusive occupation. As I mentioned earlier, the Bill in 1950 provided that the term "lease" used in the parent Act, and covering oral as well as written agreements for lease or tenancy, should also cover leave and license to occupy. "Leave and license" has not the same meaning as "lease"; it does not imply exclusive occupation, and can be subject to other conditions that are not implicit in the relationship of lessor and lessee.

But the particular paragraph which embodied that in the statutory definition of "lease" in the parent Act was removed from the Bill before it passed. I understand it was thought that Sections 18C and 18D of the parent Act would cover the point if evasion by such means was contemplated. Perhaps I had better read the provisions of those two sections—

> 18C. No covenant or agreement (whether entered into before or after the commencement of this Act) shall have any force or effect to deprive any lessee of any right, power, privilege or benefit provided for by this Act or the regulations in operation pursuant to the provisions of this Act.
>
> 18D. A person shall not enter into or make any contract or arrangement, whether orally or in writing, for the purpose of, or which has the effect of, in any way, and whether directly or indirectly, defeating, evading, or preventing the operation of this Act or the regulations in operation pursuant to the provisions of this Act in any respect.

The difficulty now apparent came to a head on the 15th June, when one Elizabeth McCombe, brought an application before the Full Court for an order of prohibition against the rent inspector to prevent him from proceeding with a determination of a fair rent on the principal ground that her tenant was not a lessee but a licensee and therefore outside the scope of the Act. The Full Court of the Supreme Court apparently upheld that view. I had best summarise the matter by reading the views of the Crown Solicitor as supplied to the Chief Secretary subsequent to the hearing—

> 1. These applications to make absolute certain orders nisi for prohibition and certiorari came on for hearing before the Full Court of the Supreme Court on Thursday last, the 15th June. Mr. L. D. Seaton, K.C., and Mr. A. Dodd appeared for the applicant, Mrs. McCombe, and I appeared on your behalf. After hearing argument, the court made the orders absolute with costs against you and the other respondents.
>
> 2. The court held that, where the parties reduce their agreement to writing, it is not permissible to bring other evidence to show that the real relationship between the parties is one that is inconsistent with the relationship set out in the written agreement. They therefore held that, where the parties to an agreement by which one party is permitted to occupy certain premises of the other, unequivocally state in such written agreement that the relationship between them is that of licensor and licensee, it is impossible, so long as there is in the agreement no term or condition inconsistent with such a relationship, to argue that the circumstances show that the parties were in fact landlord and tenant.
>
> 3. That was enough to dispose of the cases, but the court went out of its way to reaffirm the decision of the Chief Justice in the case decided earlier this year, to the effect that the real test as to what constitutes "a dwelling complete in itself" is that laid down by the English cases under the English Rent Restrictions Act as the principle for determining whether premises are let "as a separate dwelling," and refused to apply the principle enunciated in the recent Victorian case of Cliffe v. Ryan, (1949), A.L.R. 1032. In effect, the court held that the shar-

ing of conveniences such as lavatory, laundry and bathroom would not prevent the remainder of the premises, of which the occupier had exclusive possession, from being "a dwelling complete in itself," so long as no "living room" such as a kitchen or lounge room was shared. The Chief Justice even went further and stated that, in view of some of the statements made in the judgments recently delivered in the House of Lords in Baker v. Turner (1950), 1 A.E.R. 834, even where a landlord permitted a tenant to use in common with himself or other tenants such living rooms, there would be no shared accommodation. Personally, with all respect, I think this dicta goes much too far, as if it were correct, there would practically be no such thing as "shared accommodation."

4. In any case, the result of these decisions is to leave the way open for wholesale evasion of the Act. It is not merely the "shared accommodation" provisions that can be evaded, but the whole protection given by the Act against increase of rents and eviction of tenants. By entering into written agreements for a license to occupy premises, even complete and separate houses, the owner of such premises can oust the jurisdiction not only of the Rent Inspector but also of the Local Court and the Supreme Court because, if the occupier is merely a licensee, there is no relationship of landlord and tenant and the Increase of Rent (War Restrictions) Act will have no application to any such arrangement.

From that, I think it will be clear that it was desirable to include in the 1950 legislation, as was originally proposed, the leave and license provisions in the definition of "lessor"; and that it is now equally desirable that reconsideration at least should be given to the question of leave and license being included in the definition of "lessor." In my opinion, it is essential that it be done.

In the 1950 Act, turning to another aspect, it was provided that the lessor of shared accommodation, who personally occupied portion of such accommodation, might give to a lessee thereof, if unmarried, two months' notice, and if married six months' notice, and that at the end of such periods the protection afforded by the parent Act in respect of those premises should cease. That was the effect of the provision inserted in the 1950 Act. I think it will be clear to most members —it certainly was to me—that that was intended to apply to the lessor of a dwelling who, having allowed another person to occupy portion of it, desired the whole premises for his own occupation.

That, I think, was a reasonable proposition, namely, that a house shared with another should be returned to the owner, if he desired it, within the time laid down. But in the result it has been used for notices of eviction to be given to large numbers of people resident in premises designed for the occupation of many families. All that seems necessary to enable action to be taken under this section is for the owner to occupy one room or flat in a building consisting of dozens of rooms or flats, and then to give notice to all the other tenants to quit.

In one place it is reported that on these grounds notice was given to as many as 38 tenants, and in another, 10 or 12 families who had occupied the premises for long periods, faithfully paying the rent, were given notice. While it is beyond me to prove the reasons for this wholesale action in such cases, I, of course, necessarily seek for the reason. It surely cannot be a desire to occupy the whole premises because there might be 100 rooms involved, and at least there would be many more rooms than any one family would be likely to occupy, so there must be some other reason.

It seems reasonably clear that it was done to enable fresh tenancies to be created, to which tenancies the provisions of the Act would presumably not apply because of the provisions of Subsection (4) of Section 14. This subsection provides that the Act shall not apply to premises in respect of which a lease was entered into after the 31st December, 1950. Alternatively, it might have been with the idea of substituting, as in the McCombe case, an agreement for leave or licence instead of the lease contemplated by the parent Act, in which case, as I have endeavoured to indicate by quoting the McCombe case and the Crown Solicitor's opinion, the Act would virtually be non-existent and tenancies could be terminated, changed, rents increased abnormally, or anything else done, without having recourse to the Act or its provisions. The rental provisions of the Act would, of course, cease to apply, and there would be no limit imposed on the arrangements that could be made between the parties, voluntarily or otherwise.

So this Bill seeks to limit the power to give that notice to where one tenant is sharing the premises with an owner so as to ensure the owner, in such a case, the right of sole occupation, which I suggest is what was originally intended. The effect of notices given in the circumstances I have outlined is nullified by the Bill if it would not have been competent for such notices to have been given if this Bill had been in force and the tenants had not actually quit. That means, of course, that if the provisions which we now propose to insert in the Act, had been in it all the time, the notices I have been complaining about—the notices of eviction—could not in these circumstances have been given. They are to be nullified by the provisions of this measure provided the tenants concerned have not actually quit the premises. In

regard to the last mentioned, I think it will be apparent that the Bill could not seek to reinstate an already departed tenant.

Hon. J. T. Tonkin: That is one pity why the Bill was not brought down earlier. It might have affected a large number of people.

The MINISTER FOR EDUCATION: I think that difficulty has been obviated to a considerable degree because I believe that very few of these persons who have been given notice have departed. Large numbers, to my knowledge, have either taken action through the courts to ascertain the correct interpretation, or alternatively, have waited to see what the effect of this measure might be. The insertion in the Act of 1950 of the provision that the benefit of the Act should not apply to leases entered into after the 31st December, 1950, was with a view of giving no protection to new tenants, but, as will have been seen by my earlier remarks, it needs clarification.

Thus, if the Bill is passed there will be no protection to tenants who first occupied the premises after the 31st December, 1950, or who did not occupy them for twelve months prior to that day. This will prevent old tenancies being terminated for no other reason than that it is intended to re-let to the same or some other tenant on better terms—in either case evading the spirit and intention of the Act. I have already referred to the interpretation of the word "requires." The Bill seeks to change this word to "reasonably needs."

This follows the wording of the legislation in force in South Australia, and is intended to put the magistrate upon inquiry as to the facts of the case, subject to one qualification which I will mention in a moment. This will be qualified in one respect, and that is in the case of an owner himself who, at the time of giving notice, did not occupy a house owned by him. In that case, such owner will be entitled to possession without further inquiry. This follows what I have already said, that the Government regards as paramount the right of such owner to occupy his dwelling and not be compelled to occupy makeshift premises elsewhere, and be debarred from obtaining possession of his own home. Notice to give possession of an owner's dwelling to his married son or married daughter will, however, be subject to the inquiry by the magistrate as to reasonable need. A similar right is being inserted in the Bill in favour of the father and mother of the owner.

Mr. Graham: Do not you think provision for a wife should be inserted there?

The MINISTER FOR EDUCATION: Presumably the wife lives with the owner; if not, I am afraid I have no feelings on the subject. I think all members will agree that it is unfortunate that the word "require" was interpreted as it was. I suggest that it cannot, in general, be stated that an owner already living in one house, his own property, and merely having a wish to move to some other dwelling owned by him—perhaps one out of many—is necessarily entitled to evict his tenant automatically. It is, in such a case, not unjust that he should show some reasonable need which, it is claimed, was the original intention of the 1950 amendment.

As I have said, where the owner himself is debarred from his own dwelling, and having at the time no other of his own, and he desires to obtain possession, he will not be restricted any more than he was under the 1950 Act. I think this is clearly laid down in the amendment now before the House. In the Bill of 1950 a provision was inserted on the motion, in Committee, of the member for Fremantle, that the notice to be given by an owner who required premises for his own occupation, should be subject to the making of a statutory declaration, but nobody thought at the time of defining what should happen to the declaration, or, indeed, what practical use should be made of it. I am not, I make plain to the member for Fremantle, criticising his amendment in the slightest degree.

Hon. J. T. Tonkin: Was it not the member for South Fremantle who moved that amendment?

The MINISTER FOR EDUCATION: No, the member for Fremantle. I am satisfied it was put there with a very sound reason behind it, and some better use could have been made of it than there has been. So, I have no criticism to offer, but merely state the fact that that is how the provision came to be in the Act. The Bill proposes that a copy of the declaration shall be served upon the tenant so that he will get it at the same time as his notice to quit; and, in addition, a copy shall be served on the rent inspector of the Chief Secretary's Department. It is as well, I think, that the Chief Secretary's Department, through that officer, should know in just what cases action is being taken so that some record can be made available of the numbers or circumstances involved.

The 1950 legislation, as introduced, made no special provision for speedy eviction from premises not dwellings, which can be referred to under the general title of "business premises." In another place, similar provisions to those applying to dwelling-houses required by their owners were made, and these, in an amended form, were subsequently incorporated in the 1950 Act as a result of a long conference of managers. These provisions provided that business premises, owned for three years, could be repossessed after the 30th September and business premises, owned for one year, could be repossessed after the 31st December, 1951. While it may be practicable for the Housing Commission, as has been mentioned in this House in recent days, in the bulk of cases having no alternative, to offer some accommoda-

tion, or to issue a permit to build a house up to 15 squares, it is not possible to take similar action with respect to business premises.

The Government realises, and I think the House will realise, that in more normal times business premises have to be vacated on the expiry of tenancy. If a lessor declines to renew a lease, in normal times the tenant must vacate the premises. However, it was usually possible for tenants to obtain alternative premises in the neighbourhood or to build premises for themselves. Neither is practicable today. On the other hand, owners of business premises may, and frequently do, legitimately desire to occupy and carry on business on the premises, but as the law stood, up till the end of 1950, could rarely obtain possession. Their legitimate demands cannot be ignored and have to be taken into consideration. So this Bill admits of some palliative for the difficulties in which some of these individuals will find themselves.

Cases have been recorded where landlords have been prepared to inflict great hardship on the tenants by making no suggestion, even to acquiring stock-in-trade, or doing anything to minimise the loss which must fall on a tenant who is compelled hurriedly to quit business premises. In most of those cases the tenant has nowhere else to go and little prospect of obtaining premises. Therefore, that is a most important point in this matter, because if there were prospects of a tenant obtaining premises within a reasonable time, difficulties would probably not arise.

The court is therefore empowered by this Bill to consider such hardships, to mitigate them and give some reasonable opportunity of disposing of stock-in-trade, or perhaps the possibility of acquiring other premises by suspending the order for a term not exceeding 12 months. That provision relates to business premises and it should be noted that the consideration of hardship does not apply in the case of an owner reasonably needing a dwelling-house. I have already dealt with a certain judgment of the Supreme Court regarding shared accommodation and its general and extraordinary effect, in the opinion of the Crown Solicitor, upon the Act generally. In addition to the points already mentioned, the Bill proposes to deal with the definition of "shared accommodation" and perhaps I should deal, to some extent, with this point in retrospect.

Last session an attempt was made to rectify a defect in this connection. At the time it was mentioned that, as a result of the Full Court's decision, the rent inspector's right to determine rent in respect of "shared accommodation" was challengeable in many instances. The Chief Justice had expressed the opinion that there could be no sharing of accommodation between a landlord and a tenant, even though the tenant shared with the landlord the use of rooms such as kitchen or living room, because the landlord, in all such cases, retained many rights over rooms not shared with the tenant. In effect, this meant that notwithstanding that a flat formed part of other premises and that the occupants of the flat used part of these premises in conjunction with occupants of other flats, it was still a residence complete in itself; thus the rent inspector was unable to determine the rents of flats.

In the 1950 legislation Parliament agreed to rectify the position by an amendment to the definition of "shared accommodation". It now seems that these provisions did not go far enough, and that the doubts existing last year still remain. As a consequence, it is proposed by this Bill to re-amend the definition of "shared accommodation". The amendment is one which has received a great deal of consideration and follows slightly different lines from those on which the matter had been approached before. It takes into consideration the various court decisions that have been made and is as likely to be a permanent solution to the problem as any definition that could be inserted in any Bill.

Hon. J. T. Tonkin: We hope.

The MINISTER FOR EDUCATION: My confidence in some such matters has been somewhat shaken by recent events. Nevertheless, I am fairly confident about this one.

Hon. J. B. Sleeman: Then let us have it.

The MINISTER FOR EDUCATION: The amendment makes it clear that "shared accommodation" includes a room, or suite of rooms, whether described as a flat or otherwise, leased or intended to be leased, with or without goods, for the purpose of a residence, and forming part of other premises, but does not include either a semi-detatched dwelling-house or any dwelling in a terrace or group of dwelling-houses, joined together by party walls, where each of the dwelling-houses has a curtilage and where the tenant has exclusive possession of the dwelling-house and the curtilage. The word "curtilage" means such portion of the piece or parcel of land, upon which the premises are built, as forms the yard or garden of the premises. If this amendment is agreed to, there should be little or no doubt as to what is, and what is not, "shared accommodation."

While dealing with this particular subject I wish to refer to another matter I have already mentioned. The Act deals with the relationship of lessor and lessee under a lease, and the term "lease" as defined in the Act has a very wide application. I have already said that it involves exclusive right to occupancy of the premises by the lessee. As the Act

deals with "leases", it follows that an agreement in other forms, such as by leave or license, is outside its provisions. This was made clear in the Full Court's decision last year. Remedial measures are therefore being taken by this Bill to bring these forms of agreement within the scope of the Act, and for this purpose the definition clause is adequately amended.

There are many things quite outside the occupancy of a dwelling, place for dwelling or business premises, or any premises at all that human beings could occupy or inhabit, which could come under the heading of leave or license. For example, the mere right to go to a picture show is a license that one acquires by the purchase of a ticket for that purpose. An easement is a license and there are dozens of others as well. Therefore, it has been necessary to provide that the Governor-in-Council be given power to exclude certain types of leave and license.

The next item of importance deals with penalties for offences. This legislation heavily increases the penalties, making an irreducible minimum for a first offence of £100, and, in addition, such sum as will ensure that the offender derives no benefit from the offence. The maximum penalty is £400 greater than the minimum. For subsequent offences a minimum of £200 is prescribed, as well as ensuring no benefit from the offence, and the maximum penalty is, as before, plus six months' imprisonment. In explanation of the point of ensuring no benefit from the offence, I am informed a case occurred where £250 was obtained for key money and a fine of £50 imposed; hence a net profit of £200 was made.

The last amendment to the Act is to extend its life to the 31st December, 1952. I feel sure that on examination of this measure, members will agree that while adhering to certain principles, which I earlier stated, the Bill also takes into consideration the difficulties of both sides which may be considered as involved. It also bears in mind the social problems which last year's measure was designed to alleviate, and represents a genuine and reasonable effort to correct those anomalies, which obviously deserve consideration. In conclusion, may I say that the Government has no desire to debate this Bill in a party political spirit. I move—

> That the Bill be now read a second time.

On motion by Hon. J. T. Tonkin, debate adjourned.

BILL—LAW REFORM (COMMON EMPLOYMENT).

Message.

Message from the Administrator received and read recommending appropriation for the purposes of the Bill.

Second Reading.

THE ATTORNEY GENERAL (Hon. A. V. R. Abbott—Mt. Lawley) [5.59] in moving the second reading said: This Bill is for the purposes of law reform and to abrogate a rule of common law which has become known as the rule of common employment. A similar Bill was presented to this House in 1947 by the then Attorney General, Sir Ross McDonald. That Bill was not proceeded with.

Mr. Justice Wolff, who has taken a very considerable interest in law reform, considers this one to be of more than ordinary importance. It certainly is a reform that has been adopted by Great Britain and many other parts of the world that follow British law. There is a principle of common law in England, which is applicable also to Western Australia, as follows:—

> A person guilty of negligence is liable to make compensation for pecuniary damage resulting therefrom, if the damage is legally traceable to the negligence.

Further—

> A master is responsible (subject to a like qualification) for the negligence of his servant whilst performing his work and acting within the general scope of that authority.

That principle of common law, however, was varied a considerable time ago because in the year 1837 a decision of what was then known as the Court of Exchequer in the case of Priestly v. Fowler limited the general liability as above stated, insofar as it might relate to workmen.

In that case a butcher boy was injured by the collapse of his master's van in which he was travelling, due to negligence in the overloading of the van. It was held by the court that the master was not liable. The next English case in which the doctrine of common employment came before the court was one of Hutchinson v. The York Newcastle & Berwick Railway Company and was decided in the year 1850. In that case one of the judges stated the principle of common employment as follows:—

> They (the servant causing and the servant suffering the injury) have both engaged in a common service, the duties of which impose a certain risk on both of them, and in case of negligence on the part of the other, the injured party knows that the negligence was that of his fellow servant and not of his master. He knew when he was engaged in the service that he was exposed to the risk of injury, not only from his own want of skill and care, but also from the want of it on the part of his fellow servants, and he must be supposed to have contracted on the terms that as between himself and his master he would run this risk.

Thus became established what has become known as the doctrine of common employment and which may be enunciated as follows:—

> If the person occasioning and the person suffering injury are fellow workmen engaged in a common employment and having a common master, such master is not responsible for the consequences of the injury.

Hon. E. Nulsen: Under this Bill he will be.

The ATTORNEY GENERAL: Yes. So far back as 1877, this principle of common law was considered to be of doubtful value and in that year a committee of the House of Commons was appointed to consider the law on the subject. A Bill providing for the total abolition of the doctrine of common employment was referred to the committee, who reported that they were unable to recommend abolition of the doctrine of common employment; they nevertheless recommended that the existing law should be so far altered as to make the employer responsible for acts of him who was designated as vice master. As a result of this recommendation, an Act was passed known as the Employers' Liability Act.

Hon. E. Nulsen: When was that passed?

The ATTORNEY GENERAL: I think it was in the year 1880. An Act on similar lines was passed in Western Australia in the year 1894. It is known as the Employers' Liability Act of 1894, and it is No. 3 of that year. I have said, before the Act was passed a workman could recover if injured in his employment only when he could prove that the employer had personally been guilty of negligence which led to his injury.

In the case of large employers and incorporations this was impossible because one could not prove that a corporation, in its corporate entity, was responsible for negligence however negligent another employee of the corporation might have been. After the Act a workman was prima facie entitled to recover where the employer had delegated his duty or powers of superintendence to other persons and such other persons had caused the injury to the workman by negligently performing the duties and powers delegated to them.

But the doctrine of common employment except insofar as it was thus abrogated still remained. The Bill proposes to absolutely abolish that rule so that in future an employee will have the same rights and claims against his employer as would a stranger, and he will not be in any way affected by the defence which was formerly available, namely, that the accident arose out of the negligence of a fellow employee.

As I said before, this doctrine was abolished in England in 1948 by a law reform Bill of that year; and it has also been abolished in some of the States of the Commonwealth. If the old rule of common employment is abolished, then, of course, the provisions of the Employers' Liability Act, which to some extent alleviated the situations caused by that rule, will no longer be applicable and will therefore be repealed by this Bill. I move—

That the Bill be now read a second time.

On motion by Hon. E. Nulsen, debate adjourned.

House adjourned at 6.10 p.m.

Legislative Council

Wednesday, 5th September, 1951.

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

QUESTIONS.

STATE HOUSING COMMISSION.

As to Employees, Salaries and Quarters.

Hon. J. MURRAY asked the Minister for Transport:

Will the Minister inform the House—

(1) Number of employees employed by State Housing Commission in the years 1947 to 1951 inclusive—

(a) males;

(b) females?

(2) Total salary bill for each of these years?

(3) Total cost of Plain-st. building for the Commission, including resumption and latest addition thereto?