Legislative Council,

Thursday, 13th July, 1905.

THE ACTING PRESIDENT took the Chair at 4·30 o'clock p.m.

PRAYERS.

REGULATIONS (AMENDMENTS) UNDER WORKERS' COMPENSATION ACT—MOTION TO DISALLOW.

HON. M. L. MOSS (West) moved:

That the amendments to Regulations under "The Workers' Compensation Act, 1902," published in the *Government Gazette* of 16th June, 1905, be disallowed.

I move this motion formally, as I have already given my reasons, and this course will enable the Minister to make his reply.

THE COLONIAL SECRETARY (Hon. J. M. Drew): I cannot understand why the hon. member should move that these amended regulations be disallowed, seeing that the Workers' Compensation Act, in Section 19, gives power to the Governor in Council to make regulations, and provides in the Second Schedule that the Governor may appoint medical officers whose duty it shall be to examine workers who may have suffered injury. Thus the Governor has power to make regulations, and also has power to appoint a medical referee.

HON. M. L. MOSS: I have not disputed that.

THE COLONIAL SECRETARY: No; I understand that it is the administration of the Act which the hon. member objects to.

HON. M. L. MOSS: No.

THE COLONIAL SECRETARY: Then he objects to any private practitioners being appointed for the purpose of carrying out the intention of the Act; and consequently he objects to Dr. Anderson (Fremantle) and Dr. Haynes (Perth), who have been appointed medical referees.

HON. M. L. MOSS: I rise in explanation, to say that I made no aspersion against Dr. Anderson or Dr. Haynes. I have made the statement that I object to private practitioners being appointed, and I submit that the Minister is entirely out of order in saying that I object to the two medical gentlemen I have mentioned.

THE COLONIAL SECRETARY: I said the hon. member had objected to certain practitioners because they have private practice, and so I say the hon. member is simply objecting to the administration of the Act because he disproves of the Act itself. Supposing the hon. member were to object to the recent appointment of a Director of Agriculture, and supposing that an amendment of the existing regulations became necessary, would the hon. member take action in the same direction for the purpose of having those amended regulations disallowed? I do not think he would. I consider that the stand now taken by the mover is altogether illogical; and as a matter of fact all the medical officers in this State, with the exceptions of Dr. Lovegrove and Dr. Black, have private practice. [Several interjections.] There is also a doctor at Fremantle who has recently arrived in the State. Supposing a workman is injured at Cue, would the hon. member require him to come down to this part of the State in order to be medically examined by a doctor who has not private practice, say by Dr. Lovegrove or Dr. Black? I do not think the hon. member's contention will bear examination. In England and in New Zealand, private practice in the case of medical practitioners is no bar to the performing of duties under a statute of this kind. The hon. member did say he had no personal objection to the gentlemen appointed to carry out the Act in this State; therefore if he considers that the doctors appointed for the purpose are men of honesty and integrity, I do not see why the hon. member should object to their appointment. He has said that a doctor might give a certificate as to the condition of a person he had attended as a private patient, and who was claiming compensation for personal injury. I do not think any doctor holding a position worthy of respect would give a certificate under such conditions; and I cannot conceive why the hon. member has brought this matter forward. He was recently concerned in a claim for compensation tried at Fremantle, and was only partially successful in that case; so I think he may

have a private grievance, and I do not think it is right that he should bring a private grievance before this Chamber.

THE ACTING PRESIDENT: I do not think the hon. member should impute motives.

HON. M. L. MOSS: I will reply to him.

THE COLONIAL SECRETARY: I am afraid that if the hon. member proceeds in this way, an impression will get abroad that his object is to introduce party politics into this Chamber. There were in the past session two motions passed by this Chamber which I think ought not to have been introduced, and should not have been sent forward to the leader of an important party in another place. If the impression once gets abroad that this Chamber is to be a party Chamber, I think that before long there will be a strong agitation against this House, and it will be shaken to its foundations. The hon. member also said that the regulations under this Act were not necessary. When the Workers' Compensation Act was passed, this House gave power to the Governor-in-Council to make regulations under it; and hence this Chamber recognised that regulations were necessary for the purpose of carrying out the Act. Regulations have to be framed accordingly, and I do not think it can be shown that they are in contravention of the Act or that they are unreasonable. Therefore I do not think this House can well agree that the regulations should be disallowed on constitutional grounds; but I hope members will think twice before they pass a motion urging the disallowance of these regulations, because another place will have a say in the matter, and I am afraid if this motion be passed on the grounds indicated by the mover, the action of this Chamber will not create a good impression.

HON. W. KINGSMILL (Metropolitan-Suburban): I have very few words to say. I must support the motion, for the reason that the regulations as promulgated appear to me absolutely illogical. A condition has arisen under which it is untenable that medical practitioners, appointed by the Government under these regulations, should have power throughout the State to medically examine and give certificates in regard to claimants for compensation under the Act. I understand—and I would like the leader of the House to acquit me of holding a brief in the matter, for I am not a member of the legal fraternity, and am personally clear from the motives imputed by the hon. gentleman—I would like to point out that an untenable position has arisen in this way, that the certificate of one appointee of the Government has been given in a particular case, to the effect that a certain individual who was applying for relief under the Workers' Compensation Act was absolutely fit to resume the duties on which he had been engaged before he applied for that certificate; and that another appointee of the Government, who also has power throughout the State, gave a certificate the effect of which was to flatly contradict the other certificate given by a Government appointee. I maintain that any regulations which render possible such a condition of affairs must be absolutely untenable, and should be rescinded as soon as possible. Personally, I have no objection to the appointees, and I presume that the Government in their wisdom have chosen persons who, by their standing in the profession, have earned the reputation of being eminently successful and reputable medical practitioners; but I say that if the Government place before the public in this State a position in which these gentlemen can contradict one another, such as is evidently the case under the present regulations, these regulations should be rescinded as soon as possible. I may suggest that the verdict of these appointees should be conclusive evidence within a certain district; but when one appointee can contradict flatly the verdict passed by another, then I say the regulations do not carry out the purpose for which they are supposed to be made.

HON. R. LAURIE (West): I had no intention of speaking on this matter, and would not have spoken had not it been for the words which fell from the Minister's lips I am satisfied that Mr. Moss, in calling attention to these regulations, has not done so for any private reason. I should be exceedingly sorry to think that any member of this House would use his position in the Chamber for his own private purposes. If one has had to call attention to such a regulation in the manner in which it has been done, it is

the only means by which one can call attention to something he considers wrong, that has been brought under his personal observation. I heard the court proceedings in some of these cases, and am I to be debarred, simply because the leader of the House chooses to say that I should be debarred, from giving to the House and the country the benefit of my experience or reasoning in a matter of this sort, because I am likely to be told I am bringing the matter forward for private reasons? If so, then I say this is no place for me. The point Mr. Moss has been endeavouring to call attention to, and the point which I think he mentioned, is this. When these cases under the Workers' Compensation Act were being tried, the two persons injured had been under the medical referee at Fremantle; and if the Government in appointing that medical referee at Fremantle thought he was a fit and proper person to be appointed medical referee, surely it was sufficient for the court to accept that gentleman's verdict. I take it the regulations lay it down that this is so. The medical referee at Fremantle gave a certificate that one man would be fit for work on a certain date. About 4 or 5 days before the case was heard, the Government thought fit to appoint two medical referees, which they were perfectly entitled to do. The medical referees appointed are undoubtedly able men. I have not one word to say against either of the medical referees in Perth or Fremantle. Doubtless, the referees throughout the State were appointed for their ability. I want to call the attention of the Minister to this particularly, and it is for no private reasons. This was the only means Mr. Moss had of calling the attention of the Government to the fact, and I have no private feelings in the matter whatever, the case not having cost me a sixpence. When the court had to decide the matter, they had to decide it on a certificate that the man was partially incapacitated. I venture to say, Mr. Acting President, that if a certificate were handed to you, sitting as a court, you would at once say: "How much is he incapacitated? How much is he entitled to?" But there was nothing on the certificate to guide the court except the partial incapacity stated. Attention has been called to the fact by the leader of the House that this House passed the Workers' Compensation Act. I say, "All credit to members for passing it." As an employer, I have no objection to the Act, and I have all along, since the passing of the Act, been paying a man injured half wages. But there is a difference between our system and the English system. While the English Act provides for the appointment of medical referees, the court calls in a medical referee and gets his evidence, but only after a conflict in the other medical evidence. Without casting aspersions on any medical man, if a man went to a doctor for medical advice and said, "I am suffering from so and so, I have been feeling in such a condition for some weeks past," the doctor would be bound to be guided by what the person told him. Else how could he tell anything at all? He could not give a certificate or find out what was the matter with the man. The proper course to pursue is to let the court call in a doctor who shall decide in the case of a conflict in the medical evidence. With one medical man brought as a witness by one side, and with one brought as a witness by the other side, there would be a conflict unless after consultation. With one medical witness from the insurance side and one from the man's side, I say emphatically they would not agree; and time after time this has been found so. That is why Mr. Moss has brought this matter forward—to show that the appointment of medical referees under this regulation is wrong. At Fremantle the court was faced with the evidence of two medical witnesses on one side, and on the other side with the man's certificate from a medical referee which absolutely decided the case. The Act and the regulations say that the medical referee's judgment shall be final. What evidence did the court have to decide as to the amount of incapacity? None whatever; and the court held that the man was incapacitated. The difference between our procedure and the English is, as I pointed out, that when the conflict of medical evidence takes place, the court calls in a medical referee who examines the man at the time with the conflict of evidence before him, and then says whether the man is well or incapacitated; and if he be incapacitated, fixes the amount of

incapacity, thus placing the bench in possession of all the facts. The regulations ought to be of such a character as to have allowed the bench at Fremantle to call in a medical referee. The position will be that, as soon as a man is injured, he will go straight to a medical referee, who will give a certificate from which he cannot back down; and then the employer or insurance company—because all employers are insured, since they could not carry on if they were not—would have to go to the other medical referee to get a certificate straight away; and then we would have a conflict of testimony, and would not be in a better position to-day than we were before. I am sorry the Colonial Secretary should say that any member would bring this matter forward for private reasons. No employer expects a verdict in every case. The law provides—and we all are willing to abide by the law, for I hope every section of the community will do so—that these cases should be taken to the court which shall decide what the man, if injured, should receive. The proper method to be adopted would be to allow the court, and the court only, to call in the medical referee to decide in the case of a conflict in the medical testimony. That would prevent the employer or the man himself consulting the medical referees. That is the point. We may get the employer going to the medical referee at Fremantle, and the man going to the medical referee at Perth. The Government were doing absolutely what the Act says in providing regulations; but to prevent unfairness to all parties and to save the time of the court and expense to litigants—for in the State at present there is quite sufficient of a business man's time taken up in attending courts and appeal boards, which at Fremantle we have every week—and to save the time of the assessors it would have been far better to make the regulation read, "That the court shall call in the person who shall decide in a conflict of medical testimony as to the incapacity from which the man is suffering." At Fremantle the court could not decide when it was faced with this medical certificate. I trust this will be the last time, as it has been the first, that it will be imputed to any member that he has brought any matter into this House from private motives.

HON. J. A. THOMSON: What do you recommend should take the place of this regulation?

HON. R. LAURIE: I have made my recommendation.

HON. M. L. MOSS (in reply): The leader of the House has stated that he does not understand the reasons which actuated me in bringing this matter forward. I am sorry the hon. gentleman is so dense that he was not able to understand the short speech I delivered, in which I endeavoured to explain my reasons explicitly. But in order that I may emphasise and press upon him exactly why I did it, I will tell him again that under Section 11 of the Interpretation Act 1898, there is power given to any member of Parliament, if he thinks fit, when regulations are made and he objects to them, to test the opinion of the House of Parliament of which he may happen to be a member, with the object of getting members to agree or disagree with him, and to enable the other House to express an opinion. And may I say that this power of legislation by way of regulation has been allowed to pass unnoticed for too long a time in both these Houses of Parliament. The power given by regulations, if I mistake not, has been objected to by many members of Parliament in the past. In fact, I think my friend Mr. Piesse has said that the power of making regulations should be curtailed. I do not agree with that. I agree that it is necessary for the proper administration of Acts of Parliament that there should be full power to make regulations; but it is necessary whenever anything has been done against the public interest that the power contained in Section 11 of of the Interpretation Act should be used for the purpose of preventing any injustice from being continued, if a wrong regulation has been made during the recess; and it is with the object of enabling Parliament to express an opinion on regulations that Section 11 (which is not a new statutory provision, but which finds its place in the Imperial Interpretation Act and in the Commonwealth Interpretation Act) exists, its object being to enable gentlemen occupying positions in Parliament to express their opinion as to whether Parliament should continue to allow them to have the force of law in

the country. Mr. Drew says that I object to the administration of this Act. He is quite right. I strongly object to the act of administration which has brought these regulations into force, and I object to it for this reason. Let me assure the hon. gentleman, before I give the reasons which actuate me in bringing this motion forward, that there is no such base motive as he attributes to me, and I am sure his memory is not so defective that he can fail to recollect a conversation which took place in the presence of a colleague, the Minister for Labour, last night, within the precincts of this Chamber, as to the motive which actuated me in bringing the motion forward, because he himself reiterated exactly what that hon. gentleman imparted to me within the precincts of this House; in fact, this is not the first occasion on which this same motive has been thrown out to me. I would not have referred to my action in regard to the Potosi mine last year if the hon. gentleman had not accused me to-day of having brought up a matter which has turned this House into a party Chamber. It is a matter of no consequence to me whether what I do on the floor of this House is regarded from a party point of view. If any hon. gentleman thinks fit to so regard it, that will not deter me from bringing it forward if in the public interests I think it necessary to do so. I am the last to desire to turn this Chamber into a party House, because its very existence depends upon the fact that we keep it clear from party politics, and I have endeavoured to treat every question which comes forward here from the point of view of its worth or otherwise to the community, and not the point of view as to which party brings it forward. But an accusation is made against me of acting from a personal motive; and what was the personal motive? It is true I appeared as counsel in the case the hon. gentleman alluded to, but during the years I have served the public in this country I have hesitated on numerous occasions to bring forward matters which I thought ought to be ventilated on the floor of one House or the other, simply because I was professionally connected with them. When I was confronted with these regulations I was so staggered with the impropriety of leaving them in force that I seized the first opportunity of bringing them before the public. With regard to the question of the Potosi mine I referred to last session, I only want to say this in passing. I did intend when speaking on the Address-in-Reply to make reference to it. I did then seriously complain of the action of the Government. I told the hon. gentleman representing the Government on that occasion that they were making a threat against another firm—Detmold, Ltd.—and if they persisted I would bring it before the House. The hon. gentleman having brought this matter into the debate, I am sorry to say very little credit is reflected on the Government of which he is a member by the publication of that most unseemly correspondence in newspapers, relating to the interference by the Minister for Labour with Messrs. Holmes Bros. during the recess, and I am glad to express my dissent from his action, or the action at any rate of one of his colleagues. With regard to an action which any Ministry, this or any other, should steer clear of——

THE ACTING PRESIDENT: Does the hon. gentleman think this is relevant?

HON. M. L. MOSS: I do not; but as the Minister referred to this matter, it is just as well I should reply briefly to his remarks. I intend to speak on this matter farther on the Address-in-Reply, and I shall leave this aspect of the question. The question of a snub from the other House is also a matter of no importance to me. It is equally of no concern if members of this House say they do not desire to pass the motion. I have always been willing to bow to the majority. If a member were not willing to bow to the majority, he would soon be brought to his bearing and he would have to do that. I throw out this word of warning, that if these regulations are allowed to remain it will not be in Fremantle only, where I am professionally concerned, that objection will be taken. While I have no objection to the Workers' Compensation Act, and I think it a fair thing that some burden should be thrown on the employer of labour when a workman receives injury, yet it is another and totally different thing when we find an employer of labour confronted with this difficulty, that in regard to the liability to pay this weekly compensation or an amount up to £400 in case of death, which amount may be awarded without

fair and open trial in court; for we are allowing magistrates' assessors to act upon a certificate obtained in the way in which it may be obtained under these regulations. This is not the last time we shall hear of this. We shall expect that employers of labour will have occasion to complain against it, and they will find themselves in a position equally as difficult as that in which those alluded to have found themselves. These regulations were made in the month of June last. The Workers' Compensation Act has been in force since 1902. The Act has worked very well and very smoothly so far as its administration is concerned; but I attack the administration that thought fit to bring these regulations into operation, because they are entirely unnecessary. Mr. Drew was perfectly accurate when he said they have the power to make them under statute; but in my opinion the Act has worked well without them. Parliament was ill-advised—I was not a member at the time the Workers' Compensation Act was passed—when it put this provision in the schedule of the Act. I know how a schedule passes Parliament, with little consideration given to it unless someone draws attention to it. In dealing with an Act like the Workers' Compensation Act we were dealing with experimental legislation which the bulk of us knew nothing about. I say that the provision in this schedule enabling those certificates to be given in lieu of evidence, in my opinion was a very dangerous one. While in England it may be an extremely good thing to have this manner of reference where you have distinguished and eminent men who do not indulge in general practice as is the case with the practitioners here and where the community is very much larger —and again I say, without desiring to cast a slur or aspersion on either Dr. Haynes, Dr. Miskin, or Dr. Anderson, all of whom I believe to be capable, competent, and reputable practitioners in every way—in a small community, I say that in my opinion it was highly inexpedient to appoint any person in private practice. There are eminent medical Government servants in all these towns. In Fremantle there are Dr. Hope and Dr. Deravin, both of whom I think if these appointments had been made would have been quite unobjectionable, and in Perth thereare Dr. Lovegrove, Dr. Black, and Dr. Thompson. There are, too, officers in the service of the Perth Hospital; all of these would have been eminently unobjectionable, and there are also those in the Government offices in Kalgoorlie, if it were thought necessary. When we look at these regulations we find that a medical practitioner is considerably subsidised, for under these regulations he gets two guineas for each of these reports, and I think it would rather stagger the House to know the large number of cases already treated under the Workers' Compensation Act. I feel strongly as to the administration which introduced the regulations to give them the force of law, and I also feel strongly that a medical referee, if appointed at all, should only have been appointed for a district. The argument I have adduced as to appointing persons in private practice, in my opinion, is a good one. I hope that Mr. Drew regrets what he said. I hope that after the explanation he will come to the conclusion that the only motive which actuated me in bringing this matter before the House was from the point of view of the public interest and for the proper working of this country, that there should be satisfaction both to employer and employed, and particularly, if my opinion is correct, that the employer of labour is not to be unduly victimised and a greater burden cast upon him than the statute imposes. I think the hon. gentleman probably regrets the statement he has made. I think, however, without being egotistical, that probably my course of conduct in this and another House of Parliament in the State justifies me in making the statement that if I have from personal motives submitted this to the consideration of the House, it is probably the first occasion on which I have been guilty of such a thing, and I will leave my hon. friends sitting on these benches to say even on this occasion whether they think the hon. gentleman's castigation is justified.

THE COLONIAL SECRETARY: I did not wish to attribute any base motives to Mr. Moss. What I intended to say was that an impression is apt to get abroad.

HON. M. L. MOSS: I am not afraid of the impression. I have good broad shoulders to bear it.

THE COLONIAL SECRETARY: I am glad to hear it. An impresion is apt to get abroad.

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

Ayes	...	...	12
Noes	...	...	4
Majority for	...	...	8

AYES.	NOES.
Hon. G. Bellingham	Hon. J. M. Drew
Hon. C. E. Dempster	Hon. J. W. Langsford
Hon. W. Kingsmill	Hon. J. A. Thomson
Hon. R. Laurie	Hon. T. F. O. Brimage (*Teller*).
Hon. W. T. Loton	
Hon. M. L. Moss	
Hon. W. Oats	
Hon. C. A. Piesse	
Hon. G. Randell	
Hon. R. F. Sholl	
Hon. J. W. Wright	
Hon. J. D. Connolly (*Teller*).	

Question thus passed.

HON. M. L. MOSS, referring to procedure, did not intend to ask the House to send this resolution on to the Legislative Assembly, because according to Section 11 of the Interpretation Act it was necessary that a resolution to disallow regulations should be passed by both Houses of Parliament. The Legislative Council having passed this resolution affirming that the particular regulations should be disallowed, then if any member of another place chose to follow that up, it would be open to him to move to that effect in the other Chamber. The resolution passed in this Chamber would, as he understood, authorise the forwarding of this Address to the Governor; and as it would be of no avail unless the other House took the same course, he would leave it to some member of another place to take the necessary action if thought desirable.

PAPERS PRESENTED.

The COLONIAL SECRETARY laid on the table: — 1, Lunacy Rules, Fees, and Forms. 2, "Administration Act, 1903"—Additional Regulations. 3, Instructions to Agents of Curator of Intestates' Estates. 4, Gaol Regulations—Amended Scale of Rations for Asiatic Prisoners north of Geraldton.

ADJOURNMENT.

THE COLONIAL SECRETARY, in moving that the House do adjourn until the next Wednesday, explained that he had expected to be in a position to bring forward a Supply Bill at this sitting, but now found that the Bill would not be ready until the next Tuesday; and as the House could deal with it at the next sitting on Wednesday, he would not ask members to meet earlier.

Question passed.

The House adjourned at 5·22 o'clock, until the next Wednesday.

Legislative Assembly,

Thursday, 13th July, 1905.

THE SPEAKER took the Chair at 3·30 o'clock p.m.

PRAYERS.

QUESTION—RAILWAYS DUPLICATION, COST.

MR. FOULKES asked the Minister for Railways: 1, From what fund is the cost of the duplication of the railway from Perth to Armadale and Chidlow's Well paid, and what is the estimated cost of such duplications? 2, Under what authority are such duplications made?

THE MINISTER FOR RAILWAYS replied: 1, (*a.*) Duplication, Burswood to Armadale, costing £29,964 18s. 7d., was charged to General Loan Fund. (*b.*) Duplication, Lion Mill to Chidlow's Well, costing £9,397 4s. 10d., was charged to General Loan Fund. 2, Approved by the Hon. Minister for Railways for the time being.