

Legislative Council,

Tuesday, 28th August, 1906.

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

PRAYERS.

PAPERS PRESENTED.

By the COLONIAL SECRETARY: 1, Half-yearly statements of accounts Fremantle Harbour Trust. 2, Quarterly Report of Government Railways to 30th June. 3, By-law of Goldfields Water Supply Administration. 4, Return showing particulars of land taken up along the routes of the Wagin-Dumbleyung, Katanning-Kojonup, and Goomalling-Dowerin Railways; moved for by Mr. Sholl.

MESSAGE—ASSENT TO BILLS (3).

Message from the Governor received and read, assenting to three Bills—Collie and Esperance Rates Validation, Fremantle Reserves Rededication, Nelson Agricultural Society Land Sale.

BILL—FIRST READING.

Municipal Institutions Act Amendment, introduced by Hon. M. L. Moss.

BILL—LEGAL PRACTITIONERS ACT AMENDMENT.

IN COMMITTEE.

Resumed from the 22nd August.

New Clause—Associate to a Judge, admission:

HON. M. L. MOSS moved that the following be added as a clause:—

Any person who shall have served the full term of five years as associate to any one of the Judges of the Supreme Court, or who shall have acted as Official Receiver in Bankruptcy for the full term of five years, and shall have passed all the examinations prescribed by the principal Act and rules, may be admitted a practitioner.

As stated at the last sitting, he proposed placing an associate of one of the Judges on the same footing as an articulated clerk in regard to the period of service. In Victoria, the services of an associate of a Judge for a period of five years were equivalent to serving under articles. The amendment did not appear on the Notice Paper because the paper had been printed before the opportunity for it to do so occurred.

HON. R. F. SHOLL: The only objection to this clause was that associates to Judges would be receiving remuneration during the five years, whereas one of the principles of the main Act was that articulated clerks should receive no remuneration whilst serving under articles.

THE COLONIAL SECRETARY: So important an amendment should have been on the Notice Paper. The hon. member had ample opportunity, after giving notice of the amendment at the previous sitting, of handing the amendment to the Clerk to get it printed on the Notice Paper. It was impossible to fully grasp the purport of amendments unless they had been previously placed on the Notice Paper.

Progress reported, and leave given to sit again.

BILL—GOVERNMENT SAVINGS BANK.

RECOMMITTAL.

Resumed from the 22nd August.

Clause 30—Treasurer not liable for fraudulent withdrawals:

The Hon. M. L. Moss had moved to add at the end of the clause the words "Unless the depositor proves that he took all reasonable and proper precautions for the safe custody of his pass-book."

THE COLONIAL SECRETARY: The amendment could not be accepted. The clause after being fully considered had been passed by a majority, and now the hon. member wished to add words which would make the position worse than if the clause were struck out. The Government would rather have the clause struck out than have the amendment passed. It might be argued that the Government Savings Bank should be responsible in the case of forgery as well as ordinary banks; but there was a great distinction between the Savings Bank and the ordinary commer-

cial bank. The Government gave more consideration to depositors than did ordinary banks, and the depositors in the Savings Bank were more numerous than in ordinary banks. The present number of depositors in the Savings Bank was 64,000 odd. The clause was drafted to prevent cases of conspiracy or collusion in families. There was no new feature in the provision. It was the law in all the Eastern States and in Great Britain and in the United States of America, and had been the law here from the beginning. Commercial banks charged £1 1s. per annum for keeping accounts, but the Government Savings Bank only charged one shilling; also the Government Savings Bank allowed interest. Commercial banks made a big profit out of the balances to the credit of customers, paying nothing for them and, when they loaned them out, charging interest. This was a profit the Government Savings Bank did not make, because it paid interest on all balances, large or small. As the Savings Bank did not get the same profit as the ordinary commercial bank, it should not be called upon to meet the same risks as other banks. The profit made by the Savings Bank was merely nominal, being between £800 and £900 last year; so it was unreasonable to expect that the Government should make good losses through fraud. He was rather loth to make public all the reasons for the retention of the clause as printed in the Bill, but as there was a feeling amongst members against the clause, he felt compelled to offer other reasons than those already mentioned for the retention of the clause. There were many illiterate persons among the depositors in the Savings Bank, and in many cases depositors could not write their names. For instance there were many Japanese, Hindoos, Italians, and other foreigners, depositing in the Savings Bank. It was extremely difficult to read their signatures, and it was hard to be sure of their identity. The Government Savings Bank accepted deposits from persons unable to write their names. These people simply made marks, and were each given a password; and when a man presented his book he had to give the password before getting any money. Members could see how easy it would be in such a case for fraud to be committed.

On account of the exceptional risks taken by the Savings Bank as against an ordinary bank, the Committee should retain the clause and reject the amendment, because the amendment would lead to collusion. If a man who could not write his name would give his passbook to a friend to keep, that friend could go to the bank and draw money, and the next day the depositor might go to the bank and claim his money. The bank would be responsible if the amendment were passed, because the depositor could show that he had taken all reasonable precautions by giving the book to his friend as he was in the habit of doing.

HON. M. L. MOSS: No doubt the Government, if the clause were struck out, would simply as they had done in the past, control the matter by regulation, which the Colonial Secretary had already said had proved to be good in Victoria. The fact that elsewhere, either by statute or regulation, a similar provision was in operation should not relieve the Government of the responsibility sought to be imposed by the amendment. It was bad business to permit the withdrawal of money from the Savings Bank on the mere giving of a password, and the bank would be better without such business. Such cases might be met by a regulation authorising depositors who were unable to write to appoint some person to sign withdrawal notices on their behalf.

HON. G. RANDELL: The arguments of the Minister had considerably altered his view on this clause; and if he could be assured that the Government would accept liability in cases where money was wrongfully withdrawn as the result of collusion between an official and someone outside the bank, he would support the clause as printed.

THE COLONIAL SECRETARY: The Government had done so in the past.

HON. G. RANDELL was aware of that, and believed they would do so in similar circumstances again. He would now withdraw his previous opposition, and vote for the clause.

HON. R. F. SHOLL had not altered his opinion on the question. The Government desired people to deposit their savings in the bank, and with the object of encouraging them to do so had increased the limit of deposits; conse-

quently, the Government should accept the full responsibility attaching to the custody of other people's money. A depositor's passbook might easily be stolen and he might thus be defrauded by the money being paid over; and yet under this clause the Government could escape responsibility. The case of the illiterate depositor might be met by a regulation enabling a depositor to authorise a deputy to sign withdrawal notices.

HON. J. A. THOMSON supported the clause. The Government should not be hampered with unnecessary restrictions; and no Government in this State would attempt to escape the liability of making good misappropriations through the misconduct of an officer.

Amendment put and negatived.

Bill reported with farther amendment, and the report adopted.

BILLS—FIRST READING (2).

Public Works Act Amendment, received from the Legislative Assembly.

Evidence, received from the Legislative Assembly.

BILL—BILLS OF SALE ACT AMENDMENT.

SECOND READING.

Debate resumed from the last sitting.

HON. R. D. MCKENZIE (North-East): The small amending Bill now before the House, which has had the misfortune to bring down condemnation by two legal members of the House, is one that has been exercising the minds of the commercial community of this State for some very considerable time. Gentlemen who otherwise take little interest in Bills that are going through Parliament have in the case of this measure given up much of their valuable time in order to discuss and approve of the measure, which will meet the requirements not only of the whole of the commercial community of the State but of the whole of the population. The vital clause in this Bill—for it may be said there is only one clause of any great importance, the balance being made up of machinery clauses—is Clause 3, which provides that notice of intention to register a bill of sale is to be given. This notice of intention is not to be published in the *Government Gazette*, as I believe one or two members of the House are under the impression it would

be, but it would simply be given to the registrar in the same manner as a bill of sale is given at the present time when it is to be registered. I take it that the reason for the commercial community wishing for this amending Bill to be brought into force is that they do not wish to see a man give a security over certain of his goods and chattels by way of preference to one of his creditors. There is no question that raising money by way of bill of sale should be used very carefully by those people who are taking advantage of it, and when they do desire to raise money under this method they should not have any serious unsecured financial obligations. If they have, and notice of intention is given, undoubtedly the registration of the bill of sale will be prevented. The method of raising money under a bill of sale is a very convenient one for a person who has chattels, goods, or stock that he does not wish to dispose of at the time, whilst at the same time he wants to raise money for perhaps carrying on some other part of his business; and provided that he has no serious obligation elsewhere it is a very legitimate way of raising money. If a man wishes to raise money legitimately it cannot do him any harm to have notice given of intention to register a bill of sale; consequently Clause 3 will never interfere seriously with anyone who is legitimately entitled to raise money in that connection. Under the Act as it stands at present it is open for any person who has the confidence of traders to obtain credit for articles, which he may pledge by way of bill of sale to a third party for a contemporaneous advance, and this security cannot be attacked in any shape or form. The creditor who had supplied this man with goods in the first instance would, on seeing a bill of sale registered, have to take action through the ordinary court of law, and when he had got a verdict he would proceed by way of execution to sell the goods that were in the possession of this man; but he would be intercepted by the grantee of the bill of sale, who would demand that he should get the amount he advanced on the goods and chattels which had been supplied by the man who had taken this action, and the grantee would have to be paid in full before the other creditor could get a single

penny. Every man who has had any experience of commercial transactions knows that to upset a bill of sale, when it has once been registered, is a very difficult thing.

THE COLONIAL SECRETARY: And very expensive, too.

HON. R. D. MCKENZIE: I think either the present Chief Justice, or the late Chief Justice, laid it down in a case here that to upset a bill of sale you must prove fraudulent preference or conveyance. It is not sufficient to prove that a man gave preference to a creditor, but you must prove that he gave fraudulent preference, and this is a most difficult, and, as the Colonial Secretary says, a most expensive thing to do; therefore it is only right that the creditors of a man should have notice that he intends to part with certain of his property by way of security under a bill of sale. It cannot possibly do any harm to the man carrying on legitimate business. It can only affect the man who wishes to do certain of his creditors out of their just rights. It came as a great surprise to me personally that Mr. Moss should have opposed this Bill in the very strenuous way he did, and I cannot help taking notice to-day of some of his remarks. He said that if this amending Bill became law it would be one of the greatest obstacles to the transaction of business in this State ever put on the statute-book.

HON. J. A. THOMSON: A certain kind of business.

HON. R. D. MCKENZIE: Quite so. As far as traders are concerned, I think they are unanimous that if the amending Bill passes into law it will have quite the opposite effect to what Mr. Moss said it would have. There are certain financial institutions dealing largely in stock and station products which no doubt would like to see this Bill thrown out; but when the Bill gets into Committee amendments can very well be made that will answer their purposes. We know there are great distances to be traversed between here and the North-West stations, and that a large business is done by firms which advance money on wool and stock, and it is necessary, to protect themselves, that they should have some security over these. I think that in Victoria it is met by what they call a stock mortgage. This does not come under the Bills of Sale Act in

Victoria at all, and it is found to work very well indeed; but as far as ordinary traders are concerned in Western Australia, that is the traders who are living south of Geraldton and on the Eastern Goldfields, they are almost unanimous that this amending clause shall become law. Mr. Moss also said that the principal Act, the Bills of Sale Act, was one of the best works ever put on the statute-book by the James Government. This may or may not be the case, but it certainly is a fact that, when the Bills of Sale Act of 1899 was passed by the James Government and sent to this Chamber, it contained a clause just such as that we are discussing to-day, and it was thrown out by this House. Probably if this Bill had passed as the James Government wished it to pass, Mr. Moss would have been correct in his statement; but in stating that it was one of the best works ever placed on the statute-book by the James Government without that clause, Mr. Moss has made a great mistake.

HON. G. RANDELL: It was not the James Government at all.

THE COLONIAL SECRETARY: It was Mr. James himself.

HON. R. D. MCKENZIE: I am open to correction. The principal Act is a blend of several of the English Acts. I believe that in England they have a Bills of Sale Act regarding bills of sale given by way of security, that is for an antecedent debt; also an Act for contemporaneous advances; and then another Act, which includes the hire purchase agreement, which is used by various people where they are selling goods to people on time payment. This Act which we have in Western Australia contains all those three measures, and it seems to me that it has not met the requirements of this State, and that it should be amended to a certain extent. Mr. Haynes, when we were discussing this Bill in the Chamber the other evening, gave his Victorian experience in connection with the Victorian Bills of Sale Act. He mentioned that some 30 years ago, I think it was, he was in business in Victoria and had experience of the working of the Bills of Sale Act there, and it was very unsatisfactory indeed. I cannot go back exactly 30 years, but I can go back to 25 years, or at all events 20. I had a great deal of ex-

perience in an agricultural district, which was working very much on the same lines as our Great Southern District to-day, that is there were new settlers coming to the district—I am referring to the Goulburn Valley District of Victoria—and it was absolutely necessary for those storekeepers who were giving credit or making advances to the new settlers to take security by way of bills of sale. I have never yet known a case in which the giving of notice in connection with a bill of sale worked unsatisfactorily. Any man who is honest and carrying on his business legitimately, when raising money by giving a bill of sale, would not be stopped by his creditors from doing so; on the other hand, a man who was not looking after his business properly, who was known to be getting behind and likely to give a preferential bill of sale to one creditor, is the kind of man who would be stopped by other creditors. The principle of compelling the giving of notice has worked well in Victoria, and I know it is working well there to-day. I have received communications from several gentlemen in Victoria at the head of large commercial concerns, all tending to prove that the Act is working as smoothly and well in Victoria to-day as it did 20 years ago to my knowledge.

HON. J. W. HACKETT: Mr. Moss's chief objection was to the length of time for giving notice in parts of this State.

HON. R. D. MCKENZIE: His principal objection was the great distance between the North-West and the Supreme Court in Perth. But, as was pointed out by Mr. Sommers, there are very few bills of sale given in the North-West, outside of those given over stock; and I understand it is the intention of a member, when the Bill is in Committee, to introduce an amendment whereby wool and sheep will be exempt from the operation of this Bill.

HON. J. W. HACKETT: Why not extend the length of time for giving notice of intention to register?

HON. R. D. MCKENZIE: At present they have 21 days from the time the mail arrives in Perth in which to register a bill of sale. It has been remarked that when a man wishes to raise money under a bill of sale, he is anxious to get the money at once. My experience has been that the man who raises money under a

bill of sale is one who has no other property on which he can raise money; and he is no more anxious to obtain his money quickly than he would be if he were taking his title-deeds to a mortgagee and to sign the necessary documents to obtain an advance of money. One of the subclauses of Clause 3 enumerates certain municipal districts within which seven days' notice of intention must be given; and outside of those municipalities the period of notice is 14 days. I intend in Committee to move a slight amendment on that, for this reason. Take the municipality of Kalgoorlie; if a notice of intention were filed in Perth on a Saturday, an intimation of that would not get to a business man in Kalgoorlie through the usual channel until the following Monday week, when it would be too late for him to lodge his caveat.

THE COLONIAL SECRETARY: Strike out the schedule providing for seven days, and make it 14.

HON. R. D. MCKENZIE: If the Bill be carried into effect as printed, it will mean that business people on the gold-fields, also at Geraldton, York, and Northam, will have to make arrangements whereby they may obtain information daily of the notices of intention lodged with the registrar in Perth. I hope members will realise that this is an important measure for the commercial community which does not often ask this House for anything; and I can give the assurance that the Chambers of Commerce in Perth, Fremantle, and Kalgoorlie are unanimous in asking that this small amending Bill shall find a place on the statute-book.

HON. W. T. LOTON (East): I do not propose to speak at length on this Bill. Mr. Moss addressed himself to the question very clearly and convincingly; Mr. Haynes followed in a similar strain. I fail to see that any case has been made out for the necessity of this amending Bill, though it has been said that a few of the leading mercantile men of the community desire it. I can see that if a Bill of this description is passed into law, it will cause great inconvenience not only to people living in the distant North-West, to stock-owners, settlers, and pastoralists who have to obtain money by means of bills of sale, but also to people in the mining districts. My

experience has been that when a man desires to raise money by giving a bill of sale, he wants to get it as quickly as it can be got, and he does not want to be kept waiting even a week or a fortnight. It is absolutely necessary, when the security to be given is a bill of sale, that the money be obtained at once.

THE COLONIAL SECRETARY: That is the trouble; sometimes they get it too quickly.

HON. W. T. LOTON: Under the existing Act a bill of sale, to be valid, must be for a present advance, not for a past debt. Very few bills of sale are given to cover a debt incurred previously, because most people know that such bill of sale is of very little use. A bill of sale is generally given for an advance made at the time, and then, of course, it is a legal and valid document. It has been argued that some dishonest people—we cannot call them anything else—might give a preferential bill of sale to cover a past debt; but if a man did that, he must get a *quid pro quo*, an advance in cash. Very few bills of sale are given covering an advance on goods; almost universally the advance is in cash, and has been obtained no doubt to carry on the man's business.

HON. R. D. MCKENZIE: Sometimes. I can quote instances where it has not.

HON. W. T. LOTON: There may be a few such instances; but I do not think this measure would stop such practices. If a man wanted to defraud his creditors, he could sell his goods and clear out, or he would defraud them in some other way. I have not had much personal experience of bills of sale, but have had experience of those documents in other respects for a number of years; and I know that in business, especially among small traders, advances are continually wanted, and the money is usually wanted with as little delay as possible.

THE COLONIAL SECRETARY: Seven days is not very long.

HON. W. T. LOTON: A member suggests that increased notice might be given; but it seems to me that if the length of notice is extended, the worse this legislation will be. Suppose the notice were 14 days, and a caveat were entered—Mr. Moss knows how long that would take to remove—the bill of sale would have to be drawn in the meantime

and all necessary arrangements carried through, and notice must be given. If a caveat were lodged, the time for the registration of the bill of sale would have expired.

HON. R. D. MCKENZIE: You can get the time extended.

HON. W. T. LOTON: Then the whole process would have to begin over again, as the hon. member knows. I am certain that this measure would be a serious obstruction to business in the case of the man who wanted an advance expeditiously for the purpose of honestly carrying on his business. I could quote numerous instances, if I were prepared to mention names, where such necessity is occurring continually in many parts of the State. On the goldfields it frequently happens that an advance is required from a bank to pay wages at a mine.

HON. R. D. MCKENZIE: And the bank eventually gets the machinery on the mine, and even the mine itself.

HON. W. T. LOTON: No bank in this State, at all events, wants to become the owner of a mine; and the hon. member is entirely mistaken. I am not speaking of pettifogging businesses, but of business men in a rather large way who require accommodation for a reasonable time and at a reasonable rate of interest, but want that accommodation without delay. For the brief reasons I have given, I am distinctly opposed to this measure, and hope it will not find its way to the Committee stage.

HON. J. A. THOMSON (Central): I will only say a few words on this measure, because were I to speak at length I would be practically only repeating what Mr. McKenzie has said. This Bill, in my opinion, is very desirable in the interests of the trading community. Mr. Loton has asked why a measure such as this should be considered or passed in the interests of the trading community; but surely the interests of the trading and business community deserve to be studied, so long as in doing so we are not injuring anyone else. I have not yet been able to learn from the arguments of the member who has just spoken how this measure is going to injure the interests of anyone in the community; on the other hand, if the measure become law, I am satisfied it will be greatly to the advantage of the trading community.

One member stated the other night that it would greatly restrict commerce if a measure such as this became law; but I fail to see how it can restrict commerce at all, unless it be to restrict the business of those people who make a living by giving bills of sale. There can be no doubt that the business houses in Western Australia—I am not speaking of the house with which I am connected, for we take every care to protect ourselves—but the ordinary business houses which have to give credit to the small traders, will find their business restricted if this measure does not become law; because affairs have come to this state now that wholesale houses and other large concerns have to give extensive credit to the small trader, and they are afraid to give that credit because there are so many dishonest men who get goods from wholesale houses and then want to raise money somehow, not for the honourable purpose of assisting their business, and such men do not care what means they use to raise money. They will give a bill of sale over goods which practically do not belong them; goods that are not paid for, but in which they have a sort of proprietary interest because the goods have been delivered to them. Under the existing law such an action is not criminal, and it is to restrict such transactions that this Bill has been introduced. I strongly support the remarks made by Mr. McKenzie, and I hope members will at least allow the Bill to pass into Committee; and if it be necessary to add a clause by way of amendment to protect the squatting interest, surely we can have such clause added.

On motion by HON. G. RANDELL, debate adjourned.

BILL—PHARMACY AND POISONS ACT AMENDMENT.

DISCHARGE OF ORDER.

Order of the Day for Committee stage read.

THE COLONIAL SECRETARY: At the request of Mr. Moss who introduced the Bill, I move that the order be discharged.

Question passed, the order discharged.

ADJOURNMENT.

The House adjourned at twelve minutes to 6 o'clock, until the next day.

Legislative Assembly,

Tuesday, 28th August, 1906.

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THE SPEAKER took the Chair at 4:30 o'clock p.m.

PRAYERS.

QUESTION—RAILWAY LAND PURCHASE, MIDLAND JUNCTION.

MR. JOHNSON asked the Minister for Railways: 1, On what date was the land on the north side of the railway line between Midland Junction and Bellevue purchased by the Railway Department? 2, The price paid? 3, Was this land acquired for the purpose of laying down marshalling yards? 4, Have plans been prepared? 5, Is it the intention of the Government to proceed with the work? 6, If so, when? If not, why not?

THE MINISTER FOR RAILWAYS replied: 1, 2nd June, 1899. 2, £3,040. 3, Yes. 4, Yes. 5 and 6, The matter is under consideration, and will be dealt with shortly.

QUESTION—RAILWAY GOODS TRANSIT, COST.

MR. WALKER asked the Minister for Railways: What is the bed-rock cost to the Railway Department of carrying one ton (weight) of goods from Fremantle to Kalgoorlie?

THE MINISTER FOR RAILWAYS replied: It has not hitherto been considered possible or necessary to obtain the factor of cost named in the question.

QUESTION—RAILWAYS, MINISTERIAL REPLIES TO QUESTIONS.

MR. HORAN, without notice, asked the Minister for Railways: 1, In view of the fact that replies given by