

ants and auditors are not registered, and are not liable if the balance sheets they certify to do not show all the items required by the Taxation Department. It would be in their own interests if the accountants were brought in under a board, and it would also serve as a protection to the people who employed them. It should be made a condition of registration that they should only certify to balance sheets and profit and loss account statements that showed the exact position from the point of view of income tax. This would do away with a lot of unnecessary work in the Taxation Department. The examination of returns could be restricted. The statement of a registered accountant could be accepted by the department, and it would be necessary only to make a check occasionally to see that everything was in order.

Progress reported.

ADJOURNMENT—SPECIAL.

The PREMIER (Hon. Sir James Mitchell—Northam) [10.55]: I move—

That the House at its rising adjourn until 7.30 p.m. to-morrow.

Question put and passed.

House adjourned at 10.56 p.m.

Legislative Council,

Wednesday, 26th September, 1923.

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The PRESIDENT took the Chair at 5.30 p.m., and read prayers.

BILL—LUNACY ACT AMENDMENT.

Second Reading.

Hon. T. MOORE (Central) [5.38] in moving the second reading said: This is a very short Bill, the necessity for which was made apparent owing to a recent decision by a judge of the Supreme Court. Some years ago a patient, who is at present in the Claremont Hospital for the Insane, was brought before the Criminal Court in Kalgoolie, and the jury found him not guilty of the charge preferred against him, on the ground of insanity.

The patient was committed to the Hospital for the Insane during the Governor's pleasure. He was not convicted of any offence, nor had he been found guilty of any charge. After a lapse of some years, his friends decided that there was a great improvement in his condition and they had him examined by several doctors. Six doctors have pronounced the man sane. Despite that fact, it is not possible, owing to the law as it stands to-day, for the patient to be discharged from the institution. Under Section 107 of the existing Lunacy Act, he applied to a judge in the Supreme Court for the right to prove his sanity. That is where we understood he should prove his sanity, that being the intention of Parliament. The judge's decision was that he could not order the release of the patient under that section. The judge stated that because Section 107 set out that the patient was to be detained during the Governor's pleasure, he could not act.

Hon. J. J. Holmes: You mean the judge could not act?

Hon. T. MOORE: Yes. Sections 69 to 84 deal with the criminal-insane and Section 81 provides—

The Governor may permit any person confined in any hospital for the criminal-insane, not being a person under conviction and sentence, to be liberated from custody or confinement, upon such terms and conditions as he may think fit. On the breach of any such conditions, such person may be retaken and dealt with as hereinafter enacted in case of an escape.

Section 107 seems to indicate clearly that Parliament intended that all patients should come within its purview, because it reads—

If a judge receives information upon oath, or has reason to suspect, that any person of sound mind is confined in any hospital for the insane or licensed house, the judge may order the superintendent of such hospital or licensed house to bring the confined person before him for examination at a time to be specified in the order.

That section refers to "any person." It does not say, "all persons except those who have been sent to an asylum during the Governor's pleasure, because they are supposed to be criminally insane." The section is clear. It further provides—

If upon the examination of the confined person, and of the superintendent, and of any medical or other witnesses, it is made to appear to the satisfaction of the judge that the confined person is of sound mind, the judge may direct that the confined person be immediately discharged from the custody of the superintendent of such hospital or licensed house, unless he is detained therein for some other cause by due process of law.

The judge has based his argument as to why he cannot act under Section 107 on the words "unless he is detained therein for some other cause by due process of law." The judge

considered he had no right to order the release of a patient held in such circumstances. His Honour said that he regarded the section as incomplete. Hence the amendment that is suggested. If an ordinary patient comes before a judge with a certificate signed by two doctors to the effect that he is sane, the judge will order his release forthwith. In the case I refer to, although six doctors have certified that the patient is sane, the judge refuses to act because of the defect in the law which, he says, prevents him from acting.

Hon. J. Duffell: Would the result of their examination be forwarded to the Governor?

Hon. T. MOORE: No, that is the whole trouble. That is what the amendment aims at. It proposes to add to Section 107 after the words, "unless he is detained therein for some other cause by due process of law," the additional words, "in which case the judge shall furnish a report of his examination to the Governor in Council."

The PRESIDENT: The Bill does not say so.

Hon. T. MOORE: No, but it means the same thing. It is remarkable that under the law it should not be possible for this sane man to recover his liberty.

Hon. J. J. Holmes: The judge claims that he is held on due process of law?

Hon. T. MOORE: That is so.

Hon. A. Lovekin: But the section says, "for some other cause."

Hon. T. MOORE: Yes. In this case the judge says the law prevents him from acting. The Bill proposes that the judge, having heard the medical testimony and examined the patient, shall be entitled to forward his recommendation to the Governor-in-Council, who, if he so desires, may then order the man's release, conditional or unconditional.

Hon. J. Duffell: Is that optional?

Hon. T. MOORE: In some cases of release by the Governor-in-Council released men have been debarred from proceeding to certain districts. In the event of the condition being broken, the released patient may be re-taken as an escapee and again detained. There is really no reason why this course of action should not be adopted. Since the judge finds that the section of the Act is incomplete, those behind the Bill consider that the sooner the defect is remedied the better. The Colonial Secretary, who is in charge of the department, has said the amendment is necessary. Consequently the Bill has not been opposed.

Hon. J. J. Holmes: Why do you, instead of the Government, bring in the Bill?

Hon. T. MOORE: It was introduced by a private member in another place. The judge has ruled that under the existing law this man cannot get his release.

Hon. A. J. H. Saw: Cannot the Governor-in-Council, on the recommendation of the medical superintendent of the Hospital for Insane, order his release?

Hon. T. MOORE: That may or may not be; I am not in a position to say. Section

107 of the Act gives an inmate the right to appeal to a judge. Then the judge, having taken evidence, can recommend release. But in this particular case the judge says the law debars him from taking action. So it is commonly agreed that an injustice is being done to a sane man.

Hon. A. Lovekin: Under Section 104 he could obtain his release from the Inspector General of the Insane.

Hon. T. MOORE: Legal opinions have been obtained, and the man has followed the advised course, but the judge has ruled that the section of the Act is incomplete. So, without the amending Bill, it is not possible to secure his release. If the amendment be passed it will remain for the Governor-in-Council to decide whether this man should be at liberty, and under what conditions.

Hon. J. Cornell: Has the superintendent of the hospital been asked to release him?

Hon. T. MOORE: I cannot say. Under the Bill it will remain for the Governor-in-Council to release the man conditionally or unconditionally.

Hon. A. Lovekin: Cannot they do that now?

Hon. T. MOORE: Apparently not. I move—

That the Bill be now read a second time.

Hon. J. J. HOLMES (North) [5.50]: The inference I have drawn from the hon. member's remarks is that if this man had been sent in to the Hospital for Insane as a criminal he could be liberated; but because he has not been convicted criminally, a defect in the Act prevents his release. If that be so, it is an injustice. But surely there are means by which the Inspector General of the Insane could liberate this man! If the man be sane, nobody could reasonably contend that the Inspector General is holding him for pleasure. The Act provides that the man can be liberated on the recommendation of the Inspector General. I will not be a party to going behind the constituted authority. Before helping to pass this legislation, I want to know why the Inspector General has not recommended the man's release. When we pass legislation for individual persons we undermine authority, which I do not think is well advised.

Hon. A. LOVEKIN (Metropolitan) [5.52]: I agree with Mr. Holmes. I do not like taking any steps which would lead us behind the constituted authorities. I have consulted the principal Act, which the Bill proposes to amend. Under Section 104 the Inspector General of the Insane has full power to deal with a case of this sort. The section provides that the Inspector General of the Insane or any official visitor to any hospital for the insane or licensed house may, with the advice in writing of the superintendent of such hospital or the medical officer of such licensed house, order the discharge of any person detained therein or permitted to be absent therefrom under the provisions of Sec-

tion 98, whether such person has recovered or not.

Hon. A. J. H. Saw: That is under Section 98.

Hon. A. LOVEKIN: Yes. That section provides that he can be liberated and sent to some place where his health will be looked after, or his absence on trial may be permitted. It means that, on the advice of one medical man, the superintendent has full power to liberate any person. If the amending Bill be intended to go behind the law and behind the authorities in charge of the Hospital for the Insane, I am not in favour of it; but if there be really a flaw in the law, and the man is improperly detained and cannot get any redress, then perhaps the Bill is a proper one to pass. However, I should like further information on the subject.

The MINISTER FOR EDUCATION (Hon. J. Ewing—South-West) [5.55]: This is a private Bill and has passed another place. No doubt it has been considered by members of the Government in that place. At the same time, the case is a peculiar one, and this man having once been tried it is necessary that Section 107 should be applied. I do not think it in any way interferes with the rights of the superintendent. If any member cares to move the adjournment of the debate, I will have the case fully inquired into and will place the results before hon. members at the next sitting of the House.

Hon. J. CORNELL (South) [5.56]: It seems that a certain man is in custody in the Hospital for the Insane, and it is discovered that he has no right of appeal for his release, although many other inmates have that right. It has been pointed out that the Inspector General of the Insane has power to release any inmate, and Mr. Moore has told us that many of the inmates can appeal to a judge. This may be an isolated case, but on the other hand it may be a recurring case. Therefore, while the Bill may appear to deal with only one man, it will be there as a safeguard in similar cases that may arise. I see in the Bill nothing that says the passage of the Bill will liberate this man. He will still have to go through the procedure open to many other inmates. If the Bill were to provide for the liberation of this man straight out I should be the last to support it.

Hon. A. J. H. SAW (Metropolitan-Suburban) [5.58]: If the Bill merely gives to this man the right of appeal to a judge and of a trial before a judge as to his sanity, I see no objection to it. It is a legal axiom that hard cases make bad law. But in this instance there seems to be a defect in the Act, and if the defect can be remedied by the Bill giving the man concerned the right of appeal to a judge, I think it should be remedied. If a man is insane and commits a crime, undoubtedly he is not responsible for that crime, and so a verdict of not guilty is the proper one. The procedure then is to have that man

put under lock and key in an institution for the insane. But if he recovers, there seems to be no reason why he should not be released, because he has not committed any crime recognised by the law. Any offence he might have committed was absolved by reason of his insanity. When the question of his sanity is tried before a judge or before any medical man, considerable evidence will be required to justify his release, because of the fact that while he was insane, he not only had a homicidal tendency, but actually committed homicide. I see no reason why the second reading should not be agreed to. Before the Bill is finally taken through Committee, we shall have an opportunity to go more fully into the merits of this case.

On motion by Hon. V. Hamersley, debate adjourned.

BILL—RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT AMENDMENT.

In Committee.

Resumed from the previous day.

Hon. J. W. Kirwan in the Chair; the Minister for Education in charge of the Bill.

The MINISTER FOR EDUCATION had moved—That the following be inserted to stand as Clause 3:—"Section two of the principal Act is hereby amended by the deletion of the word 'other' in the definition of 'superior court.'"

New Clause put and passed.

New Clause:

The MINISTER FOR EDUCATION: I move—

That the following be inserted to stand as the last clause but one of the Bill:—
"A section is inserted in the principal Act as follows:—This Act shall not be deemed to repeal by implication the Interstate Destitute Persons Relief Act, 1912."

I have consulted the Crown Law Department and I move this new clause in deference to the opinion expressed by one or two members last night. It will overcome any doubt that may exist as to this measure by implication destroying an existing statute.

Hon. J. NICHOLSON: The new clause meets my views. It will remove any doubt as to whether the 1912 Act is repealed by implication by the passing of this measure.

Hon. J. DUFFELL: I am diffident about accepting the new clause. The arguments indicate that it is unnecessary. Under the 1912 Act there is provision for regulations, but if this clause is passed, how can it be carried into effect? We were told that the object of the 1921 Act was to bring our legislation into line with that of the other States. I fail to see the use of passing the new clause unless there is machinery to give effect to it.

Hon. J. J. HOLMES: If we insert the new clause, it will be a reflection upon the person

responsible for the introduction of the Bill and certainly a reflection upon the House. The only inference to be drawn is that which could be drawn without the new clause, but if we accept the new clause, we shall be passing something we do not understand. In order to protect ourselves we are asked to agree to a clause that nothing shall be repealed by implication. The Bill is either right or wrong. If we go to the extent of providing that another Act is not repealed by implication, we shall merely be showing the need for reform. It is a silly clause and I refuse to be a party to legislation of that kind.

Hon. J. CORNELL: I agree with Mr. Duffell and Mr. Holmes that the new clause is an extraordinary one. Nature has endowed the Minister with a large bump of generosity—

The Minister for Education: It is not that at all.

Hon. J. CORNELL: And he is anxious to meet the wishes of some members. If 19 of us went to the department for an opinion, each could get the opinion he wanted.

Hon. J. J. Holmes: Can an Act be repealed by implication? I thought it took both Houses to repeal an Act?

Hon. J. CORNELL: This measure needs no adornment by way of piety at the end.

Hon. J. NICHOLSON: Mr. Cornell has overlooked the point. The statute passed in 1921 limits the scope to certain things within the United Kingdom, and the object of that Bill is to extend the scope of the Act so that its provisions may be made use of in cases where the provisions of the Interstate Destitute Persons Relief Act may not be so applicable. If we insert the new clause, it will be competent for persons to avail themselves of whichever Act they consider the better. Mr. Lovekin yesterday suggested that where an order was obtained under the 1912 Act, it might be argued that Act was repealed by this measure. To remove any doubt, the new clause is essential. It will provide two strings to the bow.

Hon. J. Cornell: And add greater uncertainty to the law.

Hon. J. NICHOLSON: But the Act is in force.

Hon. J. J. Holmes: Is it necessary to add the words "by implication"?

Hon. J. NICHOLSON: It is wise to add them.

Hon. J. Cornell: How would you, as a lawyer, construe the new clause?

Hon. J. NICHOLSON: The point mentioned by Mr. Lovekin might be taken by a lawyer in the Eastern States. If an order were obtained under the 1912 Act, the first plea to be raised would be that the Destitute Persons Relief Act had been repealed by implication.

Hon. J. J. Holmes: Does this Bill repeal it or does it not?

Hon. J. NICHOLSON: It is open to anyone to raise such a plea, and to prevent that being done, the new clause should be inserted.

Hon. J. Cornell: Could not that plea be raised even if the new clause were inserted?

Hon. J. NICHOLSON: No.

Progress reported.

House adjourned at 6.15 p.m.

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Wednesday, 26th September, 1923.

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The SPEAKER took the Chair at 7.30 p.m., and read prayers.

QUESTION—MIDLAND, WORKSHOPS, EMPLOYEES.

Mr. DAVIES asked the Minister for Railways: 1, What was the number of employees engaged in the Midland Junction Workshops at the 30th June, 1923? 2, What was the number engaged at the same date in the years 1918, 1919, 1920, 1921, and 1922?

The MINISTER FOR RAILWAYS replied: 1, Including the shops at West Midland, 1,281. 2, Including the shops at West Midland, 30/6/1918, 1,101; 30/6/1919, 1,243; 30/6/1920, 1,384; 30/6/1921, 1,493; 30/6/1922, 1,351.

QUESTION—WEIGHTS AND MEASURES ACT, PROCLAMATION.

Capt. CARTER asked the Minister for Mines: 1, Was a Weights and Measures Act passed in 1915 or thereabouts? 2, If so, why has such Act not been proclaimed? 3, Is it the intention of the Government to proclaim it; and, if so, when? 4, Is it the intention of the Government to follow the lead given by New South Wales in this matter? 5, Do the Government know that New South Wales is further amending their Act so as to tighten up matters in connection with weights and