

population and two-fifths according to the area. The agreement that has been varied had another  $5\frac{1}{2}$  years to run, and the new agreement will operate over the balance of that term. We will have to provide a three per cent. sinking fund during the term of the agreement, and when it expires, we will have to provide a sinking fund at the rate of  $2\frac{1}{2}$  per cent., which will have to be continued until the debt is redeemed. Hon. members will see that instead of receiving, as in the past, an average of £672,000 a year, we will receive something like £280,000 a year in future. We cannot make the money go so far as we have been able to in the past, and I believe the first duty of the Commissioner of Main Roads will be to maintain roads already in existence. We receive certain traffic fees, but the revenue from that source has been considerably reduced. The second duty of the Commissioner will be to provide bridges and other requirements that the local governing authorities cannot construct out of revenue. As far as possible, any balance from the grant will be handed over to the local governing authorities. How much will be left over, time alone can tell. The Government have decided that this year the local authorities will receive an average of £250. Even so, they will not be able to receive the money all at once. That is one of the unsatisfactory features of the new agreement, seeing that we will not know, except from month to month, what money we shall receive from the Federal Government.

Mr. Marshall: Have you the machine for weighing heavy loads?

The MINISTER FOR WORKS: Apropos of that interjection, it is interesting to note that the amount received on account of heavy traffic fees is £1,547. It will be seen that we are not receiving much under that heading. The agreement must be passed by Parliament. The report of the conference proceedings shows that the Premier bitterly opposed it and there seems nothing for us to do but accept the agreement. Every other State is in favour of it. Although we shall be losing, we shall lose in proportion to the other States of Australia, and I believe the position of the Commonwealth Government is such that we have no option but to accept the revised agreement.

Mr. Marshall: Why should Western Australia lose in proportion to the other States? Why must we always be picked?

Hon. A. McCallum: Are we losing in the same proportion?

The MINISTER FOR WORKS: Yes. In the division of the money derived from the revenue from petrol, area as well as population is taken into consideration. As Western Australia has the largest area, we actually receive the largest amount under that heading. New South Wales is the only other State that will receive more than Western Australia. Instead of £2,000,000, the amount may be £1,500,000, but we will receive whatever we do get in exactly the same proportions as the other States that are included in the present agreement. I move—

That the Bill be now read a second time.

On motion by Hon. A. McCallum, debate adjourned.

*House adjourned at 7.55 p.m.*

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## Legislative Council,

*Wednesday, 29th July, 1931.*

	PAGE
Bill: Hire-Purchase Agreements, Com. ...	4073

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

### BILL—HIRE-PURCHASE AGREEMENTS.

*In Committee.*

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

Postponed Clause 5:

Hon. J. M. DREW: In Subsection 1, I wish to strike out after "vendor" in line 1 the words "except at the request or at the instance of the purchaser."

The CHAIRMAN: That will have to be done on recomittal.

Hon. H. SEDDON: I wish to move an amendment. In view of your ruling yesterday, Mr. Chairman, that the proviso I intended to move was really not a proviso but a further subclause, I shall move it in the form of a subclause. I move an amendment—

That a new subclause, to stand as Subclause 7, be inserted as follows.—

“If after the vendor has taken possession of the chattel it shall have been sold by public auction—

- (a) at a place agreed on by the vendor and purchaser, or in default of agreement at the place where the hire-purchase agreement was entered into by the purchaser; and
- (b) subject to reasonable conditions of sale which permitted both vendor and purchaser to bid; and
- (c) at a reasonable time and after adequate advertisement and due notice to the purchaser,

then the price for which the chattel was so sold, after deducting the expenses occasioned by the sale, shall, for the purposes of this section, be conclusively deemed to be the value of the chattel at the time when and the place where such sale was effected.”

The object of the new subclause was explained yesterday. The idea is to afford an alternative to the vendor and the purchaser to effect a sale, if so desired. It was contended that a magistrate might indicate that that was a desirable way by which the value of a machine might be assessed, in preference to the magistrate himself adjudicating on the matter.

Hon. J. M. DREW: I do not regard the amendment as providing an alternative. On the other hand, I think the amendment will govern the effect of the whole Bill. There is nothing in the new subclause to indicate that it provides an alternative. If the vendor complies with the conditions set out in the amendment, then the sale must take place by public auction. What will be the result? Machinery will be sacrificed. There may be a dozen repossessions at the same time, and machinery may be sold for a song. That will be the effect of the amendment. Under the Bill as it stands, the purchaser may go to a local court and have the value of a machine estimated. The ground would be cut from under his feet by the amendment, and the old system of selling machines at auction would continue.

Hon. H. SEDDON: The consent of the purchaser is essential to the procedure to be carried out if the amendment be agreed to. If the conditions governing the sale were not reasonable, the purchaser would have grounds for objection. Only with the consent of the purchaser could the sale go on.

The MINISTER FOR COUNTRY WATER SUPPLIES: It seems to me that the amendment will make it mandatory that the sale must be effected either at a place agreed on by the vendor and the purchaser or, in default of agreement, at the place where the hire-purchase agreement was entered into, which will probably be Perth. The sale is to be subject to “reasonable conditions.” Who will define what are reasonable conditions?

Hon. H. Seddon: The magistrate.

The MINISTER FOR COUNTRY WATER SUPPLIES: I am doubtful about that. Machines have been taken away from farmers because they have not even sufficient to pay half the amount owing to the vendor. That being so, how will the farmer be able to find money to repurchase his machinery at a sale? I think the purchaser will be tied down by the procedure; there is no alternative. The amendment will have to be modified if the purchaser is to have protection.

Hon. J. M. DREW: As the Minister has explained, the purchaser cannot hold up the sale because if a place is not agreed on between a purchaser and the vendor then it must take place where the contract was made. The paragraph relating to reasonable conditions of sale is in favour of the purchaser to the extent that if reasonable conditions are not provided he can appeal to the local court. If the magistrate is satisfied, the purchaser will be covered by the provisions of the measure, and not otherwise.

Hon. J. NICHOLSON: Mr. Drew has overlooked the point in Subclause 2 that the vendor shall credit the purchaser with the value of the chattel at the time and place of repossession. In the absence of sale by public auction, the only method of arriving at the value would be by the evidence of experts before the court, and the experts would be men interested on behalf of the vendor.

Hon. J. J. Holmes: Who would pay the expenses of the experts?

Hon. J. NICHOLSON: They would come out of the proceeds of the machine.

The cost would be so heavy that there would be little left for the purchaser. Some method must be devised to determine the value. The property of a mortgagor who defaults is submitted to public auction, and the select committee suggested the subclause to bring a hire-purchaser into line with a mortgagor. The select committee aimed at getting an amicable arrangement to secure as large an equity as possible to the purchaser. That idea has been preserved in this amendment by stipulating sale at a place agreed on by the vendor and purchaser and, failing agreement, at the place where the hire-purchase agreement was entered into.

Hon. F. W. ALLSOP: What about calling tenders for the machinery?

Hon. J. NICHOLSON: I would not object to that suggestion.

The CHAIRMAN: The simple way out would appear to be by inserting after "account" in line 1 of Subclause 4 the words, "and has failed to agree with the vendor that the re-possessed chattel be sold by public auction." Then the man would not be deprived of the right of appearing before the magistrate.

Hon. H. SEDDON: Your suggestion, Mr. Chairman, appears to meet Mr. Drew's objection. Perhaps he would move an amendment on those lines.

Hon. J. M. DREW: The interests of the farmer would be better protected by the court than by selling the machine at auction. I know of numerous instances where machinery has been sacrificed. I have frequently attended local courts and, so far as I could judge, justice has almost invariably been administered. If a farmer appeared before a local court, he would get some value for his machine. I was surprised to hear Mr. Nicholson discount the value of local court procedure. Local court fees are nominal; there have been protests from the legal profession against the low charges. The court provides a cheap and easy way of determining the value of a chattel and it is the only safe means I have discovered to protect the interests of the farmer.

Hon. J. NICHOLSON: I am sorry Mr. Drew has misconstrued my remarks. I did not say one word to reflect upon the procedure of local courts. Mr. Drew is wrong in inferring that the procedure would be cheap.

It might be necessary to send several experts to give evidence as to value.

Hon. G. W. MILES: Where would they be sent from?

Hon. J. NICHOLSON: From Perth. Their evidence would be necessary to aid the court in determining the value. There would be travelling expenses and time occupied in connection with the hearing of the case. The costs would not be trifling, as was indicated. We must not run away with the idea that these matters are going to be determined in the easy way that has been suggested. If any alternative can be proposed that will secure the same end, let us adopt it.

Hon. J. M. DREW: If witnesses are summoned to Geraldton from Perth, the vendor will have to bear the cost over and above the cost of witnesses in Geraldton itself. Under the Bill as amended, the vendor and purchaser would endeavour to come to some agreement as to the value of the machine. The vendor might say that it was worth only £10 or £20, while the purchaser might claim it was worth at least £70, and they would go to the court on that basis. If the farmer proved to be right, then the vendor would have to bear the whole of the costs of the case. If a man goes into court with an exaggerated claim, or a claim that is not fair or just, he suffers in regard to costs.

Hon. E. H. H. HALL: Mr. Drew has caused me to wonder whether or not the words after "purchaser" in paragraph (a) would not cause the purchaser to be at a disadvantage as compared with the vendor. I cannot understand why the words "or in default of agreement at the place where the hire-purchase agreement was entered into by the purchaser" were inserted. If the parties cannot agree, the Bill provides that they shall go before a magistrate. The three paragraphs of the subclause give the parties the opportunity to arrive at a mutual agreement.

Hon. H. STEWART: There is provision in the Bill for arriving at an amicable settlement, and everything that is desired can be done without putting into the Bill a separate clause. In any case, the subclause should be in a different form; there should be inserted something to indicate that this is purely an optional arrangement.

Hon. H. SEDDON: What is desired by members will be achieved by the suggestion made by you, Mr. Chairman. I will move it.

The CHAIRMAN: The hon. member may outline what he proposes to substitute, but he will have to withdraw the subclause and move it again in the amended form on further recommittal.

Hon. H. SEDDON: I ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause, as previously amended, put and passed.

New clause:

Hon. H. SEDDON: I move—

That the following new clause, to stand as Clause 7, be added to the Bill:—

7. Notwithstanding anything contained in section fifty-four of the Bills of Sales Act, 1899, any vendor named in any hire-purchase agreement may cause such agreement to be registered, and such registration to be renewed, under the said Act in manner and within the time provided in such Act with reference to bills of sale, and after such registration and so long as such registration continues in force and is effective, section twenty-nine of the said Act shall apply to the said agreement, and any chattel comprised therein, and no distress for rent shall be available against such chattel except to the extent in the said section provided.

The object is to enable the holder of a hire-purchase agreement to be protected against the powers of the landlord as they now exist. The clause will enable the owner of a chattel to protect himself by registering the hire-purchase agreement in the same way as a bill of sale is registered. That will enable the landlord to realise the position he is in if the tenant is slipping behind in his rent.

The MINISTER FOR COUNTRY WATER SUPPLIES: The intention of the select committee is good, but the new clause applies to the Bills of Sales Act and not to the Bill now under discussion. The wishes of the select committee can be met by an amendment on the following lines:—

"Any hire-purchase agreement exempt from registration by reason of Section 54 of the Bills of Sale Act shall, notwithstanding the fact that it is unregistered, be deemed subject to Section 29 of that Act." That would be much preferable to the amendment, which means that all will have to be registered under the Bills of Sale Act.

Hon. H. Seddon: But would not that create practically a secret bill of sale?

The MINISTER FOR COUNTRY WATER SUPPLIES: The hon. member

wants to protect the tenant against the landlord.

Hon. H. Seddon: To give him an opportunity to protect himself.

The MINISTER FOR COUNTRY WATER SUPPLIES: Is there any reason why he should not protect himself under it?

Hon. J. NICHOLSON: The Minister has missed the main point. He has explained that under the last section of the Bills of Sale Act certain articles are exempt from the necessity for registration. Under the Bills of Sale Act as originally drawn, in order that the holder of a bill of sale might be protected it was necessary, and it is necessary now, for registration to be effected; but under Section 54 a number of articles were exempted from the necessity for registration, and by a recent amendment those exemptions were enlarged. The result of those exemptions is that it is not necessary for the holders of hire-purchase agreements to register under the Bills of Sale Act. A hire-purchase agreement is a bill of sale within the definition contained in the Act, but those exemptions have been made in the Bills of Sale Act, and accordingly these hire-purchase agreements do not appear on the register. A person carrying on business might acquire a lot of these exempted articles, and there would be nothing on the register to show that that person was holding those goods on hire purchase. Consequently he could invite credit from merchants and others without disclosing the fact that the goods he held were held under hire purchase; whereas if he happened to hold some other plant not amongst the exemptions he would be bound to register it. I think that if that point were brought before the Crown Law authorities who have advised the Minister, they would realise the necessity for registration. Dr. Stow suggested to the select committee that registration should be effected, and the clause put up by the select committee was actually drafted by Dr. Stow.

Hon. G. W. Miles: If these agreements are not registered, the landlord can know nothing about them.

Hon. J. NICHOLSON: That is so. The right of distress would extend to the full, would not be limited as provided in Section 29 of the Bills of Sale Act. If the Minister is in any doubt about this, I hope

he will take opportunity to inquire further into it.

Hon. J. M. DREW: Many articles sold under hire purchase agreements are not required to be registered under the Bills of Sale Act. Still, they are protected by law, just as if they were registered. So the only object Mr. Nicholson seeks to achieve is that the landlord should be protected, that those articles shall be registered purely to the end that the landlord might be notified that they are being acquired under a hire-purchase agreement. In order to bring that about, a person who sells a sewing machine must register it in the Supreme Court as a bill of sale. That would make the Bill look ridiculous.

The MINISTER FOR COUNTRY WATER SUPPLIES: Mr. Nicholson really kills his own case. Section 54 of the Bills of Sale Act exempts practically all the articles held under hire-purchase agreement. The carrying of this amendment would mean that every one of them would have to be registered.

Hon. J. Nicholson: To claim the benefit of the Act in regard to distress.

The MINISTER FOR COUNTRY WATER SUPPLIES: But why should it be done? It would be wrong to undo what has been done in Section 54 of the Bills of Sale Act. Those articles are specifically excluded, but now it is proposed to include them by a provision in the Bill. If the amendment be at all necessary, it should be made in the Bills of Sale Act, where it would excise all the privileges of non-registration. Under it, everything will have to be registered.

Hon. J. NICHOLSON: Where there is a registered bill of sale, there is a record for anyone to see by making a search. Where no registration is effected the landlord can distrain to the full amount of his rent in respect of those articles held under hire purchase, but where there is a registered document the right of the landlord to distrain on those goods is limited. That is the necessity for registration. It has been overlooked by the Crown Law authorities when advising the Minister.

The Minister for Country Water Supplies: And by Parliament.

Hon. J. M. Drew: It has been overlooked for years. I think Mr. Nicholson himself introduced it.

Hon. J. NICHOLSON: No, I did not. Now that we have the Hire Purchase Agreement Bill before us, it is to rectify an anomalous position that the amendment has been moved. As I have said, this amendment is the result of a discussion with Dr. Stow. I hope it will be agreed to.

Hon. H. STEWART: I ask Mr. Nicholson whether there has been any real need for the amendment. If the amendment be carried, it will affect those very cases in which the vendor thought it desirable, in order to protect the purchaser and himself, that registration should be optional.

Hon. H. SEDDON: Representatives of some of the vendors claimed that the landlord might get possession of the goods the subject of a hire-purchase agreement because the purchaser owed him rent, and in that case neither the vendor nor the purchaser would get any benefit from the goods. At times the vendors have seized an article that was being purchased on time payment merely to prevent the landlord distraining upon it. When a purchaser fell into arrears of rent it was felt it must be due to financial embarrassment, and when the vendors knew of such a state of affairs, they would take possession of the machinery for their own protection. One hire-purchase agreement that was produced contained a clause to the effect that if the purchaser found himself unable to pay his rent he should notify the vendor so as to obviate the trouble that had arisen in other cases. The proposed amendment gives the vendor the right if he desires to register an agreement.

Hon. J. Nicholson: And thus get the benefit of Section 29 of the Bills of Sale Act.

Hon. H. SEDDON: The vendor can, of course, decline to register the document if he likes to take the risk. The idea of registration is to apprise the landlord of the exact position, but it is optional for the vendor to effect registration.

The MINISTER FOR COUNTRY WATER SUPPLIES: Apparently some of the vendor firms approached the select committee on the subject. They will get protection under an amendment I am going to move, and the Bills of Sale Act will not be interfered with. The amendment would mean that there would be no need for wholesale registration.

Hon. H. Seddon: What protection would the landlord have under your amendment?

The MINISTER FOR COUNTRY WATER SUPPLIES: The hon. member said it was not intended to protect the vendor, but now he wants to protect the landlord.

Hon. H. Seddon: Of course. How otherwise would the landlord know?

The MINISTER FOR COUNTRY WATER SUPPLIES: He does not come into the picture. The Committee would be well advised to reject the proposal of the select committee. Parliament has already declared there is no need to register hire-purchase agreements in respect of a number of stipulated articles, whereas the recommendations of the select committee would mean that all such agreements would have to be registered. I move an amendment—

That all the words after the numeral "7" be struck out, and the following inserted in lieu:—"Any hire-purchase agreement exempt from registration under the provisions of Section 54 of the Bills of Sale Act, 1899, shall, notwithstanding the fact that it is unregistered, be deemed subject to the provisions of Section 29 of that Act."

This protects the position but does not interfere with the Bills of Sale Act.

Hon. J. M. Drew: And it would cost about two guineas a time for registration.

The MINISTER FOR COUNTRY WATER SUPPLIES: Yes.

Hon. J. NICHOLSON: The Minister says that our amendment would involve wholesale registration. I would point out that registration is optional, but the person concerned will only get the benefit of Section 29 provided he does register.

Hon. E. H. H. HALL: I do not agree with the views expressed by the Minister when he indicated that the clause was framed to help landlords. It was framed with a view to allowing the purchaser to retain possession of an article, and not to protect the landlord.

*Amendment put and negatived.*

*New clause put and passed.*

*Title—agreed to.*

*Bill reported with amendments.*

#### *Recommittal.*

On motion by the Minister for Country Water Supplies, Bill recommitted for the purpose of further considering Clauses 2, 5, 6 and 9.

#### *In Committee.*

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

#### *Clause 2—Interpretation:*

Hon. J. NICHOLSON: I move an amendment—

That in the definition of "chattel" all the words after "any" be struck out, and "chattels personal, the subject of a hire-purchase agreement" be inserted in lieu.

Hon. J. M. Drew: Last night the Committee decided not to accept this amendment, because it would make the Bill too comprehensive.

Hon. J. NICHOLSON: It is quite a different amendment now.

The MINISTER FOR COUNTRY WATER SUPPLIES: I took strong exception to the amendment put up by Mr. Nicholson last night, but with the addition of the words "the subject of a hire-purchase agreement" I am prepared to accept the amendment.

Hon. J. M. DREW: The Bill has been introduced mainly to protect farmers in this time of difficulty, but now the intention is to extend the measure to every form of chattel personal.

Hon. J. Nicholson: No.

Hon. J. M. DREW: Any form of chattel that would be the subject of a hire-purchase agreement.

Hon. Sir CHARLES NATHAN: I understand the whole object of the Bill to be the correction of what has been a gross injustice done to people who in the past have taken advantage of the hire-purchase system. That system has enabled sharp-practice men living in town to palm off on the poor unsuspecting farmer apparatus that he did not need. That is what is to be remedied. If these abuses are taking place, then I contend that others besides the farmer are entitled to relief. If what the Bill proposes is just, fair and equitable—some of the clauses do not so appear to me—I fail to see the justice of the contentions raised by some hon. members. The man in the city who buys a sewing machine or a gramophone is equally entitled to protection with the farmer in the country. I am inclined to support Mr. Drew because of my fear that the Bill we are now endeavouring to lick into shape is so inequitable and unfair that its provisions ought not to be extended beyond what is laid down in the

measure. I would have preferred to postpone consideration of this clause.

Hon. J. NICHOLSON: The definition of "chattel" specifies certain articles; and therefore the entire Bill, if passed into law, will be limited in its effect to those particular articles. A wireless set, for instance—

Hon. J. M. Drew: That is a luxury.

Hon. W. J. Mann: It is a necessity in the country.

Hon. J. NICHOLSON: A wireless set and a hundred and one other things are notoriously the subject of hire purchase, but they are not included in the Bill. I defy anyone to specify under "chattel" all the articles coming under hire purchase, because articles thus sold are constantly coming out. Consequently the generally comprehensive definition I have suggested is desirable. "Chattel personal" might include something that is not the subject of a hire-purchase agreement.

Hon. G. W. Miles: Then how could it be affected by this Bill?

Hon. J. NICHOLSON: That was the argument used last night. To make the position clear, certain words have been added. The Minister in charge of this Bill in another place, Mr. Latham, agrees with me that those words are the right words.

Hon. J. M. DREW: I am afraid this amendment is loaded. The Bill is to be made retrospective. Are we to make it retrospective in order to enable people in these times to buy a luxury like a wireless set?

Hon. E. H. H. HALL: Things which are certainly not luxuries were excluded by the Bill as introduced; for example, bacon-cutters and butter-cutters, which are needed by country storekeepers. Mr. Fraser last night mentioned perambulators. Surely Mr. Drew would not call a perambulator a luxury.

Hon. J. Nicholson: A perambulator is not included in the Bill.

Hon. E. H. H. HALL: There is a danger that articles which are necessities may be excluded.

Hon. Sir CHARLES NATHAN: I hope the Committee will accept the views expressed by Mr. Drew and me, that any tinkering with the clause is dangerous while issues are involved that might be retrospective from Mr. Drew's viewpoint. Mr. Drew's fear and my anxiety might be removed by postponing discussion of this

clause until all the other clauses have been dealt with. Then we shall be able to tackle the present clause intelligently, and without fear of possibilities.

The CHAIRMAN: Before the Minister rises to speak I would draw the attention of hon. members to Standing Order 191, which sets out that any amendment may be made to any part of the Bill, provided that it be relevant to the subject matter of the Bill and otherwise be in conformity with the Standing Orders. The subject matter of the Bill relates to hire-purchase agreements. While I will not rule the amendment out of order, I would point out that the inclusion of the words "the subject of a hire-purchase agreement" after the words "chattel personal" is sheer redundancy.

The MINISTER FOR COUNTRY WATER SUPPLIES: I move—

That the further consideration of Clause 2 be postponed until after the consideration, on recommitment, of Clause 9.

Motion put and passed.

Clause 5:

The CHAIRMAN: The clause has been considered and amended by an earlier Committee.

Hon. J. M. DREW: I move an amendment—

That after "vendor," in line 1 of Sub-clause 1, the words "except by the request or at the instance of the purchaser" be struck out.

If the words I propose to have struck out remain in the clause, machinery firms will send their agents to farmers and say to them, "You have failed to meet your bills and we can seize your machines. We will not do that, but will give you an opportunity to return them to us." The innocent farmers will return their machinery, and once that is done, the protection afforded by this legislation will be lost to them.

Hon. H. Seddon: You have not a very good idea of farmers.

Hon. J. M. DREW: They have been victimised times out of number. The words dealt with by the amendment were inserted by an earlier Committee with another object in view regarding the position that could arise if machines had to be returned to vendors for examination or repair. Un-

less the subclause had been amended, that very fact would have brought into operation all the penal clauses of the Bill. Now, however, the Leader of the House has given notice of his intention to move a further amendment that will clarify the position, and it will be unnecessary to retain the words I desire to have struck out.

Hon. H. SEDDON: I hope the Committee will not agree to the amendment. If they do, they will create a far greater injustice than that which Mr. Drew has in mind. The impression created by the discussion on the clauses of the Bill has been calculated to make the farmer exclaim, "Save me from my friends, because they are depicting me as an imbecile, absolutely incapable of looking after my own business." Mr. Drew suggests that a farmer will be so innocent that he will surrender his machinery voluntarily, although he will know that the Bill has been passed to protect him and that all that is necessary for him to do is to rely upon that protection. I cannot see that any advantage will be gained by agreeing to the amendment. If it be agreed to, it will leave the way open to unscrupulous purchasers to return machines and secure a certain amount of equity, to which they will not reasonably be entitled.

Hon. G. W. MILES: I oppose the amendment. We have already gained more than some people expected in making the Bill retrospective, and I hope that Clauses 5 and 9 will remain as amended already. We do not want unscrupulous purchasers to push back on to the vendors machinery they have bought.

Hon. J. M. DREW. Mr. Miles has not properly interpreted the meaning of the clause. There is nothing in it that will enable unscrupulous purchasers to push machines back on to vendors.

Hon. G. W. Miles: There will be nothing to prevent that being done if the clause is amended.

Hon. J. M. DREW: It could be done at any time by an unscrupulous purchaser merely failing to meet his bills. That is the protection the farmer will enjoy under the clause. Unless we deal with the clause as I suggest, I do not know how we shall be able to secure justice.

Hon. SIR CHARLES NATHAN: I have heard many explanations advanced regard-

ing amendments moved but, with the greatest respect for Mr. Drew, I have not heard one to carry so little conviction as that made by him. He suggested that the door might be thrown open for the vendor to send a message to the purchaser that if he did not return the machinery of his own free will, the vendor would repossess. He suggested that the unfortunate purchaser might not know the real position and would be caught. It is this particular clause, and the few words referred to by Mr. Drew, that made me request the adjournment of the discussion on Clause 2 pending a decision on the amendment to Clause 5. As to the retrospective effect of the Bill, my objections were purely on the ground of principle. At the same time, with regard to the retrospectivity agreed upon by the Committee, I cannot see a great deal of danger to anyone concerned, provided the conditions set out in the Bill are fair and equitable to all concerned. If we delete the amendment agreed to by a former Committee, as suggested by Mr. Drew, it will leave it open to the perpetration of one of the grossest pieces of unfair legislation ever introduced into any Parliament. It will recall to our minds the New South Wales legislation we have heard so much discussed. What is proposed is a piece of Lang legislation, neither more nor less, and I hope I shall convince hon. members to that effect. Under hire-purchase agreements at present, the purchaser has the right to send back a machine. Whether the words are included in the clause or not, the purchaser will still have that right. The object of the select committee in including those words, was that there should be no premium offered to dishonest persons to avail themselves of legislation not intended for them.

*Sitting suspended from 6.15 to 7.30 p.m.*

Hon. SIR CHARLES NATHAN: The essence of a hire-purchase agreement is that a man who has possession of a machine may terminate his hire by returning the machine. After that, all hire automatically ceases. The inclusion of the words would not affect that position, but if the words are not included, we shall be offering a premium to a man who, having entered into an agreement, sees an opportunity to obtain an equity or some value for a machine he has ceased to re-



gard as of the importance it was at the time he purchased it. Many men have been able to purchase machines under this system whereas, if they had had to find the cash, they would not have been able to buy them. The system has grown and has become accepted as a regular method of trading, and I see no reason why it should not continue to be a method of trading, so long as it is properly regulated. Hundreds of people have acquired, under better conditions, machines that at the moment they feel they could do without, but they hesitate to return them because they would terminate the agreement and lose the hire they have paid. Thousands of pounds worth of material have been supplied under this system, and the agreements should be honoured by both parties as far as possible. What about the men who in good faith have supplied the machines? If we offer practically a premium to people to return their machines many of those men will be driven into the insolvency court or into liquidation, and the result will be a complete termination of the hire-purchase system.

Hon. J. Nicholson: And much unemployment.

Hon. SIR CHARLES NATHAN: Members, by supporting the amendment, will be placing themselves and their constituents in a position, the significance of which they do not realise. Machines can be sold under a bill of sale, but it was to avoid the expense of a bill of sale and the registration and to give a man an opportunity to return a machine if he liked, that hire-purchase agreements were introduced. What we are trying to do is to rectify abuses that have crept in. We are not enacting emergency legislation. If the words are deleted, all future transactions will be carried out under bills of sale. Under that form of security, if payments are not maintained, the vendor can obtain possession and claim from the purchaser the full value of the machine, which he cannot do under the hire-purchase system, and he can have the machine put up to auction and sold. Mention has been made of the charge of £2 2s., but members will be imposing penalties that hardship on the farmers by endeavouring to do something that is inequitable and unfair. I hope members will not allow their judicial minds to be warped by existing financial conditions. If a moratorium is desirable to afford people relief

from liabilities for the time being, let us consider that question dispassionately, but do not let us introduce into legislation of this kind a principle that would be unsound and unfair to everybody. It would be making a rod for the farmers' own backs.

Hon. J. M. DREW: I feel that my attempt to explain the amendment has failed. This might be due to the fact that we are considering an amendment passed last night, and without having a clean print of the Bill before us. The amendment passed last night was practically my amendment, and I now ask for its deletion. I was not responsible for the wording of that amendment. The Minister approached the Crown Law Department and the Parliamentary Draftsman prepared the amendment. As soon as I saw it, I realised that it did not express my views. I want the wording of the subclause restored to what it was when the Bill was introduced, and I desire to have the following subclause added:—

(2) If a vendor shall take possession of the chattel for some temporary purpose by the request or at the instance of the purchaser and shall afterwards refuse to re-deliver the chattel to the purchaser, he shall be deemed as at the date of such refusal, to have taken possession of the chattel otherwise than at the request or at the instance of the purchaser.

Hon. J. Nicholson: The words are still necessary.

Hon. J. M. DREW: As I was indirectly responsible for the insertion of the words. I am moving for their deletion. The subclause I have indicated is the Minister's, and will give me what I desired in the first place.

Hon. J. Nicholson: The subclause will not be necessary if you strike out the words.

Hon. J. M. DREW: It is necessary in the event of a vendor taking possession of a machine left with him for repairs.

The MINISTER FOR COUNTRY WATER SUPPLIES: In addition to my amendment the select committee also suggested an amendment which was acted upon. Mr. Drew pointed out another difficulty last night, and this is being met by the amendment I have placed before members.

Hon. SIR CHARLES NATHAN: On the Notice Paper of the 28th inst. the Leader of the House had an amendment to Clause 5 to insert after the word "shall," in the first line, "except by the request or at the in-

stance of the purchaser." Naturally it appeared from that that the Minister was in favour of the insertion of those words.

Hon. J. M. Drew: He was trying to meet my wishes.

Hon. SIR CHARLES NATHAN: On the typewritten slip that has been placed before us we find that it is proposed to delete those particular words "except by the request or at the instance of the purchaser," and the inference is that the Minister thought better of his proposed amendment, and so was placed in the position of asking Mr. Drew to move it. To the subsequent amendment which Mr. Drew proposes to move to this clause, to my mind there is no serious objection. I hope that the words will be permitted to remain even if we do add the proposed subclause.

Hon. J. NICHOLSON: In relation to the amendment which will be moved later, Mr. Drew, in giving reasons for striking out the words "except by the request or at the instance of the purchaser," which is what we are dealing with now, pointed out that the addition which will be made has really no relation to the words he wants to strike out. As a matter of fact the one is closely related to the other. Mr. Drew stated that if the words he desired to strike out were actually struck out, his amendment would still have some relationship to the rest of the clause. As a matter of fact it would be out of place. I contend that the words he proposes to strike out are most essential, and I hope the Committee will see that the words are retained.

Amendment put and negatived.

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

That the following be inserted to stand as Subclause 2:—

"(2.) If a vendor shall take possession of the chattel for some temporary purpose by the request or at the instance of the purchaser and shall afterwards refuse to redeliver the chattel to the purchaser he shall be deemed, as at the date of such refusal, to have taken possession of the chattel otherwise than at the request or at the instance of the purchaser."

The reason for this amendment is that a machine may be sent back for repairs or adjustment, and it may be kept and not returned to the purchaser.

Amendment put and passed.

Hon. H. SEDDON: I shall now again submit the subclause that I moved at a previous stage, with the addition, at the beginning, of the words "Subject as aforesaid." I move—

That the following be inserted to stand as Subclause 7:—

"Subject as aforesaid, if after the vendor has taken possession of the chattel it shall have been sold by public auction—

(a) at a place agreed on by the vendor and purchaser, or in default of agreement, at the place where the hire-purchase agreement was entered into by the purchaser; and

(b) subject to reasonable conditions of sale which permitted both vendor and purchaser to bid; and

(c) at a reasonable time and after adequate advertisement and due notice to the purchaser,

then the price for which the chattel was so sold, after deducting the expenses occasioned by the sale, shall, for the purposes of this section, be conclusively deemed to be the value of the chattel at the time when and the place where such sale was effected."

The MINISTER FOR COUNTRY WATER SUPPLIES: How will the purchaser approach the court; the door will be closed against him.

Hon. H. SEDDON: "Subject as aforesaid." My contention is that the phrase "subject as aforesaid" clearly means that the provisions contained in the amendment are subject to those preceding. If the Minister thinks it is not clear enough, I am prepared to consider any amendment on the amendment he may suggest.

Hon. G. W. MILES: I do not think this is the place at which to insert the amendment. It should go into Subclause 4, after the provision for a request to have the vendor's account reviewed by the magistrate. If they cannot mutually agree to the sale by auction, they can go to the magistrate. That is the proper place for this amendment.

Subclause put and a division taken with the following result:—

Ayes	..	..	..	9
Noes	..	..	..	10

Majority against	..	1
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AYES.

Hon. F. W. Ailsop		Hon. Sir C. Nathan
Hon. J. T. Franklin		Hon. J. Nicholson
Hon. J. J. Holmes		Hon. H. Seddon
Hon. J. M. Macfarlane		Hon. E. H. Harris
Hon. W. J. Mann		(Teller.)

	NOES.
Hon. C. F. Baxter	Hon. G. A. Kempton
Hon. J. M. Drew	Hon. G. W. Miles
Hon. G. Fraser	Hon. E. Rose
Hon. E. H. H. Hall	Hon. O. H. Wittenoom
Hon. V. Hamersley	Hon. W. H. Kitson
	(Teller.)

AYE.	PAIR.	NO.
Hon. Sir W. Lathlain		Hon. H. Stewart

Subclause thus negatived.

Clause, as previously amended, put and passed.

Clause 6—Re-opening hire-purchase agreement:

Hon. J. NICHOLSON: Last night I moved an amendment to insert after "section," in line four, the words, "in respect of any agreement made after the passage of this Act." I withdrew that amendment on the understanding that on recommittal I would have an opportunity to bring it up again. I realised that it would be necessary also to reconsider Clause 9, and so I asked that the clause be recommitted.

The CHAIRMAN: Does the hon. member move his amendment again?

Hon. J. NICHOLSON: Yes, I will move that amendment.

The CHAIRMAN: The Committee have already decided that the whole of the provisions of the Act shall be retrospective. This amendment proposes that one section of the Act shall not be retrospective. Therefore, I rule that for the hon. member to achieve his purpose, it will be necessary first to reverse the decision previously arrived at, that the whole of the Bill shall be retrospective. If that can be done, then the hon. member will be free to move to recommit Clause 9 again for the purpose of getting his amendment into that clause.

Hon. J. NICHOLSON: Last night I withdrew this amendment on the understanding that I would have opportunity to move it on recommittal, which I have done.

The Minister for Country Water Supplies: But there has been a definite amendment made since then.

Hon. J. NICHOLSON: I said distinctly that I understood no objection would be taken to my raising this question on recommittal.

The CHAIRMAN: If the Chair permits this amendment and it is agreed to, it will then be necessary to make an amendment, either wiping out the whole of Clause

9 or so amending it as to say the whole of the provision except Clause 6 shall be retrospective. The correct procedure is to vote on the principle of whether the whole of the Bill should be retrospective, which has been done and the principle agreed to.

Hon. J. NICHOLSON: If on consideration, some amendment is made in the direction that you, Sir, suggest, it will mean the recommittal again of this clause.

The CHAIRMAN: It is a question whether the Chair is to have its way or whether Mr. Nicholson is to have his way. I have given my ruling, and if the hon. member wants his way he must move to disagree with that ruling.

Hon. J. NICHOLSON: I do not wish to do that. I merely want to recall what took place last night and what was proposed.

The Minister for Country Water Supplies: That cannot be done now.

The CHAIRMAN: If on Clause 9 being recommitted, the Committee decides to reverse its previous decision, even Mr. Nicholson must admit there will then be no necessity for the amendment he now wishes to move.

Hon. J. NICHOLSON: I cannot go back on it without recommittal.

The CHAIRMAN: I rule that at this stage the amendment is not admissible. If the Committee when reconsidering Clause 9, reverses its decision of last night, the hon. member will be able to move his amendment, which I hold will then be unnecessary.

Clause put and passed.

Clause 9—No contracting out:

Hon. J. NICHOLSON: I realise that in view of the amendment which was made last night it will be necessary for an amendment to be moved on the lines that you, Sir, have suggested. I had hoped the matter would be dealt with on Clause 6. If the Committee had decided against inserting those words in Clause 6 there would have been no use in proceeding with the amendment to Clause 9. I move an amendment—

That at the commencement of the clause the following words be inserted:—"Save and except as to Section 6 hereof."

The CHAIRMAN: Mr. Nicholson's amendment applies not only to retrospective

but to any agreement drawn contrary to Clause 6.

Hon. J. NICHOLSON: The first part of Clause 9 states that the provisions of the Act shall have effect notwithstanding any agreement to the contrary. The effect of the clause would be to nullify a paragraph in any agreement seeking to contract out of the provisions of any Act. As legislators we have duties to perform of a judicial character. We are a House of review, and every member should exercise the utmost care in dealing with Bills of this nature, perhaps more care than is exercised in another place. We must also be fair and impartial to all parties concerned. In this case a serious principle is involved, the principle of retrospectivity. The effect of making this clause apply to agreements already in existence will be most serious, and a result will be produced that will be both unjust and inequitable. When a person enters into an agreement he does so with a full knowledge of the law as it stands. No law should be made retrospective that will produce an inequitable and unfair result. Many people might not have entered into agreements had they known the documents would be affected by this type of legislation. This constitutes so serious an injustice and is such a grave reflection upon Parliament, that I doubt very much whether last night members realised what it all meant. I doubt if even the Lang Parliament would commit such an injustice.

Hon. G. W. Miles: What injustice would there be to anyone who entered into an honourable agreement?

Hon. J. NICHOLSON: If anyone had believed that retrospective legislation would be passed, he would undoubtedly have had his agreement drawn in a different way. This may tend to put a stop altogether to the hire-purchasing method.

Hon. W. J. Mann: That would not be a great disadvantage.

Hon. J. J. Holmes: It is not too late to do it now.

Hon. J. NICHOLSON: We are endeavouring to cure evils.

Hon. Sir William Lathlain: And we are creating more.

Hon. J. NICHOLSON: Yes, and throw still greater hardships upon the farming community and other people.

Hon. W. H. Kitson: In what way?

Hon. J. NICHOLSON: No one will enter into hire-purchase agreements in future except under conditions more onerous than they are at present.

Hon. E. H. H. Hall: We had evidence from farmers' representatives that if they could not get a retrospective Bill, they would rather have none.

Hon. J. NICHOLSON: A one-clause Bill would be quite sufficient to abolish all hire-purchase agreements, if that were desired. There is the other alternative, the disposal of the goods by way of bill of sale. The Bill, if enacted, will probably become a useless monument in the statute-book. The farmer will be handicapped in obtaining his machinery, and in the event of the agreement being determined will be made liable not only for payments up to date but for the whole of the purchase price. His position will be worsened instead of bettered. I hope hon. members will weigh the consequences.

The CHAIRMAN: I am afraid I shall have to rule Mr. Nicholson's amendment out of order, on two grounds. The amendment seeks to preface Clause 9, as amended yesterday, with the words "Save and except as to Section 6 hereof." The effect of introducing those words would be that any agreement drawn contrary to the provisions of the measure would come within the category of Clause 6, Subclause 1, paragraph (c), reading—

The agreement contains terms or provisions inserted with a view to evade any provision of this Act . . . .

Clause 6 begins—

In any proceedings taken under the last preceding section . . . .

Thus the prefacing of Clause 9 with those words would involve Clause 5 as well as Clause 6. I therefore rule that the amendment is not in order. Mr. Nicholson can attain his object by moving that all the words inserted yesterday in Clause 9 after the word "contrary" be struck out. Furthermore, the exempting of Clause 6, as proposed by Mr. Nicholson, will apply not only to agreements already existing, but to agreements made under the Bill if enacted. Mr. Nicholson's object can be achieved in a straight-out and direct manner by moving the retrospective striking-out I have suggested.

Hon. J. NICHOLSON: Very well, Sir. I move an amendment—

That after the word "contrary" the following be struck out:—"and shall extend to any hire-purchase agreement made and in operation at or before the commencement of this Act."

The MINISTER FOR COUNTRY WATER SUPPLIES: Though I did not take part in the debate on this matter yesterday, I cannot sit silent under the statements made by Mr. Nicholson. We have before us the evidence given to the select committee by reputable firms. They are not worrying in the slightest degree about the retrospective phase of the Bill. Mr. Nicholson has said we should be fair and impartial. The clause is fair and impartial. What is there wrong with allowing the hirer to go to court when he can prove that the interest charged is excessive? Is he not entitled to protection, no matter how long the agreement has been made? Surely Mr. Nicholson does not wish to protect firms who do business on unfair and unreasonable lines. Does the hon. member wish to protect people who attempt to evade the measure? Should not harsh and unconscionable transactions be reviewed? That is the reason why the retrospective clause has been passed. There has been almost daylight robbery on the part of one or two firms. Reputable firms know and say that they have nothing to be afraid of; it is the extreme cases that have to be legislated against.

Amendment put and negatived.

Clause, as amended, put and passed.

Postponed Clause 2—Interpretation:

The CHAIRMAN: The question before the Committee on postponement was the striking-out in the definition of "Chattel" of all words after "any," line 2, and the inserting in lieu thereof of the words "Chattel personal the subject of a hire-purchase agreement."

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

That the words "the subject of a hire-purchase agreement" be struck out.

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

Hon. H. SEDDON: The definition of "Chattel" having been amended, it becomes necessary to strike out certain other words. I move an amendment—

That the following be struck out:—" 'Motor vehicle' and 'vehicle' have the same meanings respectively as in the Traffic Act, 1919-1930."

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

Bill again reported with further amendments.

*House adjourned at 8.16 p.m.*

## Legislative Assembly.

*Wednesday, 29th July, 1931.*

	PAGE
Questions: Bank interest ... ..	4085
State Savings Bank deposits ... ..	4088
Unemployment and eviction notices ... ..	4086
Miners' Phthisis ... ..	4086
Personal explanation ... ..	4086
Bills: Abattoirs Act Amendment, 1R. ... ..	4086
Supply (No. 1) £1,370,000, all stages ... ..	4086
Financial Emergency, 3R. ... ..	4131
Constitution Acts Amendment, report ... ..	4145
Wroth Bankruptcy case, Select Committee; extension of time ... ..	4131

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

### QUESTION—BANK INTEREST.

Mr. J. I. MANN asked the Premier: As the recently passed Debts Conversion Agreement Act provides for the voluntary conversion of bonds at a lower rate of interest, will the same privilege be given to depositors in the Associated Banks who have money on fixed deposit covering a period of two years, thus enabling the Associated Banks more speedily to lower the rate of interest to their borrowers?

The PREMIER replied: The question of bank interest will be discussed at the Loan Council meeting which I am about to attend.