Legislative Council

Tuesday, the 21st August, 1962

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The DEPUTY PRESIDENT (The Hon. W. R. Hall) took the Chair at 4.30 p.m., and read prayers.

QUESTION WITHOUT NOTICE

TRUSTEES BILL

Further Adjournment of Debate

The Hon. F. J. S. WISE asked the Minister for Justice:

It appears it will not be practicable for vital interests associated with the Trustees Bill to be ready for intimate discussion on the Bill for a few weeks. It is possible therefore that the resumption of the debate may of necessity be delayed beyond the 28th August. Because of that, will the Minister have any objection—

(1) To a further delay of, say, three weeks as from this date?

(2) To the report of the Law Reform Committee being available to members who are studying the Bill?

The Hon. A. F. GRIFFITH replied:

(1) The 28th August—the date to which the honourable member moved the adjournment of the debate on this Bill—was one that was picked out of the air, as it were, and agreed to across the floor of the House by nods of the head. I have no objection to a further adjournment beyond that date. I am very anxious, in fact, that all interested persons should have ample opportunity to study this Bill; not only for their purpose, but for the purpose of putting forward any suggestions which may be advantageous to the measure. I feel sure satisfactory arrangements can be made for postponement to enable the Bill to be considered on a date convenient both to myself and to the Leader of the Opposition.

(2) I would like an opportunity to consider whether I can make the report available to members.

The Hon. F. J. S. Wise: Thank you.

QUESTIONS ON NOTICE

NATIVES

Enteritis Outbreak: Tabling of Health Department Report

1. The Hon. R. H. C. STUBBS asked the Minister for Mines:

Will the Minister lay on the Table of the House the report by the Public Health Department dealing with the outbreak of enteritis among natives at the Norseman Native Reserve, as referred to in my question on Tuesday, the 14th August, 1962?

The Hon. A. F. GRIFFITH replied:

Yes; for seven days.

The report was tabled.

IWANKIW CASE

Negotiations Between Union and Constable Marshall

2. The Hon. A. L. LOTON (for The Hon. J. M. Thomson) asked the Minister for Mines:

Further to my question dated the 1st August last concerning damages owed by Constable V. S. Marshall of Denmark to R. Iwankiw, with particular reference to the reply to part (5) thereof—and in view of the time lag from the 5th July, 1961, to the 31st March, 1962, when the Full Court rejected

Marshall's appeal, plus a further elapse of over five months since that court's decision—will the Minister inform the House—

(1) Have any negotiations concerning the matter of this payment passed between the union and Mr. Marshall since the 21st March to the 1st August of this year?

(2) Have any negotiations passed between them since the date of my question and today?

(3) If the replies to questions Nos. (1) and (2) are in the affirmative, what are the dates of their communications with Mr. Marshall, and what are the dates of his replies?

(4) Is it true that the union or Mr. Marshall are satisfied to allow these damages to remain unpaid for an indefinite period?

(5) If the answer to No. (4) is "No," why the delay?

(6) If the Crown is to be requested to pay these damages, will the union indicate how long it will be before it will make that request known to the Government?

The Hon. A. F. GRIFFITH replied:

(1) to (6) It is not known what correspondence has passed between the Police Union and other parties.

ASSOCIATIONS INCORPORATION ACT AMENDMENT BILL

Third Reading

THE HON. A. F. GRIFFITH (Suburban—Minister for Justice) [4.38 p.m.]: I move—

That the Bill be now read a third time.

Before this Bill goes through the third reading, I would like to supply Mr. Wise with some information concerning a particular point he raised when the Bill was in its second reading stage. During the course of the debate the honourable member made reference to that part of the explanatory speech which sets out that the rule that a member in a firm responsible for the preparation of a draft affidavit ought not to take the oath, would still apply; and the opponent would still need to seek out either a justice of the peace or an independent commissioner of affidavits.

Mr. Wise said he wondered what I meant when I referred to that rule. I stated that the rule was one which existed between practitioners; because I believed that to be the case. I have since been able to confirm that that, in fact, is the case. The rules referred to—rules 16 and 17—are rules of the Supreme Court which deal with the practices of the Supreme Court, and affidavits taken as a result of Supreme Court rules. The honourable member is correct, therefore, inasmuch as the rule has no effect so far as the Associations Incorporation Act is concerned; nor has it any effect in respect of the Declarations and Attestations Act, because the Declarations and Attestations Act lays down what documents are authorised to be taken under that Act and who, in fact, shall take them.

There is quite a long list of persons who are entitled to take declarations and attestations according to that Act. However, I will not bore the House by reading them out. Sufficient to say there is quite a list; and in the main all these people are laymen—they are not practitioners. Therefore, the understanding or the rule between practitioners is as I thought it was—it is a question of ethical practice between practitioners of the Supreme Court; and in this particular case it is intended that the same practice will continue.

I took the trouble to speak to his Honour the Chief Justice and explain the point taken by the honourable member. I asked the Chief Justice whether I could convey to the House his view upon this matter, and the Chief Justice told me that he would view with displeasure any practice of a nature contrary to the one that I explained was intended to be carried out in connection with the additional authority—to use that word—by a commissioner for declarations to take affidavits under the Associations Incorporation Act.

Bearing in mind that it is the Chief Justice's function to commission practitioners in the matter of becoming commissioners for affidavits, his comment was that any unethical practice—which he did not think would take place—would render the practitioner liable to the cancellation of his commission. So I think it should remove any possibility of their being any unethical practice of that nature.

Question put and passed.

Bill read a third time and transmitted to the Assembly.

AMENDMENTS INCORPORATION ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [4.45 p.m.]: This Bill, if passed, will give authority to add to the very many prescribed requirements

within the parent Act many other additions without those additions necessarily being enactments or being contained in Acts of Parliament. Under the present law —the Amendments Incorporation Act of 1938—there is authority on reprinting, under the order of the Minister for Justice or the Attorney-General—and only those two gentlemen—to have in the reprint all amendments made in Parliament by other enactments; and, further, there is authority for other provisions to be added.

In section 4 of the Amendments Incorporation Act, in addition to the things which are actually additions to an Act by the passing of a further Bill, there is a right within the Minister's authority to arrange for reprinting of short titles; to amend names of bodies corporate; to alter marginal notes, errors in spelling, numbering; and to deal with all those minor things which become almost automatic and to which attention is always drawn by our Clerk of Parliament.

But this proposal goes considerably further than what is at present prescribed in the parent Act, in that the new paragraph (d)—an addition to section 3 of the Act—proposes to add to the authority for reprinting things that have not actually of themselves been ratified by Parliament. There is a difference between enactments as such and regulations, or alterations even to agreements between companies which have been ratified by Parliament in the schedules of different Bills; provided, of course, that the Bills give authority for the amendments of such agreements. All of the matters which are sought to be reprinted up to this point are the matters which initially, as I have said, have passed through Parliament; but this broadening to take in regulations, rules, altered verbiage in agreements, and altered provisions in agreements is a very considerable departure, particularly on the point that Parliament may not know anything at all about what is being done.

The Hon. A. F. Griffith: At the time.

The Hon. F. J. S. WISE: It may not know anything at all about it for some time for the reason that many Acts go for a long time without being reprinted. I have taken legal advice on this point since we met last Thursday to see whether there would be any place in this Act—and if there were a place, I am sure the Minister would not object—to provide for Parliament being informed by the tabling of papers of all of the alterations to an Act which is to be the subject of a reprint authorized by a Minister.

The importance of that is this: That some of the most contentious Bills passed by Parliament are the Bills which contain in their schedules agreements between the Government and parties; and these are amended in a form of which Parliament knows nothing.

The Hon. A. F. Griffith: They cannot be amended by Parliament on introduction for ratification, anyway.

The Hon. F. J. S. WISE: Exactly; but Parliament knows nothing after the passing of the Bill. My point—and I think all Governments would agree with it—is this: It is vital for Parliament to be kept right up to date with what happens in such agreements. However, I admit that on searching for a place to ensure that Parliament is so advised I find there is no place in the Amendments Incorporation Act; and the only place would be in the Bill which ultimately will become an Act.

I think it is a very important matter; because, although we are not particularly worried in this State as to what Governments would do following the passing of an Act containing an agreement, it has not always been so in all States of the Commonwealth. In addition, it is a good thing for members to know how an agreement has been varied. So I think that from time to time—perhaps once a year; or at some time when such a Bill is before us—provision should be made for Parliament to be advised when alterations are made to agreements.

In this case, however, it is inappropriate. I simply raise the point. We can forget all about it until the appropriate time when Bills are presented which have the power and authority within them for amendments to be made after their passing—amendments to be made without Parliament making the amendments; without a direct enactment.

The Hon. A. F. Griffith: That is, in the terms of the agreement itself.

The Hon. F. J. S. WISE: That is so.

The Hon. A. F. Griffith: Parliament cannot alter the basis of an agreement.

The Hon. F. J. S. WISE: I do not wish that Parliament should have anything to do with the alteration. It is a matter between the parties. My only point is: I think Parliament should know. I think it is a valid point. When Parliament knows, then the public knows the altered circumstances in the agreement between any company and the Government; if there is a provision in that Act for Parliament to be so advised.

With those comments, I have no objection to this Bill, or to the succeeding Bill which arranges for reprinting, because we are giving authority for the Minister for Justice or for the Attorney-General, as the case may be, to arrange to include in reprinted Acts all of the things which have been agreed to with parliamentary authority but have not, as such, been enacted by Parliament. I support the Bill.

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [4.52 p.m.]: I appreciate the attitude of the honourable

member and the point raised by him. I would like to say, Sir, that with respect to legislation of this nature, I do not regard it as being in any way political, or a matter of party policy, but one of practicabilities as far as the—

The Hon. F. J. S. Wise: The administration facilities are concerned.

The Hon. A. F. GRIFFITH: Yes. I have an open mind on the subject. My approach to these matters is, of course, that of a layman; and many of these suggestions are coming forward from the Law Reform Committee of the Law Society in an attempt, I am sure, to make administration easier in many cases.

What I would like to do with this one is to have an opportunity of looking at the point raised by Mr. Wise. I would like to deal with this Bill as we have with many other Bills; that is, let it pass through the second reading stage and, before it passes through the third reading stage, I will make inquiries to see how the point raised by the honourable member—

The Hon. F. J. S. Wise: It can't be done. I have taken the advice of the Parliamentary Draftsman. It cannot be done in this Bill.

The Hon. A. F. GRIFFITH: I realise it cannot be done in this Bill, but I want to make sure that it does not, in effect, open itself to some practice in the future which may not be appreciated by members of Parliament. So with that in mind, I will again speak to the Chief Parliamentary Draftsman, knowing that it cannot be inserted into this Bill. I want to make sure that we are not putting something on the statute book that we may subsequently regret. I have moved that the Bill be read a second time with the knowledge that it will give me an opportunity to make these inquiries.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

REPRINTING OF ACTS AUTHORISATION ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [4.58 p.m.]: This very simple Bill has contained in its principal clause exactly the same principle as in the last clause of the previous Bill: that is to simplify the acceptance of a reprinted Bill before a court as prima facie evidence of it being a correct copy of a Bill. I understand that a lot of trouble has ensued at times as to proof being available—that a Bill, as presented, is a correct copy—and the small amendment which is being sought states very clearly that the reprinted Act shall be deemed to be a correct copy of the Act. That is to say, it is prima facie a correct copy. I think one can have no objection to this Bill because it simply deals with the reprinted Acts discussed in the last motion.

Question put and passed.

Bill read a second time.

In Committee, etc.

The Deputy Chairman of Committees (The Hon. A. R. Jones) in the Chair; The Hon. A. F. Griffith (Minister for Justice) in charge of the Bill.

Point of Order

The Hon. A. L. LOTON: On a point of order, Sir, did the Minister move that the Bill be now read a second time.

The Hon. A. F. Griffith: Yes; in my opening speech.

The Hon. A. L. LOTON: How does Mr. Wise come into the picture?

The Hon. A. F. GRIFFITH: He had the adjournment of the debate. I found it unnecessary to reply to the debate in order not to waste the time of the House. The honourable member spoke to the second reading of the Bill. He supported it, and I found it unnecessary to reply. I introduced the second reading stage last Thursday.

The Hon. F. J. S. Wise: I simply got the adjournment of the second reading debate.

The Hon. A. F. GRIFFITH: I did not think it was necessary to reply.

Committee Resumed

Bill passed through Committee without debate, reported without amendment, and the report adopted.

BUILDING SOCIETIES ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August on the following motion by The Hon. A. F. Griffith (Minister for Housing):—

That the Bill be now read a second time.

THE HON. E. M. DAVIES (West) [5.2 p.m.]: This Bill seeks to amend the Building Societies Act, 1920-1961. The purpose of the measure it to correct a typographical error in section 5; to substitute the word "order" for the word "award" in the last line of the proviso to subsection (2) of

section 39; and the third amendment is for the purpose of adding a schedule to follow the fourth schedule, and to be known as the fifth schedule. This is brought about through an oversight when the Bill was being amended in 1961, when the fifth schedule was omitted from the measure. It is necessary to have the fifth schedule to make sure that the power to cancel the registration of a building society is complete. That amendment and the other slight amendments are necessary, and I see no reason to debate the measure any further. It appears to be for the purpose of correcting some anomalies, and I support the second reading.

The Hon. A. F. Griffith: Thank you.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

CHURCH OF ENGLAND (NORTHERN DIOCESE) ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Mines):—

That the Bill be now read a second time.

THE HON. W. F. WILLESEE (North) [5.7 p.m.]: This Bill is a very simple one in principle. It merely alters the title of the Church of England (Northern Diocese) Act from its present title to that of the Church of England (Diocese of North West Australia) Act. The trustees will now be known as "The Trustees of the Diocese of North West Australia" and any documents in connection with land registered up to this point of time, and bearing the existing name of the diocese, will be altered and reregistered free of charge. I support the measure.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

DECLARATIONS AND ATTESTATIONS ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [5.10 p.m.]: I am glad the Minister asked that this order of the day be taken before certain other orders of the day, because I did intend to draw his attention to the fact that order of the day No. 8, the Evidence Act Amendment Bill, is really complementary to this one.

The Hon. A. F. Griffith: That is why I tried to get them back in order.

The Hon. F. J. S. WISE: I feel sure that this Bill will meet a need in regard to documents which have to be witnessed, because of the limitations within our statute upon justices of the peace. I have no doubt that some of us who are, and who for a long time have been, justices of the peace for Western Australia have found occasion, when in other States, to be asked to witness Western Australian documents; because it is a requirement in our Act that justices of this State must perform that duty.

This Bill proposes to bring into line the statutes of all States in this connection, and the Minister has assured us that we are the only State out of step in this regard. It will be of tremendous convenience to the public to have, as the Bill prescribes, added to section 2 of the principal Act a provision which will enable justices of the peace for any part of Australia that is outside the State to do certain things which at the moment only a member of either House of Parliament or a commissioner for declarations can perform. The present provisions of section 2 were inserted by this House only a few years ago, and the new provisions will be of great assistance. I support the Bill.

The Hon. A. F. Griffith: Thank you.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

EVIDENCE ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [5.15 p.m.]: I am hoping that my colleague, Mr. Heenan, will get the adjournment of the debate on this Bill. Unfortunately he was ill last week when the Bill was introduced. It contains a provision upon which a legal mind can give us greater clarity than can a layman.

The purpose of the amendment is to provide that where a document requires attestation to be valid, that document may, in any legal proceeding, be proved in the manner in which it might be proved if no attesting witness to the document were alive, or present. Although that language is quite understandable there is the exception as it affects wills. One can understand the specific exemption of wills, because they may be so old that the attesting witnesses have to be summoned from far distant places; or they may not be available.

The Hon. A. F. Griffith: They may be above or below.

The Hon. F. J. S. WISE: That is so. There is a distinction, but in looking at this matter from a layman's point of view it is not easy to see. It is taken for granted that the presence of the attesting witness is exempted; but it is made quite clear and beyond doubt in the Bill that the present requirements of courts of law in regard to attesting witnesses will no longer apply.

I have not had an opportunity to discuss this matter with my colleague, but I think it will be to the benefit of this House, provided the Minister agrees, if Mr. Heenan obtains the adjournment of the debate.

The Hon. A. F. Griffith: I do not mind at all. Perhaps he can give us his views right away; if not, I am agreeable to an adjournment.

The Hon. F. J. S. WISE: Unfortunately, the honourable member was ill last week.

Debate adjourned, on motion by The Hon. E. M. Heenan.

INTERPRETATION ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

> That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [5.18 p.m.]: This Bill seeks to amend one of the oldest Acts of Western Australia. It is proposed to amend section H of the second schedule —a schedule which has not been altered except in very minor particulars since 1853. For the benefit of new members, and without being presumptuous, I want to point out that they will find the Interpretation Act in the Standing Orders of this House, commencing at page 160.

It is obvious that the case which was mentioned by the Minister and upon which Mr. Justice Fullagher made some comments, relates to the schedule to that Act. The case referred to was Trobridge v. Hardy, heard in 1955. The report will be found in the *Commonwealth Law Reports*, Vol. 94, 1955-56. Some very important comments were made in that case relating to the point which has given rise to the introduction of the amending Bill; that is, treble costs must be imposed as the law stands.

If a person loses a case which he brings against one of the many parties mentioned in section H of the second schedule to the Act—including police officers and public servants—in the course of their duties, treble costs may be awarded. Those people are given special protection. Nothing capricious or frivolous can be raised against them; and under no circumstances can there be any association with malice.

If a person quite properly takes a case against a public servant, including a police officer, but for some reason fails, he has treble costs awarded against him. As the law stands that cannot be altered. If the plaintiff loses the case on points of law, treble costs are awarded against him. In an endeavour to correct this situation, the Bill has been introduced. The amendment provides that at the discretion of the court the maximum costs, or any part of such costs, may be awarded. That is really the purpose of the Bill.

I submit that section H of the second schedule to the Interpretation Act was framed in the days when Western Australia had much greater cause to protect people acting in the interests of the Crown in some very unpleasant duties. Although many old laws are not at all faulty merely because they are old, I suggest this one is, in that the whole of section H does not meet the circumstances of today. The Government is endeavouring to bring an element of justice into the awarding of costs against the plaintiff, by removing the requirement of the existing law to award treble costs in all cases.

There were three judges who heard the case referred to, namely, Mr. Justice Fullagher, Mr. Justice Kitto, and Mr. Justice Taylor. Mr. Justice Taylor said that in an endeavour to construe the provisions of section H it should be borne in mind that the Act was first enacted in Western Australia in 1853, and was introduced in sufficiently wide terms to cover a multitude of activities. It was designed for incorporation in any other Act passed by the Parliament of the State, and for adoption for the protection of Government officials and others, in the exercise of a wide variety of statutory powers.

He went on to deal with the question of wrongful acts and pointed out that malice was the overriding element which the plaintiff must prove against the defendant. In the instance I referred to, malice was not admitted when the case was heard by the court of this State; but

because, in the views of the learned gentlemen of the High Court of Western Australia, there was no doubt about malice, the case went against the original defendant.

Here we have before us a Bill to remedy the position; and the text of the case was read out in full by the Minister when he introduced it. There can be no doubt about the intention of the Bill; it has been introduced entirely for the purpose of protecting police officers, public servants and other persons, provided they are acting and are authorised to act under the provisions of our statutes. The Bill makes provision that instead of treble costs being awarded mandatorily, any portion of the costs may be awarded.

The Hon. A. F. Griffith: There is a discretion.

The Hon. F. J. S. WISE: Yes. I am sure that a number of members have asked whether many such cases have arisen, or are likely to arise, under the laws of today; and whether the protection provided in section H 110 years ago is required just as much today as it was then. Some people have asked whether we are likely to have capricious cases taken against police officers, or Government departmental officers, who are acting in accordance with the law, where treble costs would be awarded mandatorily against the plaintiffs should they lose.

The Hon. A. F. Griffith: We could ask whether it is unlikely that such cases will arise.

The Hon. E. M. Heenan: This Bill will obviate that.

The Hon. F. J. S. WISE: The provision in the Bill still retains the maximium costs which may be awarded, but it also gives a discretion to the court to award any lesser amount. The schedule to which the Bill relates is not the same as that which appeared in the original Interpretation Act of this State, and which was known as Victoria No. 6, passed before 1853. It was in 1853 that the present section H was included in the Interpretation Act.

The Hon. A. F. Griffith: This Bill has been introduced as a result of representations by the Law Reform Committee of the Law Society, arising from the case which you have referred to.

The Hon. F. J. S. WISE: I am aware of that. Although the remarks of Mr. Justice Fullagher were mentioned, both of the other learned judges had a lot to say on the inequity of awarding, or the ability to award, treble costs, particularly when malice was emphasised and had to be proven. So, a case would fail if malice could not be proved although great injustices might have been inflicted; the plaintiff would lose such a case, and would have to pay treble costs. I hope the Bill before us will improve the existing situation, because it seeks to give a discretion to the court to award such costs as it considers proper to be awarded.

THE HON. E. M. HEENAN (North-East) [5.29 p.m.]: This is an interesting Bill, and I am certain all members have appreciated the outline given by Mr. Wise in respect of the Interpretation Act which was enacted in 1853. I am sure all of us will agree with the proposal that justices of the peace, police officers, and other people in that category should be provided with adequate protection when they carry out their public duties; they should not become liable to be assailed vexatiously, or without adequate reason.

Justices of the peace act purely in an honorary capacity; and, as we know, they render a very valuable service to the community, especially in country towns where they are called upon at odd times; and they frequently give up a great deal of their time in the interests of the community.

My experience is that invariably they are men and women of high repute, and it is therefore a reasonable proposition that they should not be assailed and prosecuted without very good cause. I think similar views should be applied to the police and similar officers. Their role is to preserve law and order; and frequently it is a dangerous, difficult, and unpleasant job they are called upon to fulfil in the community's interests; and it is only right that they should be protected.

That point of view needs to be borne in mind perhaps more so than in earlier years, because undoubtedly there is now an element ever-present in the community which has no respect for the law or for the officers who are called upon to enforce the law.

In the past this provision with which we are now dealing gave ample protection. Prosecutions taken against these people could not succeed unless a complainant was able to establish corruption or malice; and I think that everyone will agree that if a policeman or a justice of the peace is corrupt in the carrying out of his duties, it is only right that any person who suffers thereby should be able to prosecute and succeed. Likewise if a policeman, in the carrying out of his normal duties, is malicious towards the public, and it can be proved, it is right that a prosecution should succeed.

However, the Interpretation Act went pretty far by stipulating that unless a complainant was able to prove either of those elements in his prosecution, he would fail and then be mulcted in treble costs. There might have been some merit in his prosecution, but he might not have been

able to establish malice or corruption, and he therefore would fail in his prosecution. The magistrate would then have to saddle him with treble costs. I think all of us would agree that was going too far; and that is what the Bill before us proposes to remedy.

In the past the magistrate or the court dealing with the case had no alternative but to inflict treble costs on the complainant who failed, even though there may have been some merit in his complaint. This Bill, if carried, will give the court a wide discretion in the matter. If, for instance, the court thinks the prosecution was vexatious and had no merit, it will still be able to inflict treble costs on the complainant who was not justified in making his complaint and who probably put everyone to a lot of expense and trouble without any grounds whatever. But, on the other hand, if the court considers that there was some merit in the prosecution, it may only inflict such portion of those costs as it thinks fit, and that may even mean no costs at all.

I think it is a worth-while provision. As we know, not many such cases come before us, but every now and again one pops up, and it is only right that we should have a proper Act under which to deal with the matter; and, as I have said, this amendment will give the courts discretion which they have not had in the past.

THE HON. J. G. HISLOP (Metropolitan) [5.38 p.m.]: I believe this Bill maintains in its entirety the principle of treble costs, and we should have a look at the possibility of altering it with the idea of giving the magistrate further powers to decide whether there shall be treble costs at all. My reading of this amendment is that the court before which the action is brought may award treble costs to the defendant, or such portion of those costs as the court thinks fit. Therefore I regard the words "those costs" as being portion of treble costs, and we would be well advised to delete the word "those" and leave the question of costs to the magistrate. This would mean that he could award treble costs or any portion of the costs.

The word "those" seems to me to stipulate that he must first of all assess the costs and then treble them; whereas I believe that the magistrate should be able to decide—as Mr. Heenan said—that there shall be no costs at all. But if he awards costs, I think he must treble them; and my opinion is that we would be very well advised to take out the word "those" and leave in the words "such portion of costs as the court thinks fit."

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [5.40 p.m.]: I think it might be an idea if we leave this matter until we reach the Committee stage. There is obviously no opposition to the Bill; therefore I will not endeavour to explain the matters raised until the Bill is in Committee.

Question put and passed.
Bill read a second time.

In Committee

The Deputy Chairman of Committees (The Hon. E. M. Davies) in the Chair; The Hon. A. F. Griffith (Minister for Justice) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Section H Second Schedule amended—

The Hon. J. G. HISLOP: I move an amendment—

Page 2, line 7—Delete the word "those."

The Hon. F. J. S. Wise: If you do that, why not take out the words "portion of those"?

The Hon. A. F. Griffith: Why mess it up at all?

The Hon. J. G. HISLOP: Yes; it might be better to do that. However, I have moved my amendment to deal firstly with the word "those." This will leave the question of costs entirely to the magistrate.

The Hon. A. F. Griffith: You are not hoping to go back to the word "portion" after taking out the word "those," are you?

The Hon. J. G. HISLOP: Well, I will withdraw my amendment if Mr. Wise desires to go further.

The DEPUTY CHAIRMAN (The Hon. E. M. Davies): I have not put the amendment yet so there is no need for the honourable member to withdraw it.

The Hon. F. J. S. WISE: I can see exactly what Dr. Hislop is trying to do, but could it not be that even greater costs than treble costs could be imposed if those words were taken out?

The Hon. A. F. Griffith: That is right.

The Hon. F. J. S. WISE: It could be that the court might award treble costs to the defendant; or such costs as the court thinks fit.

The Hon. A. F. Griffith: That is right.

The Hon. F. J. S. WISE: When Dr. Hislop was speaking, I rudely interjected to suggest that he might take out three words instead of one, but now I feel we should keep the matter tied to the treble costs; or there could be exorbitant costs permitted if we amend it in the manner suggested. Having looked at both proposals, I am quite prepared to leave well alone.

The Hon. A. F. GRIFFITH: I hope we will leave this alone. I think it does maintain the principle of treble costs which was intended. Under the provision "the court before which the action was brought may

award treble costs to the defendants," the defendant may be awarded no costs at all. Is that right, Mr. Heenan?

The Hon. E. M. Heenan: Yes.

The Hon. A. F. GRIFFITH: If we delete the words "portion of those" we certainly leave the gate right open for a greater amount than treble. I think it is clear enough. It is intended to maintain the principle of treble costs, but at the moment the court can do nothing but award treble costs. If Parliament accepts this amendment, it will empower the court to award costs of a lesser nature than treble costs.

The Hon. E. M. HEENAN: I think the Minister has made the position perfectly clear. Previously the court had no alternative but to inflict treble costs. This means that the court may award treble costs, or it may award no costs at all; it may go to the limit of awarding treble costs, or it may award any portion of treble costs. The word "may" leaves the court in the position of saying that it will inflict no costs at all. I would not take out any part of this; I would leave it as it is.

Clause put and passed.

Title put and passed.

Report

Bill reported without amendment and the report adopted.

House adjourned at 5.49 p.m.

Legislative Assembly

Tuesday, the 21st August, 1962

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The SPEAKER (Mr. Hearman) took the Chair at 4.30 p.m. and read prayers.

QUESTIONS FROM MEMBERS

Withholding by Speaker

THE SPEAKER (Mr. Hearman): Does the Deputy Leader of the Opposition wish to ask me a question concerning the withholding of questions to be asked in this House?

MR. TONKIN (Melville—Deputy Leader of the Opposition): Yes. I was wondering whether you would give me an explanation as to why you withheld certain questions which I desired to place on the notice paper, and which would have appeared on the notice paper for today's sitting. Standing Order 109 provides that a member may question another member on any matters in which such member may be concerned, if those matters are relevant to any Bill or motion on the notice paper.