REPORT
of the
ROYAL COMMISSION
on the provisions of the
COMPANIES BILL

with Appendices as follows:

Appendix I.—Schedule of Recommended Amendments.
Appendix II.—Evidence submitted by Witnesses.
Appendix III.—Statement Tendered on behalf of the Co-operative Federation of W.A.
Appendix IV.—Copy of Royal Commission, Extracts from the Minutes of the Legislative Council, and the Votes and Proceedings of the Legislative Assembly, and Minutes of Meetings.

Presented to both Houses of Parliament by His Excellency's Command.

[THIRD SESSION OF THE SEVENTEENTH PARLIAMENT.]
Royal Commission on the provisions of the Companies Bill.

REPORT.

TO His Excellency Sir James Mitchell, K.C.M.G., Lieutenant-Governor in and over the State of Western Australia and its Dependencies in the Commonwealth of Australia.

May it Please Your Excellency:

WE, the Members of the Royal Commission appointed to consider the provisions of the Companies Bill, have the honour to present to Your Excellency our Report, together with Appendices as follows:—

Appendix I.—Schedule of recommended amendments.
Appendix II.—Evidence submitted by witnesses.
Appendix III.—Statement tendered on behalf of the Co-operative Federation of W.A.
Appendix IV.—Copy of Royal Commission, Extracts from the Minutes of the Legislative Council, and the Votes and Proceedings of the Legislative Assembly, and Minutes of Meetings.

HISTORY OF APPOINTMENT OF ROYAL COMMISSION.

The Companies Bill, the subject of the inquiry, was introduced in the Legislative Assembly during the Second Session of the Seventeenth Parliament, by the Minister for Justice, Hon. E. Nulsen, M.L.A., and after debate on the second reading on the 3rd day of December, 1940, the Hon. E. Nulsen and Messrs. A. V. R. Abbott, A. J. Rodovels and A. F. Watts were appointed as a Select Committee to consider the Bill. Subsequent to the receipt of a message from the Legislative Assembly, the Honourables L. Craig, G. Fraser, H. Schedon and A. Thomson were appointed on the 4th day of December, 1940, as a Select Committee of the Legislative Council to confer with the members of the Legislative Assembly appointed to consider the provisions of the Companies Bill.

It was found necessary prior to the prorogation of Parliament by the Governor which automatically dissolves the Joint Select Committee, for its conversion into a Royal Commission, and accordingly the members were appointed as an Honorary Royal Commission by the Governor on the 9th day of July, 1941. The Royal Commission was published in the Government Gazette on the 11th day of July, 1941, and empowered members to do the following things, namely:—

1. To examine, enquire into, consider and report generally upon the provisions of the Bill for an Act to consolidate and amend the Law relating to Companies and for other purposes now before the Legislative Assembly in the Parliament of Western Australia.

2. To do such other acts, matters and things in relation to the said Bill as you might or could do as a joint select committee of the Legislative Assembly and the Legislative Council of the Parliament of Western Australia pursuant to the resolutions thereof referring the said Bill to you as such Select Committee;

3. To consider and make a recommendation in relation to the amendment of the provisions of the said Bill, the deletion therefrom of any of the said provisions or the insertion therein of any further provisions, which in the opinion of the Commission are justified or warranted by any of the enquiries and investigations made under paragraphs 1 and 2 hereof.

MEETINGS.

Twenty-six meetings were held, the first being on the 10th day of December, 1940, and the last on the 29th day of July, 1941. Twenty-four of these meetings were held as a Joint Select Committee and two as a Royal Commission.
WITNESSES.

At the outset of the inquiry all organisations which were thought to be interested in the provisions of the Bill were invited to submit their viewpoints to the Committee and four advertisements were also inserted in the press inviting comment from persons concerned.

Evidence was given by the following:

1. E. Blankensee, representing the Associated Banks in W.A.
2. G. J. Boydsom, Registrar of Companies, Western Australia.
3. A. C. II. Brickham, Registrar of Companies, South Australia.
4. A. C. Curlew, representing the W.A. Chamber of Manufacturers.
5. T. F. Davies, representing the Law Society of W.A.
6. R. D. Forbes, representing Messrs. Parker and Parker, Solicitors, and the Co-operative Federation of W.A.
7. C. W. Harper, representing the Co-operative Federation of W.A.
8. K. H. Hatfield, representing the Law Society of W.A.
9. L. W. Jackson, representing the Fire and Accident Underwriters' Association of W.A., and the Chamber of Mines of W.A. (Inc.)
12. A. Martin, representing the Trustees section, Combined Committee Secretarial, Accountancy and Trustees Associations.
13. C. H. Merry, representing the Accountancy section, Combined Committee Secretarial, Accountancy and Trustees Associations.
14. R. Goyne-Miller, representing the Secretarial section, Combined Committee Secretarial, Accountancy and Trustees Associations.
15. E. S. Saw, representing the Perth Chamber of Commerce and the Stock Exchange of Perth.
17. J. L. Walker, Solicitor General, Drafter of the Bill.

A statement tendered on behalf of the Co-operative Federation of Western Australia is attached hereto as Appendix III.

We were glad to have in attendance as a witness Mr. A. G. H. Brickham, Registrar of Companies in South Australia, who was present in this State on other duties and who volunteered to give evidence. As the Bill is primarily modelled on the lines of the South Australian Act, Mr. Brickham's evidence was of special importance, particularly from the aspects of administration and the desirability of such legislation.

Our sincere thanks are extended to all of the witnesses for their most informative, constructive and valuable criticisms and suggestions for the amendment of the Bill.

Attached hereto, in Appendix I., are the amendments which your Royal Commission recommend should be made to the Bill. Owing to the size of the Bill and the number of amendments deemed necessary, it is impracticable to give categorically the reason for every amendment, but references are made hereafter to all matters of major importance. We are satisfied that, if the Bill is passed with the recommended amendments, it will be the embodiment of all that is necessary for the proper protection of the financial and commercial sections of the community, the investing public and the interests of individuals likely to be affected by the provisions of the Act, and that, in the main, the enactment will be uniform with the company legislation passed in England and adopted by the various States of the Commonwealth. The principal matters recommended are dealt with in the following paragraphs:

PRIVATE AND PROPRIETARY COMPANIES.

Provision was made in the Bill for both Private and Proprietary Companies, but we recommend the deletion of those provisions relating to private companies. South Australia is the only State in the Commonwealth making provision for registration of both types of company. As the membership of a private company is unlimited, the principal distinction between a private and a public company is that a private company may not issue to the public a general invitation to subscribe for any of its shares. We are, therefore, of the opinion that provision should not be made for this form of company, particularly as the promoters of such a company could issue and circulate amongst friends and acquaintances an invitation to subscribe for shares, which in practice might be interpreted very liberally. This fact coupled with the provision for allowing the accepting of deposits from persons other than members, might in our opinion lead to exploitation by unscrupulous promoters.
We are, however, of the opinion that provision should be made for the formation of proprietary companies, which by reason of the restriction of membership to 50, are as a rule, small private concerns, in which the public generally is not interested. We recommend an amendment to enable these companies which, prior to the coming into operation of the Act, had accepted deposits from persons other than their members, to be registered as proprietary companies, provided all other requirements for such registration can be complied with.

As the membership of a proprietary company is limited, we consider that no good purpose exists for specifically providing that such a company must by its memorandum restrict the right to transfer its shares, preferring to leave the matter to the option of the company, and we accordingly recommend the deletion of the provision.

It is also proposed to exempt a proprietary company from the duty of appointing a registered auditor, if a majority of the shareholders in both number and shareholding value resolve that such appointment be not made.

**PROSPECTUSES.**

The provisions in the Bill relating to prospectuses, are in the main uniform with the legislation in other States. We have paid particular attention to these provisions and feel that, with the incorporation of certain amendments, they represent the maximum amount of protection that can be given to intending investors and provide adequate safeguards against the activities of fraudulent promoters.

In order to provide greater protection to the public, it is recommended that the Registrar of Companies should not register any prospectuses unless verified copies of all material contracts have been filed with him, such documents being available for inspection by any person on payment of a prescribed fee. It is also recommended that where any statement or report of an expert is included in a prospectus, full particulars should be given of the nature and extent of the interest of the expert in the company, and of his qualifications, together with the date of the report; and that if a mining title is acquired from the Department of Mines, full details of the title be included.

A new provision recommended is that non-compliance with or contravention of any of the requirements to be stated in a prospectus, shall not affect the validity or operation of any contract entered into on the faith of the prospectus or be a ground for the rescission of any such contract, when the non-compliance or contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial or was otherwise such as might in the opinion of the Court having regard to all the circumstances reasonably be ignored.

**REGISTRATION OF COMPANY CHARGES.**

It is recommended that the provisions relating to registration in the office of the Registrar of Companies relating to all charges created by any company over its property be deleted, as it is felt that these provisions represent an unnecessary duplication of the Bills of Sale Act. Furthermore, as the Bills of Sale Act is under the same administration as the Companies Act, and both offices are in the same building, a proper search of documents relating to companies filed thereunder can be undertaken without any undue inconvenience.

**PRIORITY OF DEBTS.**

The Bill provides that salaries and wages owing to any officer or employee to the extent of £50 and £25 respectively shall be a first charge over claims of holders of debentures under any floating charge created by a company over its assets. We are of the opinion that the priority of wages and salaries should not be limited to one particular class of security, but should be extended to cover all securities, and recommend accordingly: also proposing that the limit of £50 for wages or salaries owing shall be made general for all employees. (Messrs. Craig, Sadleir and Abbott dissent from this proposal unless it is restricted to securities executed after the passing of this Act.)

In all cases of companies being wound up, it is recommended that subject to the costs of winding up and to the abovementioned general priority of salaries and wages, debts, owing by a company in liquidation, shall rank in priority in accordance with the Commonwealth Bankruptcy Act, 1924-1933, and that the overriding power of the Court to determine the priority, in cases where a company is being wound up by the Court, be dispensed with.

No specific provision was made in the Bill that the Crown should be bound by the provisions of the Act. It is agreed that the Crown's special prerogative should continue, but that the priority should not extend as against the priority of wages and salaries, or to any corporate body representing the Crown actually engaged in trading and carrying on business under the provisions of the State Trading Concerns Act, 1916, and an amendment is recommended accordingly.

**CO-OPERATIVE COMPANIES.**

Under the Bill no new co-operative company could be registered under the Companies Act as a limited company. After hearing evidence from the Co-operative Federation of Western Australia, we recommend that amendments be made rectifying this position, and specifying the requirements to be set out in the memorandum or articles of association of such a co-operative company. Provisions relating to the distribution of surplus profits accredited to the reserve fund in any year have been included.
By the Companies Act Amendment Act, 1929, societies were prohibited from being registered under the Co-operative and Provident Societies Act, 1903, and at the present time only six societies under the said Act are carrying on business. Evidence was submitted that this restriction was undesirable, as there would probably be a demand for the registration of new societies of the consumer type, as distinct from the producer type of society which would generally register as a limited company. The Commission agrees that there should be provisions covering these consumer societies, and recommends that they be allowed to register under the provisions of the Co-operative and Provident Societies Act, 1903.

As it is desirable for all companies, societies and associations to be under the same administration, we recommend an amendment of the Co-operative and Provident Societies Act of 1903 to provide that the Registrar of such Act shall be the Registrar of Companies in lieu of the Registrar of Friendly Societies.

FOREIGN COMPANIES—LOCAL SHARE REGISTER.

Existing legislation (as incorporated in the Bill) requires all foreign companies registered in this State engaged in the business of mining, timber or land to keep at the registered office of the company in this State a local register of shareholders for the registration of all shareholders who apply to be registered therein. We recommend the extension of this provision, making it apply to all foreign companies carrying on business in Western Australia.

The primary object of the amendment is to obviate the payment by the estate of a deceased shareholder of double probate duty on shares held in a company carrying on business in Western Australia and registered in the share-register at the principal office of the company. It will also, to a great extent, prevent delay being incurred in the transfer of any such shares.

RESTRICTIONS ON OFFERING SHARES FOR SUBSCRIPTION OR SALE.

The provisions relating to the restrictions on the offering of shares to the public for subscription or for sale, which in general followed the existing legislation as passed in 1938, were very carefully reviewed, as it is recognised that frauds are often perpetrated on the unsuspecting public by unscrupulous share pushers. To strengthen the provisions relating to share-hawking, it is recommended that sub-clause (1) of Clause 390 be amended to read:

(1) Subject as hereinafter provided in this subsection, it shall not be lawful for any person to go from house to house or from place to place whether by appointment or otherwise offering to any member of the public shares for subscription or purchase or in exchange for other shares.

The inclusion of the words “whether by appointment or otherwise” will clarify the intention of the section and act as a guide in its enforcement. As serious frauds have been occasioned by share-hawkers persuading shareholders to exchange valuable scrip for valueless shares, the words “or in exchange for other shares” have also been inserted.

As it may be desirable in certain cases for genuine companies to be allowed to have their shares hawked or offered for sale in writing, a provision is recommended empowering the Minister controlling the Act to grant exemption from its requirements, subject to due publicity being given, subject also to a power of revocation at any time.

The deletion is recommended of the provision allowing a person to make an offer in writing for the buying or selling of shares to any person with whom he has been in the habit of doing regular business in the buying or selling of shares. A share-salesman could quite easily arrange some method to establish a regular course of business and thus evade liability for making offers in writing, and furthermore “doing regular business” might even be interpreted to cover the preliminary approach made by the share-salesman, and involving perhaps two or three transactions, before the making of any definite legal offer.

REGISTRATION OF SHARE BROKERS.

We recommend the retention of the principle of registration of all share-brokers as we are of the opinion that greater protection to the investing public will be provided. At the present time no degree of control is exercised and any person whatsoever (whether a man of substance or a man of straw) may trade as a share-broker, handling, particularly during mining booms, thousands of pounds worth of scrip.

It is proposed that the amount of the deposit to be lodged by applicants for registration other than members of any recognised stock exchange or their authorised representatives, be increased from £300 to £500, and thus made uniform with the security to be lodged by land agents under the Land Agents Act.

We are of the opinion that if our recommendation is adopted conferring upon the Minister the right to exempt certain companies from the provisions relating to share-hawking and the offering of shares in writing to the public, no necessity exists for the appointment of exempted share-dealers and the deletion of these provisions is therefore recommended.

We are opposed to the granting of a monopoly to members of recognised stock exchanges to act as share-brokers.
REGISTRATION OF AUDITORS AND LIQUIDATORS.

Your Royal Commission is satisfied that ample reasons exist for the registration of company auditors and liquidators as it is realised that shareholders and the public generally will benefit by these provisions. An admirable modifying provision in the Bill, designed principally for the benefit of companies in outlying districts, is that the Attorney General, if satisfied that it is impracticable or inconvenient for any company to appoint a registered auditor or registered liquidator may authorise a competent person (not registered) to act as auditor or liquidator of the company, subject to any conditions or restrictions he may think fit to impose.

It is recommended that the Registrar of Companies be the licensing authority for the registration of company auditors and liquidators subject to the right of any person aggrieved by his decision to apply to the Supreme Court, which may confirm, reverse or modify the decision complained of. We are strongly opposed to the suggestion made by the Combined Committee Secretarial, Accountancy and Trustees Associations that a semi-governmental board be created to act as the licensing authority.

SOUTH AUSTRALIAN COMPANIES ACT AMENDMENT ACT, 1939.

The provisions of the Bill were in general taken from the South Australian Companies Act of 1934, with certain exceptions principally relating to investment companies, share-dealing, and matters specially applicable to local conditions contained in the existing Act. At the commencement of the inquiry it was discovered that the South Australian Act had been brought up to date and anomalies therein corrected by an amending Act passed in 1939, and your Royal Commission therefore requested those organisations which intended to submit evidence to consider the effect of this amending Act. After hearing evidence and giving the matter careful consideration, we recommend the adoption of the majority of the provisions contained in the amending Act, the principal matters dealt with being amplified in the two succeeding paragraphs.

It is recommended that the Governor, on the recommendation of the Attorney General, may appoint inspectors to investigate the affairs of any company. The Attorney General shall not make any such recommendation unless on written information submitted to him by the Commissioner of Police or the Registrar of Companies, he has reasonable cause to suspect that, such company is not carrying on business in good faith in the interests of shareholders, or that the directors, managers, or officers of the company have been guilty of fraudulent or negligent conduct which has caused or is likely to cause serious loss to the company or its shareholders, or that the company is endeavouring to raise capital from the public by unlawful or dishonest means.

Where a foreign company carrying on business in Western Australia goes into liquidation in the place of its incorporation, your Royal Commission recommends that, subject to any creditor or contributory applying for the company to be wound up in this State, the liquidator of the company appointed in the country of its incorporation shall have the powers of a liquidator for Western Australia. The agent of the company will be required to forward to the Registrar of Companies notice of the appointment of the liquidator and of the dissolution of the Company. It is also recommended that the Registrar be empowered to strike off from the register the name of any company which, after due inquiry, is found to have ceased carrying on business in Western Australia.

TIMES FOR FILING NOTICES.

Various times, such as three, seven, ten, fourteen, fifteen, thirty days and one month have been provided in the Bill for the issuing of notices and the filing of documents. In order to avoid confusion it is proposed to standardise these times providing for fourteen days where the requirements of the Bill allow any period up to fourteen days and twenty-eight days in lieu of any period in excess of fourteen days.

RIGHTS OF MINORITY SHAREHOLDERS.

It was brought to the notice of the Royal Commission that directors of companies holding a majority of the shareholding sometimes exercised their majority voting power to increase their remuneration to such an exorbitant figure in relation to the value of their office that it acted to the detriment of the other shareholders. As no legal remedy exists to aid such shareholders, it is suggested (Mr. Abbott dissenting on the ground that the next following provision is sufficient) that when the rate or amount of remuneration of any director has been fixed or determined by a resolution carried by means of votes given by or on behalf of the director concerned, then any three or more shareholders, who are of the opinion that the rate or amount of the remuneration so fixed or determined is improper or unreasonable or unconscionable and detrimental to the best interests of the company and the shareholders, may appeal to the Court against the rate or amount of remuneration so fixed on such grounds aforesaid, and on such appeal the Court may affirm or vary the rate or amount of remuneration appealed against.

Another new provision recommended, as contained in the New South Wales and Victorian Companies Acts, is that if directors have abused their fiduciary position and have acted in the affairs of a company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which in the opinion of the Court is unfair or unjust to other members, the Court may order the company to be wound up. The chief distinction between this recommendation and the preceding one is that an application for the review of the remuneration of a director could be made when it was not desired that the company should be wound up.
It is recommended that new clauses be inserted:—

- empowering the Registrar of Companies to destroy annual returns and other documents held by him for a period of at least ten years;
- that the rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of any pension or superannuation fund or scheme for the benefit of any employees of a company; and
- that no balance sheet or other financial statement issued by a company shall contain any direct or indirect representation that the company has any reserve fund, unless the reserve fund is actually existing and the representation is accompanied by a statement showing whether or not such reserve fund is used in the business, and, if any portion thereof is otherwise invested, showing the manner in which, and the securities upon which the same is invested.

It is also recommended that the relative clauses be amended:—

- providing an absolute prohibition of the use of the word "State" in the name of any company;
- making the prohibition of the use of other specified words in the name of any company, apply only to companies registered after the Act comes into operation;
- making it unlawful for a company to give financial assistance to any of its directors; and
- specifying the requirements to be stated on share certificates and debentures; and
- providing that where a company incorporated in this State has the majority of its members in this State, the annual general meeting shall be held in Western Australia; and that if the majority of the members of such a company reside out of the State, a general meeting shall be held in Western Australia once at least in every year if required by a majority of the resident shareholders, being in any event not less than ten members;
- deleting provisions for extraordinary resolutions;
- making it compulsory for minutes of companies to be entered in a bound book;
- stipulating that every minute of a resolution fixing the rate or amount of remuneration of any director shall contain the names of every director and his nominees respectively voting for or against the resolution and stating how such directors and nominees voted;
- improving and enlarging the accounting provisions generally, especially those relating to subsidiary companies, and the requirements to be stated in the published balance sheets and profit and loss accounts;
- providing that a director who is in any way interested personally in a contract with the company of which he is director shall not be qualified to vote upon any resolution relating to such contract; and
- granting the Registrar of Companies a discretionary power to extend the time for the performance of any obligation by any person or company.

COMMENCEMENT OF ACT.

Clause 1 of the Bill provides that the Act shall come into operation on a date to be fixed by proclamation. We are of the opinion that it is desirable for the Act (if passed) to be proclaimed, but in view of the present state of national emergency, we feel that some reason may arise in the future making it difficult for certain provisions being complied with. An amendment to the relative clause is therefore recommended providing that in proclaiming the Act to come into operation, certain provisions may be suspended for a period to be specified in such proclamation.

STAMP DUTY PAYABLE ON TRANSFERS OF SHARES.

A recommendation has been made to the Hon. Treasurer following evidence submitted by the Stock Exchange of Perth, that the stamp duty payable on the transfer of shares be reduced and made comparable with the average stamp duty payable in the other States of the Commonwealth.

LIMITED PARTNERSHIPS ACT, 1909.

The Committee recommends that the Limited Partnerships Act, 1909, be amended to incorporate special provision for mining partnerships, allowing the partners, whose liability is limited to the amount to which they had contributed, the right to participate in the executive management or administration of the company. This recommendation is made following evidence submitted by Mr. A. H. Malloch, to the effect that the mining industry of the State would be greatly assisted if additional protection were granted to persons willing to invest in the re-opening of abandoned mines, but not prepared to take the ordinary partnership risk of unlimited liability.
APPRECIATION.

The Committee congratulates the Solicitor General on his capable drafting of the Bill and of the desired amendments.

We desire unanimously to place on record our appreciation of the services rendered by Mr. A. S. Cowan as Secretary to the Joint Select Committee and later the Royal Commission. Mr. Cowan's care in keeping the records, his unfailing courtesy and his ability in the difficult work required of him have been outstanding. We would request the Government to make some suitable recognition of these services.

Dated this 29th day of July, 1941.

E. NULSEN,
Chairman.

H. SEDDON,
Deputy Chairman.

LESLIE CRAIG,
Member.

GILBERT FRASER,
Member.

A. THOMSON,
Member.

VAL. R. ABBOTT,
Member.

A. J. RODOREDA,
Member.

ARThur F. WATTS,
Member.

A. S. COWAN,
Secretary,
Parliament House, Perth.
**Appendix I.**

**SCHEDULE OF RECOMMENDED AMENDMENTS TO BILL.**

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>is deleted and a new clause is substituted in lieu thereof as follows:—</td>
</tr>
<tr>
<td></td>
<td><strong>1.</strong> (1) This Act may be cited as the <em>Companies Act, 1941</em>, and subject to subsection (2) of this section shall come into operation on a date to be fixed by proclamation.</td>
</tr>
<tr>
<td></td>
<td>(2) The Governor may by any proclamation issued under subsection (1) of this section declare that any sections, divisions, or Parts of this Act, which are specified in the Proclamation shall not come into operation until a date or until after the expiration of a period to be specified in the Proclamation and in any such case the Proclamation shall take effect according to the tenor thereof.</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>is deleted and a new clause is substituted in lieu thereof as follows:—</td>
</tr>
<tr>
<td></td>
<td><strong>2.</strong> This Act is divided into Parts, as follows:—</td>
</tr>
</tbody>
</table>

**PART I.—SECTIONS 1 TO 11: PRELIMINARY.**

- Division 1.—ss. 1 to 3: Interpretation.
- Division 2.—ss. 4 to 10: Repeal of Acts and transitional provisions.
- Division 3.—s. 11: Prohibition of large partnerships.

**PART II.—SECTIONS 12 TO 48: INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO.**

- Division 1.—ss. 12 to 19: Memorandum of Association.
- Division 2.—ss. 20 to 23: Articles of Association.
- Division 3.—s. 24: Form of Memorandum and Articles.
- Division 4.—ss. 25 to 29: Registration.
- Division 5.—ss. 30 to 32: Provisions with respect to names of Companies.
- Division 6.—ss. 33 to 38: General provisions with respect to Memorandum and Articles.
- Division 7.—s. 39: Membership of Company.
- Division 8.—ss. 40 to 42: Proprietary Companies.
- Division 9.—s. 43: Reduction of number of Members below legal Minimum.
- Division 10.—ss. 44 to 48: Contracts, etc.

**PART III.—SECTIONS 49 TO 102: SHARE CAPITAL AND DEBENTURES.**

- Division 1.—ss. 49 to 55: Prospectus.
- Division 2.—ss. 56 to 60: Allotment.
- Division 3.—ss. 60 to 62: Commissions and Discounts.
- Division 4.—ss. 63 and 64: Issue of redeemable preference Shares and Shares at a Discount.
- Division 5.—ss. 65 to 73: Miscellaneous provisions as to Capital.
- Division 6.—ss. 74 to 80: Reduction of Capital.
- Division 7.—ss. 81 to 83: Variation of rights of Shareholders.
- Division 8.—ss. 84 to 93: Transfer of Shares and Debentures, evidence of Title, etc.
- Division 9.—ss. 94 to 98: Special provisions as to Debentures.
- Division 10.—ss. 99 to 102: Provisions as to Company's Register of Charges and as to copies of Instruments creating Charges.

**PART IV.—SECTIONS 103 TO 165: MANAGEMENT AND ADMINISTRATION.**

- Division 1.—ss. 103 to 105: Registered Office, Secretary of Company, etc.
- Division 2.—a. 106: Restrictions on commencement of Business.
<table>
<thead>
<tr>
<th>Clause Number.</th>
<th>Amendment.</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>2—cont.</td>
<td>Division 3.—ss. 107 to 114: Register of Members.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 4.—ss. 115 to 116: Branch Register.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 5.—ss. 117 and 118: Annual Return.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 6.—ss. 119 to 129: Meetings and Proceedings.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 7.—ss. 130 and 141: Accounts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 8.—ss. 142 to 144: Audit.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 9.—ss. 145 to 149: Inspection.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 10.—ss. 150 to 160: Directors and Managers.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 11.—ss. 161: Avoidance of provisions in Articles or Contracts relieving Officers from Liability.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 12.—ss. 162 to 164: Arrangements and Reconstructions.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 13.—ss. 165: Arbitrations.</td>
<td></td>
</tr>
</tbody>
</table>

**PART V.—SECTIONS 166 TO 175: NO LIABILITY COMPANIES.**

**PART VI.—SECTIONS 176 TO 180: CO-OPERATIVE COMPANIES.**

**PART VII.—SECTIONS 181 TO 305: WINDING-UP OF COMPANIES.**

Division 1.—ss. 181 to 188—
(a) ss. 181 and 182: Preliminary.
(b) ss. 183 to 187: Liability of Members as Contributors.
(c) s. 188: Liquidators.

Division 2.—ss. 189 to 234: Winding-up by Court.
(a) ss. 189 to 190: Winding-up by Court.
(b) ss. 191 to 195: Petition for Winding-up and effect thereof.
(c) s. 196: Commencement of Winding-up.
(d) ss. 197 to 199: Consequences of Winding-up Order.
(e) ss. 200 to 213: Official Liquidators.
(f) ss. 214 to 216: Committees of Inspection.
(g) ss. 217 to 234: General powers of Court in case of Winding-up by Court.

Division 3.—ss. 235 to 265: Voluntary Winding-up of Company.
(a) ss. 235 to 237: Resolutions for and Commencement of voluntary Winding-up.
(b) ss. 238 and 239: Consequences of voluntary Winding-up.
(c) s. 240: Declaration of Solvency.
(d) ss. 241 to 246: Provisions applicable to a Member's voluntary Winding-up.
(e) ss. 247 to 255: Provisions applicable to a Creditor's voluntary Winding-up.
(f) ss. 256 to 265: Provisions applicable to every voluntary Winding-up.

Division 4.—ss. 266 to 270: Winding-up subject to supervision of Court.
Division 5.—ss. 271 to 305: Provisions applicable to every mode of Winding-up.
(a) ss. 271 to 276: Proof and ranking of Claims.
(b) ss. 277 to 282: Effect of Winding-up on antecedent and other Transactions.
(c) ss. 283 to 287: Offences antecedent to or in course of Winding-up.
(d) ss. 288 to 296: Supplementary provisions as to Winding-up.
(e) ss. 296 to 298: Supplementary powers of Court.
(f) s. 299: Provisions as to Dissolution.
(g) ss. 300 to 305: Provisions as to defunct Companies.

**PART VIII.—SECTIONS 306 TO 312: WINDING-UP UNREGISTERED COMPANIES.**

**PART IX.—SECTIONS 313 TO 315: APPLICATION OF THIS ACT TO COMPANIES FORMED OR REGISTERED UNDER FORMER ACTS.**

**PART X.—SECTIONS 316 TO 332: COMPANIES NOT FORMED UNDER THIS ACT AUTHORIZED TO REGISTER UNDER THIS ACT.**
### Clause Number | Amendment | Clause re-numbered
--- | --- | ---

2—contd.

**PART XI.**—Section 333 to 367: Foreign Companies.

**PART XII.**—Sections 368 to 371: Receivers and Managers.

**PART XIII.**—Sections 372 to 385: Restrictions on Sale of Shares and Offers of Shares for Sale.
- Division 1.—ss. 372 to 375: Restrictions relating to Shares.
- Division 2.—ss. 377 to 385: Restrictions relating to Share Brokers.

**PART XIV.**—Sections 386 to 398: Investment Companies.

**PART XV.**—Sections 397 to 407: Registrar's Office and Administration.

**PART XVI.**—Sections 408 to 438: Miscellaneous.
- (a) ss. 408 to 412: Auditors and Liquidators.
- (b) s. 413: Rules.
- (c) ss. 414 and 415: Regulations—Tables and Forms.
- (d) s. 416: Service of Documents.
- (e) ss. 417 and 418: Enforcement of Orders.
- (f) ss. 419 and 420: Lost Documents.
- (g) ss. 421 to 438: Miscellaneous.

**FIRST SCHEDULE—Repealed Acts.**

**SECOND SCHEDULE—Tables A, B, and C.**

**THIRD SCHEDULE—Implied Powers of Companies.**

**FOURTH SCHEDULE—Form of Statement in Lieu of Prospectus to be delivered to Registrar by a Proprietary Company on becoming a Public Company.**

**FIFTH SCHEDULE—Form of Statement in Lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to Allotment on a Prospectus issued.**

**SIXTH SCHEDULE—Form of Annual Return of a Company having a share capital and also forms of balance sheets to accompany such Annual Return.**

**SEVENTH SCHEDULE—Form of Annual Return of Company not having a Share Capital.**

**EIGHTH SCHEDULE—Form of Statement referred to in Section 141 of the Act.**

**NINTH SCHEDULE—Provisions which do not apply in the case of a Winding-up subject to Supervision of the Court.**

**TENTH SCHEDULE—Table of Fees to be paid to Registrar.**

**ELEVENTH SCHEDULE—Rules for proceedings for Winding-up Companies by Order of the Court.**

**TWELFTH SCHEDULE—Form of Balance Sheet of an Investment Company.**

**THIRTEENTH SCHEDULE—Sundry Forms.**
### Clause 3

**(a)** The terms "Authorised auditor" and "Authorised Liquidator" are deleted, and new terms "Registered Auditor" and "Registered Liquidator" are inserted after the term "Public Company" as follows:

- "Registered auditor" means a person duly registered as an auditor under section four hundred and eight of this Act.
- "Registered liquidator" means a person duly registered as a liquidator under section four hundred and eight of this Act; and who, when required, has given security as provided for in this Act.

**(b)** A new term "Charge" is inserted after the term "Books and papers" as follows:

- "Charge" means:
  1. a mortgage or charge for the purpose of securing any issue of debentures;
  2. a mortgage or charge on uncalled share capital of the company;
  3. a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration or would be registerable as a bill of sale;
  4. a mortgage or charge on the book debts of a company;
  5. a floating charge on the undertaking or property of the company;
  6. a mortgage or charge on the calls made but not paid;
  7. a mortgage or charge on goodwill on a patent, on a trade mark or on a copyright.

The term also includes an agreement to create a charge.

**(c)** "Court" is amended by deleting therefrom the words "or any Judge thereof" and inserting in lieu thereof the words "of Western Australia."

**(d)** "Manager" is amended to read:

- "Manager" means principal executive officer of a company whether such principal executive officer be the managing director or the secretary or some other officer with some other designation.

**(e)** "Mining purposes" is amended by adding thereto the following words:

- "This term shall not include quarrying operations for the sole purpose of obtaining stone for building, road-making, and similar industrial purposes."

**(f)** The term "Mortgage" is deleted.

**(g)** A new term "Officer" is inserted after the term "No liability company" as follows:

- "Officer" means manager unless otherwise specified.

**(h)** "Registrar" is amended by adding thereto the following words "for the time being and includes any duly appointed acting or Deputy Registrar."

### Clause 4

is amended by deleting from sub-clause (1) in the eleventh line of paragraph (c) thereof, the word "enter" and inserting in lieu thereof the word "entered."

### Clause 10

is amended by deleting from the fourth and fifth lines the words "or private company."

### Clause 12

is amended as follows:

1. By deleting from the second line the words "or private company."
2. By deleting from the third line the words "Sections forty-two and forty-three" and inserting in lieu thereof the words "Section forty."

### Clause 13

is amended:

1. By inserting in sub-clause (1) after paragraph (d) thereof a new paragraph to stand as paragraph (e) as follows:
   - (e) The full names, addresses and occupations of the subscribers of the memorandum and whether each subscriber is over or under the age of twenty-one years.
2. Inserting after sub-clause (3) a new sub-clause to stand as sub-clause (4) as follows:
   - (4) No person under the age of twenty-one years shall subscribe to a memorandum.
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
</tr>
</thead>
</table>
| 14            | is amended as follows:—
                | 1. By inserting in sub-clause (1) after sub-paragraph (iv) of paragraph (a) thereof a new sub-paragraph as follows:—
                | (v) The full names, addresses and occupations of the subscribers of the memorandum and whether each subscriber is over or under the age of twenty-one years. |
                | 2. By re-numbering sub-clause (2) as sub-clause (3) and inserting a new sub-clause (2) as follows:—
                | (2) No person under the age of twenty-one years shall subscribe to a memorandum. |
                | 3. Sub-clause (3) is deleted and a new sub-clause to stand as sub-clause (4) is inserted in lieu thereof as follows:—
                | (4) No company shall be registered as a no-liability company until it is proved to the Registrar by statutory declaration and such other evidence as he shall require that five per cent. of the nominal capital of the company has been paid up and lodged to the credit of a trustee for the company in a bank approved by the Registrar. |
| 15            | is amended as follows:—
                | 1. By inserting in sub-clause (1) after paragraph (d) thereof a new paragraph to stand as paragraph (e) as follows:—
                | (e) The full names, addresses and occupations of the subscribers of the memorandum and whether each subscriber is over or under the age of twenty-one years. |
                | 2. By inserting after sub-clause (2) a new sub-clause to stand as sub-clause (3) as follows:—
                | (3) No person under the age of twenty-one years shall subscribe to a memorandum. |
| 16            | is amended as follows:—
                | 1. By inserting in sub-clause (1) after paragraph (c) thereof a new paragraph to stand as paragraph (d) as follows:—
                | (d) The full names, addresses and occupations of the subscribers of the memorandum and whether each subscriber is over or under the age of twenty-one years. |
                | 2. By inserting after sub-clause (2) a new sub-clause to stand as sub-clause (3) as follows:—
                | (3) No person under the age of twenty-one years shall subscribe to a memorandum. |
| 17            | is amended by deleting the proviso and inserting a new sub-clause to stand as sub-clause (2) as follows:—
                | (2) The attorney of a subscriber duly authorised in that behalf by a written power of attorney duly executed by the subscriber and in force may sign the memorandum in the name of such subscriber. Provided that before accepting the signature on the memorandum by an attorney as aforesaid the Registrar may require the power of attorney to be produced for his inspection and may require the production of evidence to his satisfaction that the power of attorney is still in force and operation. |
| 19            | is amended by deleting from sub-clause (7) in the seventh line of paragraph (a) thereof the word “fifteen” and inserting in lieu thereof the words “twenty-eight.” |
| 20            | is amended as follows:—
<pre><code>            | 1. By deleting the proviso to sub-clause (1). |
            | 2. By deleting from sub-clause (7) in the third line of paragraph (a) thereof the word “fifteen” and inserting in lieu thereof the words “twenty-eight.” |
</code></pre>
<p>| 22            | is deleted. |</p>
<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause renumbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>is amended by deleting the proviso and inserting a sub-clause to stand as sub-clause (2) as follows:— &lt;br&gt; (2) The attorney of a subscriber duly authorised in that behalf by a written power of attorney duly executed by the subscriber and in force may sign the articles in the name of such subscriber. Provided that before accepting the signature on the articles by an attorney as aforesaid the Registrar may require the power of attorney to be produced for his inspection and may require the production of evidence to his satisfaction that the power of attorney is still in force and operation.</td>
<td>23</td>
</tr>
<tr>
<td>24</td>
<td></td>
<td>23</td>
</tr>
<tr>
<td>25</td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>26</td>
<td>is amended by deleting from sub-clause (2) in the first line thereof the words &quot; may refuse to &quot; and inserting in lieu thereof the words &quot; shall not.&quot;</td>
<td>25</td>
</tr>
<tr>
<td>27</td>
<td>is amended by deleting from sub-clause (1) in the fourth line thereof the words &quot; a private limited company.&quot;</td>
<td>26</td>
</tr>
<tr>
<td>28</td>
<td></td>
<td>27</td>
</tr>
<tr>
<td>29</td>
<td></td>
<td>28</td>
</tr>
<tr>
<td>30</td>
<td></td>
<td>29</td>
</tr>
<tr>
<td>31</td>
<td>is amended as follows:— &lt;br&gt; 1. By inserting in paragraph (a) of sub-clause (1) in the second line of sub-paragraph (i) and in the fifth line of paragraph (ii) of the proviso to sub-paragraph (iv) after the figures &quot; 1897 &quot; in each case, the sign and figures &quot; -1940, &quot; &lt;br&gt; 2. By deleting from sub-clause (1) the word &quot; or &quot; at the end of paragraph (i) thereof, and by deleting paragraph (j) thereof. &lt;br&gt; 3. By inserting after sub-clause (2) a new sub-clause to stand as sub-clause (3) as follows:— &lt;br&gt; (3) (a) Where a company has, prior to the commencement of this section been registered under the repealed Acts by a name which includes therein any of the words (other than the word &quot; State &quot;) mentioned in subsection (2) of this section nothing in this section shall prevent the continuance of the registration of such company by such name after the commencement of this section. &lt;br&gt; (b) Where a company has prior to the commencement of this section been registered under the repealed Acts by a name which includes therein the word &quot; State,&quot; the registration of such company shall cease and be cancelled by the Registrar after the expiration of three calendar months from the date of the commencement of this Act, unless in the meantime— &lt;br&gt; (i) the Governor shall, on the application of the company, by order published in the Government Gazette, consent to the continuance of the registration of the company by the name aforesaid; or &lt;br&gt; (ii) the company shall, by special resolution and with the approval of the Registrar signified in writing, have changed its name by the exclusion therefrom of the said word &quot; State,&quot; and the substitution therefor of another word or other words which are not prohibited by this section. &lt;br&gt; (c) Where a company changes its name in accordance with the provisions of sub-paragraph (ii) of paragraph (b) of this subsection it shall be deemed to have been authorised so to do by subsection (1) of section thirty-two of this Act and thereafter subsections (3), (4), (5) and (6) of the said section thirty-two shall, with such adaptations as may be necessary, apply and have effect in relation to the change of its name by the company aforesaid.</td>
<td>30</td>
</tr>
</tbody>
</table>
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number.</th>
<th>Amendment.</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>31—cont.</td>
<td>4. By re-numbering sub-clauses (3), (4), and (5) as sub-clauses (4), (6), and (7).</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>5. By deleting from sub-clause (4) in the first line thereof the words &quot;such consent&quot; and inserting in lieu thereof the words &quot;the consent of the Governor referred to in sub-sections (2) and (3) of this section.&quot;</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>6. By deleting from sub-clause (6) (sub-clause (5) as renumbered) the word &quot;thirty&quot; in the seventh line, and substituting in lieu thereof the words &quot;twenty-eight.&quot;</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>7. By deleting sub-clause (6) and inserting a new sub-clause to stand as sub-clause (7) as follows:— (7) In this section the word &quot;company&quot; does not apply to a company which at the commencement of this Act has already been registered as a foreign company under the repealed Acts or to a company which at the commencement of this Act had not been registered as a foreign company under the repealed Acts and had been carrying on business in this State as a company incorporated elsewhere than in this State; but save and except as aforesaid the said word &quot;company&quot; includes a company which upon application made after the commencement of this Act is registered under Part XI. of this Act.</td>
<td>31</td>
</tr>
<tr>
<td>32</td>
<td>33 is amended by deleting from sub-clause (4) the words &quot;section one hundred and thirty-four&quot; in the sixth line and inserting in lieu thereof the words &quot;sections one hundred and seventeen and one hundred and eighteen.&quot;</td>
<td>31</td>
</tr>
<tr>
<td>33</td>
<td>32 is amended as follows:— 1. By deleting from sub-clause (2) in the third line thereof the words &quot;thirty-one&quot; and inserting in lieu thereof the word &quot;thirty.&quot; 2. By deleting from sub-clause (5) in the first line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot; 3. By inserting in sub-clause (6) after the word &quot;certificate&quot; in the first line thereof, the words &quot;or a copy thereof certified as correct under the hand and seal of the Registrar.&quot;</td>
<td>31</td>
</tr>
<tr>
<td>34</td>
<td>33</td>
<td>31</td>
</tr>
<tr>
<td>35</td>
<td>34</td>
<td>31</td>
</tr>
<tr>
<td>36</td>
<td>35</td>
<td>31</td>
</tr>
<tr>
<td>37</td>
<td>36 is amended by deleting from sub-clause (1) in the second line thereof the word &quot;person&quot; and inserting in lieu thereof the word &quot;member.&quot;</td>
<td>31</td>
</tr>
<tr>
<td>38</td>
<td>37</td>
<td>31</td>
</tr>
<tr>
<td>39</td>
<td>38 is amended by inserting in the third line after the word &quot;powers&quot; the words &quot;included in its memorandum or.&quot;</td>
<td>31</td>
</tr>
<tr>
<td>40</td>
<td>39 is deleted.</td>
<td>31</td>
</tr>
<tr>
<td>41</td>
<td>40 is amended as follows:— 1. By deleting from the heading the words &quot;and Private.&quot; 2. By renumbering sub-paragraphs (a) of paragraph (i) and by renumbering sub-paragraphs (b), (c) and (d) thereof as sub-paragraphs (a), (b) and (c). 3. By striking out from sub-clause (3) the last four lines thereof. 4. By deleting from the second line of sub-clause (4) the words &quot;an affidavit&quot; and inserting in lieu thereof the words &quot;a statutory declaration.&quot; 5. By deleting from sub-clause (4) after the words &quot;certificate&quot; in the first line thereof, the words &quot;or a copy thereof certified as correct under the hand and seal of the Registrar.&quot;</td>
<td>31</td>
</tr>
<tr>
<td>42</td>
<td>40</td>
<td>31</td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
<td>Clause re-numbered as</td>
</tr>
<tr>
<td>---------------</td>
<td>----------</td>
<td>----------------------</td>
</tr>
</tbody>
</table>
| 42—cont.      | 6. By renumbering sub-clause (5) as sub-clause (6) and inserting a new sub-clause to stand as sub-clause (7) as follows:—
<p>|               | (7) Where two or more persons hold one or more shares in a proprietary company jointly they shall for the purposes of this section be treated as a single member. | 41 |
|               | 43 is deleted. | 42 |
|               | 44 is deleted. | |
|               | 45 is deleted. | |
|               | 46 is amended by deleting from sub-clause (1) the words “or private company” wherever they appear; by deleting from the fourth line the words “as the case may be” and by deleting from the eighth and ninth lines the words “in the case of a proprietary company.” | 41 |
|               | 47 is amended as follows:— | 42 |
|               | 1. By deleting from sub-clause (1) in the second line thereof the words “forty-two or forty-three” and inserting in lieu thereof the word “forty.” | |
|               | 2. By deleting from sub-clause (2) the words “sections forty-two and forty-three” in the second and third lines and inserting in lieu thereof the words “section forty”; by deleting from the fifth line the words “or private company as the case may be” and by deleting from the ninth line the words “or private companies.” | |
|               | 3. By amending sub-clause (3) as follows:— | |
|               | (a) By deleting from the first and second lines the words “or a private company,” from the seventh line the words “or private company,” and from the tenth line the words “or private company as the case may be.” | |
|               | (b) By deleting from the fourth and fifth lines the words “sections forty-two and forty-three respectively” and inserting in lieu thereof the words “section forty,” and by deleting from the eleventh line the word “seven” and inserting in lieu thereof the word “fourteen.” | |
|               | 48 is amended by deleting from the second and third lines the words “or a private company.” | 43 |
|               | 49 | 44 |
|               | 50 | 45 |
|               | 51 | 46 |
|               | 52 | 47 |
|               | 53 | 48 |
|               | 54 | 49 |
|               | 1. by deleting sub-clause (3) and inserting new sub-clauses as follows:— | |
|               | (3) The Registrar shall not accept any prospectus unless— | |
|               | (a) it is dated and signed in the manner required by this section; and | |
|               | (b) there are also lodged therewith for filing certified copies of all material contracts, matters in regard to which are required by paragraph (13) of Part A of section fifty of this Act to be stated in the prospectus. | |
|               | (4) The copy of every material contract filed in accordance with sub-section (3) of this section may be inspected in the office of the Registrar by any person on payment of the prescribed fee and when the said office is open for business. | |
|               | 2. by renumbering sub-clause (4) and (5) as sub-clause (6) and (6). | |</p>
<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause renumbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>55</td>
<td>is amended as follows: ---</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>1. By inserting after sub-clause (3) new sub-clauses (4), (5) and (6) as follows:—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4) A prospectus shall not contain the name of any person as a trustee for holders of debentures or as an auditor or a solicitor of the company or proposed company unless such person has prior to the issue of the prospectus consented in writing to act in the capacity proposed to be stated in the prospectus, and a verified copy of such consent has been filed with the Registrar.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(5) Where any statement made by an expert or contained in what purports to be a copy of or extract from a report, memorandum or valuation by an expert is included or set forth in a prospectus, there shall also be included or set forth in the prospectus the date on which the statement, report, memorandum or valuation aforesaid was made, and whether or not the same was made or prepared by the expert for the purpose of the same being incorporated in the said prospectus, and also particulars of the professional or other qualifications of such expert.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(6) Where in a prospectus reference is made of any mining lease or other mining tenement within the provisions of any law of this State relating to mining which has been acquired or is subject of an option to acquire the same, there shall also be set forth in the prospectus the particulars of a certificate, which shall be obtained from the Department of Mines, containing full details of the nature of such mining lease or other mining tenement and of the title thereto or the estate or interest therein.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. By renumbering sub-clauses (4), (5) and (6) as (7), (8) and (9) and inserting a new sub-clause to stand as sub-clause (10) as follows:—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(10) Non-compliance with or contravention of any of the requirements of this section shall not affect the validity or operation of any contract entered into on the faith of the prospectus or be a ground for the rescission of any such contract, when the non-compliance or contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial or was otherwise such as ought in the opinion of the Court having regard to all the circumstances of the case reasonably to be excused.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. by deleting from sub-clause (5) (sub-clause (8) as renumbered) in the eighth line thereof the words &quot;sixty&quot; and inserting in lieu thereof the word &quot;forty-four.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. Part A is amended:—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) by deleting paragraph (4) and inserting in lieu thereof the following:—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4) The names, descriptions, and addresses of the directors, solicitors, and secretary, or proposed directors, solicitors, and secretary.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) by deleting from paragraph (13) in the eighth line thereof the word &quot;conduct&quot; and inserting in lieu thereof the word &quot;contract.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) Paragraph (15) is amended by inserting in the second line after the word &quot;director&quot; the words &quot;and of every expert.&quot; and by inserting in the fifth and eleventh lines after the word &quot;director&quot; the words &quot;or expert.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. Part (c) is amended:—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) by deleting from the first line the word &quot;paragraphs&quot; and inserting the word &quot;parts.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) paragraph (1) is amended by deleting from the ninth and tenth lines thereof the words &quot;is entitled to commence business&quot; and inserting in lieu thereof the words &quot;has in fact commenced business.&quot;</td>
<td></td>
</tr>
<tr>
<td>Clause Number.</td>
<td>Amendment.</td>
<td>Clause re-numbered as</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>56—contd.</td>
<td>2. By deleting from paragraph (iii) (renumbered as (ii)) the words &quot;indorsed upon a full prospectus&quot; and inserting in lieu thereof the words &quot;(as the case may be) either indorsed upon or annexed to but detachable from a full prospectus, and that when the form of application is annexed to but detachable from a full prospectus an application upon such form will only be received when the applicant has indorsed on such form and signed a memorandum to the effect that before detaching the form of application from the prospectus he has perused the prospectus.&quot;</td>
<td>52</td>
</tr>
<tr>
<td></td>
<td>is amended by deleting from the last line the words &quot;or a private company.&quot;</td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>is amended:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. By inserting in sub-clause (1) in the first line after paragraph (d) thereof after the word &quot;shall&quot; the words and figures &quot;subject to subsection (10) of section fifty of this Act.&quot;</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>2. By inserting in sub-clause (4) in the tenth line after the word &quot;accountant&quot; the word &quot;geologist.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. By inserting after sub-clause (4) a new sub-clause as follows:— (5) A person or association of persons (whether corporate or otherwise) carrying on the business of a banker, or an auditor, or a solicitor, or a broker shall not be deemed to have authorised the issue of a prospectus or to have been a party to the preparation of a prospectus merely because such person, association of persons, auditor, solicitor or broker has consented to his or its name appearing in such prospectus and his or its name appears in such prospectus.</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>is amended by deleting from sub-clause (3) the words &quot;fifty-four&quot; in the first line and inserting in lieu thereof the word &quot;forty-nine&quot; and by deleting from the fourth line the word &quot;fifty-five&quot; and inserting in lieu thereof the word &quot;fifty.&quot;</td>
<td>55</td>
</tr>
<tr>
<td>59</td>
<td>is amended:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. By deleting from sub-clause (1) in the seventh line thereof the word &quot;fifty-five&quot; and inserting in lieu thereof the word &quot;fifty.&quot;</td>
<td>56</td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (4) in the second line thereof the word &quot;three&quot; and inserting in lieu thereof the word &quot;four.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. By deleting from sub-clause (4) in the sixth and twelfth lines thereof the word &quot;four&quot; and inserting in lieu thereof the word &quot;five.&quot;</td>
<td>57</td>
</tr>
<tr>
<td></td>
<td>is amended by deleting from sub-clause (2) the words &quot;a no-liability company, private company, or.&quot;</td>
<td>58</td>
</tr>
<tr>
<td></td>
<td>is amended:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. By deleting from sub-clause (2) in the third line thereof the words &quot;sixty-one and sixty-two&quot; and inserting in lieu thereof the words &quot;fifty-six and fifty-seven.&quot;</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td>is amended:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. By deleting from sub-clause (2) in the second line of the proviso thereof the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (3) the words &quot;at least six years&quot; in the first and second lines of paragraph (a) thereof.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>is amended by inserting in the second line of sub-clause (1) after the word &quot;commission&quot; the words &quot;and/or brokerage.&quot;</td>
<td>61</td>
</tr>
<tr>
<td>65</td>
<td>is amended:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. By inserting a sub-clause to stand as sub-clause (1) as follows:— (1) It shall not be lawful for a company in any circumstances or for any purpose to give, whether directly or indirectly, and whether by means of a loan, guarantee the provision of security or otherwise, any financial assistance to any director of the company.</td>
<td>62</td>
</tr>
</tbody>
</table>
xxi.

SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number.</th>
<th>Amendment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>67—contd.</td>
<td>2. By re-numbering sub-clauses (1), (2) and (3) as (2), (3) and (4).</td>
</tr>
<tr>
<td></td>
<td>3. By amending sub-clause (1) (sub-clause (2) as amended) as follows:—</td>
</tr>
<tr>
<td></td>
<td>(a) By deleting from the first and eighth lines the word &quot;section&quot; and inserting in lieu thereof in each case the word &quot;subsection.&quot;</td>
</tr>
<tr>
<td></td>
<td>(b) By adding at the end of paragraph (a) the words &quot;to any person not being a director of the company.&quot;</td>
</tr>
<tr>
<td></td>
<td>(c) By adding to paragraph (b) in the fifth line after the word &quot;employees&quot; the words &quot;not being directors&quot; and by deleting from the sixth and seventh lines the words &quot;including any director holding a salaried employment or office in the company.&quot;</td>
</tr>
<tr>
<td></td>
<td>4. By deleting from sub-clause (2) (sub-clause (3) as re-numbered) in the third line thereof the figure &quot;(1)&quot; and inserting in lieu thereof the figure &quot;(2)&quot;</td>
</tr>
<tr>
<td></td>
<td>5. By inserting in sub-clause (3) (sub-clause (4) as amended) in the second line after the word &quot;company&quot; the words &quot;and every director.&quot;</td>
</tr>
<tr>
<td>68</td>
<td>is amended as follows:—</td>
</tr>
<tr>
<td></td>
<td>1. By amending sub-clause (1) as follows:—</td>
</tr>
<tr>
<td></td>
<td>(a) By inserting in the second line of paragraph (a) thereof after the word &quot;by&quot; the word &quot;special.&quot;</td>
</tr>
<tr>
<td></td>
<td>(b) By inserting in paragraph (b) after the first word &quot;the&quot; the word &quot;special.&quot;</td>
</tr>
<tr>
<td></td>
<td>(c) By deleting from the second line of paragraph (d) the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
</tr>
<tr>
<td></td>
<td>(d) By adding after paragraph (d) a new paragraph to stand as paragraph (e) as follows:—</td>
</tr>
<tr>
<td></td>
<td>(e) The provisions of paragraphs (a) to (d) inclusive of this proviso shall not apply to a no-liability company.</td>
</tr>
<tr>
<td>69</td>
<td>2. By inserting in sub-clause (2) in the first line thereof after the words &quot;passed a&quot; the word &quot;special.&quot;</td>
</tr>
<tr>
<td>70</td>
<td>is amended by deleting from sub-clause (2) in the first line thereof the word &quot;fifteen&quot; and inserting in lieu thereof the word &quot;twenty-eight&quot; and by deleting from the last line the word &quot;thirty-eight&quot; and inserting in lieu thereof the word &quot;thirty-seven.&quot;</td>
</tr>
<tr>
<td>71</td>
<td>is amended by deleting from sub-clause (1) in the third line of paragraph (f) the word &quot;seventy-nine&quot; and inserting in lieu thereof the word &quot;seventy-four&quot; and by deleting from the twelfth line of the said sub-clause the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
</tr>
<tr>
<td>72</td>
<td>is amended by deleting from sub-clause (1) in the seventh line thereof the word &quot;fifteen&quot; and inserting in lieu thereof the word &quot;twenty-eight&quot; and by inserting at the end of the said sub-clause the words &quot;by the company.&quot;</td>
</tr>
<tr>
<td>73</td>
<td>is amended by deleting from sub-clause (3) the word &quot;thirty-eight&quot; and inserting in lieu thereof the word &quot;thirty-seven.&quot;</td>
</tr>
<tr>
<td>74</td>
<td>75</td>
</tr>
<tr>
<td>76</td>
<td>77</td>
</tr>
<tr>
<td>78</td>
<td>79</td>
</tr>
<tr>
<td>80</td>
<td>81</td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>81</td>
<td>is amended by deleting from sub-clause (2) in the third line thereof the word &quot;thirty-eight&quot; and inserting in lieu thereof the word &quot;thirty-seven.&quot;</td>
</tr>
<tr>
<td>82</td>
<td>is amended as follows:— 1. By deleting from sub-clause (2) in the second line thereof the word &quot;seven.&quot; and inserting in lieu thereof the word &quot;fourteen.&quot; 2. By deleting from sub-clause (5) in the first line thereof the word &quot;fifteen&quot; and inserting in lieu thereof the word &quot;twenty-eight.&quot;</td>
</tr>
<tr>
<td>83</td>
<td>is amended by deleting from sub-clause (2) in the fourth line thereof the word &quot;twenty-one&quot; and inserting in lieu thereof the word &quot;twenty-eight.&quot;</td>
</tr>
<tr>
<td>84</td>
<td>is amended by deleting from sub-clause (1) in the third line thereof the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
</tr>
<tr>
<td>85</td>
<td>is amended by deleting from sub-clause (1) in the seventh line thereof the word &quot;seven.&quot; and inserting in lieu thereof the word &quot;fifteen.&quot;</td>
</tr>
<tr>
<td>86</td>
<td>is amended by deleting sub-clause (1) and inserting a new sub-clause as follows:— 1. Every company (including a no-liability company) shall within twenty-eight days after the allotment of any of its shares, debentures, or debenture stock, and within two months after the date on which a transfer of any such shares, debentures, or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, debentures, and certificates of all debenture stock allotted or transferred unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide. In this section &quot;transfer&quot; means a valid transfer and does not include a transfer which the company is entitled to refuse to register and does not register. 2. By inserting in sub-clause (2) in the second line after the word &quot;of the&quot; the words &quot;subsection (1) of.&quot; 3. By deleting from sub-clause (3) in the fourth line thereof the word &quot;ten&quot; and inserting in lieu thereof the word &quot;twenty.&quot; 4. By adding after sub-clause (3) a new sub-clause to stand as sub-clause (4) as follows:— (4) (a) All share certificates and all debenture certificates issued by or delivered out of the office of a company shall bear indorsed therein in clear printing or writing the following:— (i) The name of the company and the authority under which it is constituted. (ii) The amount of the authorised capital with full particulars of number and class of shares into which the capital is divided, and in the case of shares carrying special rights and privileges a reference thereto. (iii) The address of the registered office of the company at the date of issue or delivery.</td>
</tr>
<tr>
<td>87</td>
<td></td>
</tr>
<tr>
<td>88</td>
<td></td>
</tr>
<tr>
<td>89</td>
<td></td>
</tr>
<tr>
<td>90</td>
<td></td>
</tr>
<tr>
<td>91</td>
<td></td>
</tr>
<tr>
<td>92</td>
<td></td>
</tr>
<tr>
<td>93</td>
<td></td>
</tr>
<tr>
<td>94</td>
<td></td>
</tr>
<tr>
<td>95</td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause renumbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>95—contd.</td>
<td>(iv) In the case of a certificate of shares a statement showing the amount paid up or deemed to be paid up on the shares comprised in the particular certificate as appears by the records of the company and where the amount paid up or deemed to have been paid up is in excess of such statement then an endorsement stating the number and amount of the last call paid up or credited as paid up on the shares at the time of issue or delivery. (b) Where a company has a branch register within the meaning of section one hundred and fifteen of this Act all share certificates entered in the branch register shall also be indorsed with a statement showing that the certificate is entered in the branch register and the address for the time being of the office where the branch register is kept. (c) If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding two pounds.</td>
<td>91</td>
</tr>
<tr>
<td>96</td>
<td>is amended by deleting from sub-clause (3) in the seventh line thereof the word &quot;thirty&quot; and inserting in lieu thereof the word &quot;twenty-eight.&quot;</td>
<td>94</td>
</tr>
<tr>
<td>97</td>
<td>is amended as follows:— 1. Sub-clause (1) is amended:— (a) By inserting in the fifth line after the word &quot;charge&quot; the words &quot;or where possession of any property of a company is taken by any mortgagee or grantee of a bill of sale under the powers in relation thereto contained in the mortgage or bill of sale.&quot; (b) By deleting from the eighth line thereof the word &quot;ninety&quot; and inserting in lieu thereof the word &quot;ninety-five.&quot; (c) By inserting in the ninth line after the word &quot;winding-up&quot; the words &quot;of a company.&quot; (d) By deleting from the tenth and eleventh lines the words &quot;claims of holders of debentures under any floating charge created by the company&quot; and inserting in lieu thereof the words &quot;all other debts.&quot; (e) By inserting at the end of the said sub-clause the words &quot;or mortgage or bill of sale as the case may be.&quot; 2. By deleting from sub-clause (2) in the second line thereof the word &quot;ninety&quot; and inserting in lieu thereof the word &quot;seventy-five.&quot;</td>
<td>98</td>
</tr>
<tr>
<td>98</td>
<td>are deleted.</td>
<td>99</td>
</tr>
<tr>
<td>99-104</td>
<td>is amended by deleting from sub-clause (1) in the fourth line thereof the word &quot;Part&quot; and inserting in lieu thereof the word &quot;Act.&quot;</td>
<td>99</td>
</tr>
<tr>
<td>105</td>
<td></td>
<td>101</td>
</tr>
<tr>
<td>106</td>
<td></td>
<td>102</td>
</tr>
</tbody>
</table>
**Clause Number.** | **Amendment.** | **Clause re-numbered as**
--- | --- | ---
119 | is deleted. |  
120 | is amended:—  
1. By deleting from sub-clause (1) in the second line thereof the word "third" and inserting in lieu thereof the word "thirteenth."  
2. By amending sub-clause (4) as follows:—  
(a) By deleting from the fourth line the word "three" and from the eighth line the word "ten" and inserting in lieu thereof in each case the word "fourteen."  
(b) By inserting in the eighth line after the word "same" the words "and notify the company thereof."  
(c) By deleting from the ninth line the word "filing" and inserting in lieu thereof the words "notification by the Registrar of the recording."  
|  | 103  
121 | is amended by deleting sub-clause (2) and re-numbering sub-clauses (3) and (4) as sub-clauses (2) and (3). |  
122 | is amended as follows:—  
1. Sub-clause (1) is amended:—  
(a) By inserting in paragraph (a) in the second line thereof after the word "name" the words "together with the words 'registered office'."  
(b) By deleting from paragraph (b) the word "engraven."  
(c) By inserting in paragraph (c) after the word "advertisements" in the second line the words "(other than ordinary trade advertisements)."  
2. By deleting from sub-clause (3) in the third line of paragraph (a) the words "is not so engraven" and inserting in lieu thereof "does not appear."  
|  | 104, 105  
123 | is amended as follows:—  
1. By deleting from sub-clause (3) the words "certify that the company is entitled to commence business and that certificate shall be conclusive evidence that the company is so entitled" appearing in the fourth to seventh lines and inserting in lieu thereof the words "the requirements of subsection (1) or of subsection (2) as the case may be have been complied with, and that certificate shall be conclusive evidence of that fact in favour of any person dealing under the company."  
2. By deleting from sub-clause (7) the words "private company or a"  
|  | 106, 107  
124 | is amended by deleting from sub-clause (1) the words "distinguishing each share by its number" appearing in brackets in sub-paragraph (i) of paragraph (a) and inserting in lieu thereof the words "with distinguishing numbers."  
|  | 108, 109  
127 | is amended by deleting from sub-clause (2) in the eighth line thereof the word "ten" and inserting in lieu thereof the word "fourteen."  
|  | 110  
128 | is amended by deleting from the first and last lines the word "seven" and inserting in lieu thereof in each case the word "fourteen." and by deleting from the sixth line the word "thirty" and inserting in lieu thereof the word "twenty-eight."  
|  | 111  
130 | is amended as follows:—  
1. By deleting from sub-clause (1) in the second and third lines thereof the words "and in section four hundred and forty-three of this Act."  
2. By adding after sub-clause (4) a new sub-clause to stand as sub-clause (5) as follows:—  
(5) A company shall not be bound to see to the execution of any trust whether expressed implied or constructive to which any shares of the company may be subject.  
|  | 112, 113  

**SCHEDULE—continued.**
<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>131</td>
<td>is amended as follows:—</td>
<td>114</td>
</tr>
<tr>
<td>132</td>
<td>1. Sub-clause (1) is amended as follows:—</td>
<td>115</td>
</tr>
<tr>
<td>133</td>
<td>(a) By deleting from the second line the word “twenty-one” and inserting in lieu thereof the word “twenty-eight.”</td>
<td>116</td>
</tr>
<tr>
<td>134</td>
<td>(b) By deleting from paragraph (ix) the words “which or a list of which are required to be registered or filed with the Registrar under this Act” and inserting in lieu thereof the words “affecting the property of the company.”</td>
<td>117</td>
</tr>
<tr>
<td></td>
<td>(c) By deleting from paragraph (xxiii) in the first and second lines thereof the words “private company or a.”</td>
<td></td>
</tr>
<tr>
<td>135</td>
<td>2. By deleting from sub-clause (3) the letter, words and figure “(b) of subsection (1) of section forty-two” appearing in the thirteenth and fourteenth lines and inserting in lieu thereof the letter, words and figure “(a) of subsection (1) of section forty.”</td>
<td>118</td>
</tr>
<tr>
<td>136</td>
<td>3. By deleting sub-clause (4) and re-numbering sub-clauses (5), (6) and (7) as sub-clauses (4), (5) and (6).</td>
<td>119</td>
</tr>
<tr>
<td></td>
<td>4. By inserting at the end of sub-clause (6) (sub-clause (5) as re-numbered) the words “or to any public company as regards any year, if the Registrar had not prior to the thirty-first day of March of that year issued to that company a statement that the company was entitled to commence business.”</td>
<td></td>
</tr>
</tbody>
</table>
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause renumbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>137</td>
<td>is amended as follows:—&lt;br&gt;1. By deleting from sub-clause (1) in the seventh line thereof the word &quot;twenty-three&quot; and inserting in lieu thereof the word &quot;six.&quot;&lt;br&gt;2. By deleting from sub-clause (2) in the first line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;&lt;br&gt;3. By deleting from sub-clause (3) in the third line of paragraph (c) thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;&lt;br&gt;4. By deleting from sub-clause (9) in the third line thereof the words &quot;private company or a.&quot;</td>
<td>120</td>
</tr>
<tr>
<td>138</td>
<td>is amended as follows:—&lt;br&gt;1. By deleting from sub-clause (3) in the first line thereof the word &quot;twenty-one&quot; and inserting in lieu thereof the word &quot;twenty-eight;&quot; by deleting from the fourth line of the said sub-clause the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen,&quot; and by deleting from the last line the words &quot;said date&quot; and inserting in lieu thereof the words &quot;the date of the deposit.&quot;&lt;br&gt;2. By deleting from sub-clause (6) in the last line thereof the word &quot;forty-one&quot; and inserting in lieu thereof the word &quot;twenty-four.&quot;</td>
<td>121</td>
</tr>
<tr>
<td>139</td>
<td>is amended by amending sub-clause (1) as follows:—&lt;br&gt;1. By deleting from paragraph (a) in the third line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;&lt;br&gt;2. By deleting from paragraph (d) in the first line thereof the words &quot;private company or.&quot;&lt;br&gt;3. By deleting from paragraph (f) in the first line thereof the word &quot;originally.&quot;</td>
<td>122</td>
</tr>
<tr>
<td>140</td>
<td>is amended as follows:—&lt;br&gt;1. By deleting sub-clause (1) and renumbering sub-clauses (2), (3), (4), (5), and (6) as sub-clauses (1), (2), (3), (4), and (5).&lt;br&gt;2. By deleting from sub-clause (2) (sub-clause (1) as amended) the words &quot;such a majority as is required for the passing of an extraordinary resolution&quot; appearing in the third and fourth lines thereof and inserting in lieu thereof the words &quot;a majority of not less than three-fourths of such members as being entitled so to do vote in person or, where proxies are allowed, by proxy.&quot;&lt;br&gt;3. By deleting from sub-clause (3) (sub-clause (2) as amended) the words &quot;an extraordinary resolution or&quot; appearing in the first and second lines thereof.&lt;br&gt;4. By deleting from sub-clause (4) (sub-clause (3) as amended) the words &quot;an extraordinary resolution or&quot; appearing in the first and second lines thereof.</td>
<td>123</td>
</tr>
<tr>
<td>141</td>
<td>is amended as follows:—&lt;br&gt;1. By deleting sub-clause (1) and renumbering sub-clauses (2), (3), (4), (5), and (6) as sub-clauses (1), (2), (3), (4), and (5).&lt;br&gt;2. By deleting from sub-clause (2) (sub-clause (1) as amended) the words &quot;such a majority as is required for the passing of an extraordinary resolution&quot; appearing in the third and fourth lines thereof and inserting in lieu thereof the words &quot;a majority of not less than three-fourths of such members as being entitled so to do vote in person or, where proxies are allowed, by proxy.&quot;&lt;br&gt;3. By deleting from sub-clause (3) (sub-clause (2) as amended) the words &quot;an extraordinary resolution or&quot; appearing in the first and second lines thereof.&lt;br&gt;4. By deleting from sub-clause (4) (sub-clause (3) as amended) the words &quot;an extraordinary resolution or&quot; appearing in the first and second lines thereof.</td>
<td>124</td>
</tr>
<tr>
<td>142</td>
<td>is amended by deleting from the second line thereof the words &quot;an extraordinary resolution or by.&quot;</td>
<td>125</td>
</tr>
<tr>
<td>143</td>
<td>is amended as follows:—&lt;br&gt;1. By deleting from sub-clause (1) in the third line thereof the word &quot;fifteen&quot; and inserting in lieu thereof the word &quot;twenty-eight.&quot;&lt;br&gt;2. By deleting from sub-clause (4) paragraph (b) thereof and renumbering paragraphs (c), (d) and (e) as (b), (c) and (d).&lt;br&gt;3. By deleting from paragraph (a) (renumbered as paragraph (b)) of sub-clause (4) the words in brackets &quot;as the case may be&quot; appearing in the fourth line thereof and the words &quot;or an extraordinary resolutions&quot; appearing in the fifth and sixth lines thereof.</td>
<td>126</td>
</tr>
<tr>
<td>144</td>
<td>is amended as follows:—&lt;br&gt;1. By deleting from sub-clause (1) the words &quot;or managers&quot; appearing in the third and fourth lines thereof and by inserting in the fourth line of the said sub-clause after the word &quot;in&quot; the word &quot;bound.&quot;</td>
<td>127</td>
</tr>
<tr>
<td>145</td>
<td>is amended as follows:—&lt;br&gt;1. By deleting from sub-clause (1) the words &quot;or managers&quot; appearing in the third and fourth lines thereof and by inserting in the fourth line of the said sub-clause after the word &quot;in&quot; the word &quot;bound.&quot;</td>
<td>128</td>
</tr>
<tr>
<td>Clause Number.</td>
<td>Amendment.</td>
<td>Clause re-numbered as</td>
</tr>
<tr>
<td>---------------</td>
<td>------------</td>
<td>----------------------</td>
</tr>
</tbody>
</table>
| 145—cont.     | 2. By inserting after sub-clause (3) a new sub-clause to stand as sub-clause (4), as follows:—  
(4) (a) Every minute of a resolution fixing the rate or amount of remuneration of any director shall contain the names of every director respectively voting for or against the resolution and state how each such director voted, and, if the case so requires, shall contain the names of every person mentioned in subsection (2), paragraph (b), of section one hundred and fifty-six of this Act who votes in favour of the resolution.  
(b) If any person whose duty or part of whose duty it is to enter such minute in the book kept for that purpose fails or neglects to enter therein the particulars required by paragraph (a) of this subsection such person shall be liable in respect of each such offence to a penalty not exceeding fifty pounds. | |
|               | is amended as follows:—  
1. By deleting from sub-clause (2) in the second line thereof the word "seven" and inserting in lieu thereof the word "fourteen," and by deleting from the fourth line thereof the word "sixpence" and inserting in lieu thereof the words "one shilling." | 129 |
|               | 2. By deleting from sub-clause (3) in the sixth line thereof the word "of" and inserting in lieu thereof the words "not exceeding." | 130 |
| 146           | is amended as follows:—  
1. By deleting sub-clauses (1) and (2) and inserting in lieu thereof new sub-clauses as follows:—  
(1) Every company shall cause to be kept proper accounts in which shall be kept full true and complete accounts of the affairs and transactions of the company.  
(2) The accounts shall be kept at the registered office of the company or at such other place as the directors may think fit, and at all times shall be open to inspection by any director of the company.  
2. By adding after sub-clause (3) a new sub-clause to stand as sub-clause (4) as follows:—  
(4) The Court may in any particular case order that the accounts of a company be open to inspection by an accountant acting for a director, but only upon an undertaking in writing being given to the Court that information acquired by such accountant during his inspection shall not be disclosed by him save to such director. | 131 |
| 147           | is amended as follows:—  
1. By adding after sub-clause (1) a new sub-clause to stand as sub-clause (2), as follows:—  
(2) Every profit and loss account of a company not being a banking company shall show the balance of profit and loss for the period which it covers and shall in particular show separately:—  
(a) The net balance of profit and loss on the company's trading;  
(b) (i) Income from general investments;  
(ii) Income from investments in subsidiary companies;  
(c) amounts (if any) charged for depreciation or amortisation on (i) investments, (ii) goodwill, and (iii) fixed assets;  
(d) the amount transferred to the account from reserves or from provisions;  
(o) directors' fees.  
2. By renumbering sub-clauses (2) and (3) as sub-clauses (3) and (4).  
3. By inserting in sub-clause (2) (sub-clause (3) as renumbered) in the seventh line thereof after the word "affairs" the words "including information as to whether or not the results of the year's operations (as disclosed in the profit and loss account or the income and expenditure account) have in the opinion of the directors been materially affected by items of an abnormal character." | 131 |
Clause Number | Amendment |
--- | --- |
149 | is amended as follows:—
150 | 1. By deleting sub-clause (1) and inserting in lieu thereof a new sub-clause, as follows:—
151 | (a) There shall be annexed to the profit and loss account of the holding company required by section one hundred and thirty-one of this Act—

(i) a separate profit and loss account for each subsidiary company drawn up in the manner hereinbefore prescribed for a profit and loss account; or

(ii) a consolidated profit and loss account of the holding company and of its subsidiary companies drawn up as nearly as may be in the manner hereinbefore prescribed for such an account and eliminating all inter-company transactions—and in addition a statement showing the total losses (if any) of the subsidiary company or companies; and

(b) there shall be annexed to the balance sheet of the holding company required by section one hundred and thirty-one of this Act—

(i) a balance sheet of each subsidiary company drawn up in the manner hereinbefore prescribed for a balance sheet; or

(ii) a consolidated balance sheet of the holding company and of its subsidiary companies drawn up as nearly as may be in the manner hereinbefore prescribed for a balance sheet and eliminating all inter-company transactions—

Provided that, in the case of a subsidiary company incorporated outside of this State whether it has or has not established a place of business in this State, it shall be sufficient compliance with the provisions of this sub-section if the separate profit and loss account or the separate balance sheet (as the case requires) of such subsidiary company is in such form and contains such particulars and includes such documents (if any) as the company is required to make out and lay before the company in general meeting by the law for the time being applicable to such company in the country or state where it is incorporated; and the provisions of this sub-section in regard to the drawing up of consolidated profit and loss accounts or of consolidated balance sheets (so far as such accounts and balance sheets deal with profit and loss accounts or balance sheets of such subsidiary company) shall with such adaptations as are necessary be read and construed and have effect accordingly.
<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>202—contd.</td>
<td>(iii) a body corporate; (iv) a person who is or becomes indebted to the company in an amount exceeding two hundred and fifty pounds.</td>
</tr>
<tr>
<td>203</td>
<td>(b) Any person disqualified by paragraph (a) of this subsection who acts as liquidator of a company shall be liable to a fine not exceeding fifty pounds.</td>
</tr>
<tr>
<td>204</td>
<td>is amended by numbering the existing provisions as sub-clause (1) and inserting a new sub-clause to stand as sub-clause (2) as follows:— (2) Without limiting the generality of paragraph (vi) of subsection (1) of this section, the Court may, if it is satisfied that directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which in the opinion of the Court is unfair or unjust to other members, order the company to be wound up.</td>
</tr>
<tr>
<td>205</td>
<td>is amended by deleting from the seventh and eighth lines of paragraph (i) the words &quot;three weeks&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
</tr>
<tr>
<td>206</td>
<td></td>
</tr>
<tr>
<td>207</td>
<td></td>
</tr>
<tr>
<td>208</td>
<td></td>
</tr>
<tr>
<td>209</td>
<td>is deleted.</td>
</tr>
<tr>
<td>210</td>
<td></td>
</tr>
<tr>
<td>211</td>
<td></td>
</tr>
<tr>
<td>212</td>
<td></td>
</tr>
<tr>
<td>213</td>
<td></td>
</tr>
<tr>
<td>214</td>
<td></td>
</tr>
<tr>
<td>215</td>
<td></td>
</tr>
<tr>
<td>216</td>
<td>is amended by deleting from sub-clause (1) in the second line of paragraph (ii) thereof the word &quot;twenty-nine&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
</tr>
<tr>
<td>217</td>
<td></td>
</tr>
<tr>
<td>218</td>
<td>is amended as follows:— 1. By inserting in sub-clause (1) in the second line thereof after the word &quot;liquidator&quot; the words &quot;unless the Court otherwise directs.&quot; 2. By deleting from sub-clause (3) in the fourth and fifth lines thereof the words &quot;two hundred and forty-five and two hundred and forty-six&quot; and inserting in lieu thereof the words &quot;two hundred and twenty-nine and two hundred and thirty.&quot;</td>
</tr>
<tr>
<td>219</td>
<td>is amended as follows:— 1. By deleting from sub-clause (6) in the first line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot; 2. By inserting in sub-clause (8) after the word &quot;appointment&quot; in the third line the words &quot;and whether any, and what, security or additional security is to be given by any official liquidator at any time subsequent to his appointment.&quot;</td>
</tr>
<tr>
<td>220</td>
<td></td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>221</td>
<td>is amended by deleting sub-clause (4) thereof.</td>
</tr>
<tr>
<td>222</td>
<td>is amended as follows:— 1. By inserting after sub-clause (1) a new sub-clause to stand as sub-clause (2) as follows:— (2) Where at any general meeting of creditors and contributories there shall arise any conflict of opinion as between a majority of the creditors present at such meeting on the one hand and the contributories present at the meeting on the other hand, the decision of the said majority of the creditors shall prevail. 2. By renumbering sub-clauses (2), (3) and (4) as sub-clauses (3), (4) and (6).</td>
</tr>
<tr>
<td>223</td>
<td>is amended by deleting from sub-clause (2) in the second line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
</tr>
<tr>
<td>224</td>
<td>is amended as follows:— 1. By deleting from sub-clause (1) in the second and third lines thereof the words &quot;at such times as may be prescribed, but.&quot; 2. By deleting from sub-clause (3) in the first line thereof the word &quot;may&quot; and inserting in lieu thereof the words &quot;shall within three months after the date of the lodging of the account&quot; and by deleting from the second line of the said sub-clause the words &quot;an authorised&quot; and inserting in lieu thereof the words &quot;a registered.&quot;</td>
</tr>
<tr>
<td>225</td>
<td>is amended by deleting from sub-clause (1) in the fourth line thereof and from sub-clause (2) in the fifth line the word &quot;sixteen&quot; and inserting in lieu thereof in each case the word &quot;one.&quot;</td>
</tr>
<tr>
<td>226</td>
<td>is amended by deleting from sub-clause (6) in the fourth line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
</tr>
<tr>
<td>227</td>
<td></td>
</tr>
<tr>
<td>228</td>
<td></td>
</tr>
<tr>
<td>229</td>
<td>is amended by deleting from sub-clause (1) in the fourth line thereof and from sub-clause (2) in the fifth line the word &quot;sixteen&quot; and inserting in lieu thereof in each case the word &quot;one.&quot;</td>
</tr>
<tr>
<td>230</td>
<td>is amended by deleting from sub-clause (6) in the fourth line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
</tr>
<tr>
<td>231</td>
<td></td>
</tr>
<tr>
<td>232</td>
<td></td>
</tr>
<tr>
<td>233</td>
<td></td>
</tr>
<tr>
<td>234</td>
<td></td>
</tr>
<tr>
<td>235</td>
<td></td>
</tr>
<tr>
<td>236</td>
<td></td>
</tr>
<tr>
<td>237</td>
<td></td>
</tr>
<tr>
<td>238</td>
<td></td>
</tr>
<tr>
<td>239</td>
<td></td>
</tr>
<tr>
<td>240</td>
<td></td>
</tr>
<tr>
<td>241</td>
<td></td>
</tr>
<tr>
<td>242</td>
<td></td>
</tr>
<tr>
<td>243</td>
<td>is deleted.</td>
</tr>
<tr>
<td>Clause Number.</td>
<td>Amendment.</td>
</tr>
<tr>
<td>---------------</td>
<td>------------</td>
</tr>
<tr>
<td>151—contd.</td>
<td>2. By inserting in sub-clause (2) in the first line thereof after the word &quot;company&quot; the words &quot;which is required to comply with this division&quot; and by deleting from the ninth to twelfth lines of the said sub-clause the words &quot;statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified&quot; and inserting in lieu thereof the words &quot;separate balance sheet of the subsidiary company or the consolidated balance sheet of the holding company (as the case may be) shall contain particulars of the manner in which the report is qualified.&quot;</td>
</tr>
<tr>
<td></td>
<td>3. By deleting sub-clauses (3) and (4).</td>
</tr>
<tr>
<td>152</td>
<td>is amended by deleting sub-clause (1) thereof and inserting in lieu thereof a new sub-clause as follows:— (1) Where the assets of a company consist directly or indirectly, in whole or in part of shares in another company (whether that other company is a company within the meaning of this Part or not) held directly or through a nominee or through another company (whether a company within the meaning of this Part or not) the majority of whose shares the holding company holds directly or indirectly, and— (a) the amount of the shares so held is at the time when the accounts of the holding company are made up or more than fifty per cent. of the issued share capital of any such other company or such as to entitle the company to more than fifty per cent. of the voting power in such other company; or (b) the company has power (not being power vested in it by virtue only of the provisions of a security or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to nominate or appoint the majority of the directors of such other company, every such other company shall be deemed to be a &quot;subsidiary company&quot; within the meaning of this Part, and the expression &quot;subsidiary company&quot; in this Part means a company in the case of which the conditions of this section are satisfied.</td>
</tr>
<tr>
<td>153</td>
<td>is amended by amending sub-clause (1) as follows:— 1. Paragraph (a) is amended— (a) by inserting in the first line after the first word &quot;the&quot; the word &quot;total.&quot; (b) By inserting in the second line after the word &quot;made&quot; the word &quot;lawfully.&quot; (c) By deleting from the fifth line the words &quot;director or.&quot; (d) By inserting in the sixth line after the word &quot;employee&quot; the words &quot;not being a director.&quot; 2. By inserting in the first line of paragraph (b) after the first word &quot;the&quot; the word &quot;total&quot; and by deleting from the second line of the said paragraph the words &quot;director or.&quot;</td>
</tr>
</tbody>
</table>

**New Clause 137**

Insert a new clause to stand as Clause 137 as follows:—

137. (1) No balance sheet, summary, advertisement, statement of assets and liabilities or other document whatsoever published, issued or circulated by or on behalf of a company shall contain any direct or indirect representation that the company has any reserve fund, unless— (a) that reserve fund is actually existing; and (b) the said representation is accompanied by a statement showing whether or not such reserve fund is used in the business, and, if any portion thereof is otherwise invested, showing the manner in which, and the securities upon which the same is invested. (2) Any director or manager, who, alone or in conjunction with any other person, knowingly or wilfully signs, publishes, issues or circulates, or causes to be signed, published, issued or circulated any balance sheet, summary advertisement, statement of assets and liabilities or other document which contravenes subsection (1) of this section shall be guilty of a misdemeanor, punishable on indictment in the Supreme Court, and in addition to any civil responsibility shall on conviction be liable to be imprisoned for any term not exceeding two years; and any director or manager who through culpable negligence alone or in conjunction with any other person, signs, publishes, issues
<table>
<thead>
<tr>
<th>Clause Number.</th>
<th>Amendment.</th>
<th>Clause renumbered as.</th>
</tr>
</thead>
<tbody>
<tr>
<td>137—contd.</td>
<td>or circulates or causes to be signed, published, issued or circulated, any balance sheet, summary, advertisement, statement of assets and liabilities, or other document, which contravenes the said subsection shall, in addition to any civil responsibility, be guilty of an offence and shall on conviction be liable to a penalty not exceeding one hundred pounds.</td>
<td></td>
</tr>
<tr>
<td>154</td>
<td>is amended by deleting sub-clauses (1) and (2) and inserting in lieu thereof new sub-clauses as follows:—</td>
<td>138</td>
</tr>
<tr>
<td></td>
<td>(1) Every balance sheet and profit and loss account or income and expenditure account of a company shall be accompanied by a certificate signed on behalf of the Board by two of the directors of the company or, if there is only one director resident in the State, by that director stating that in their or his opinion the balance sheet is drawn up so as to exhibit a true and correct view of the state of the company's affairs, and that in their and his opinion the profit and loss account or the income and expenditure account (as the case may be) is drawn up so as to exhibit a true and correct view of the results of the business of the company for the year, and the auditor's report shall be attached to the balance sheet, and the report shall be laid before the company in general meeting and shall be open to inspection by any member.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) Every company which issues, publishes or circulates any copy of a balance sheet or of a profit and loss account or of an income and expenditure account which has not been certified and signed as required by this section or (in the case of a balance sheet) which has not a full and true copy of the auditor's report attached thereto, and every director, manager or other officer of the company who is knowingly a party to the default shall on conviction be liable to a penalty not exceeding twenty pounds.</td>
<td></td>
</tr>
<tr>
<td>155</td>
<td>is amended as follows:—</td>
<td>139</td>
</tr>
<tr>
<td></td>
<td>1. By deleting from the first and second lines of sub-clause (1) the words “private or” and by deleting from the fifth line of paragraph (a) of the said sub-clause the word “seven” and inserting in lieu thereof the word “fourteen.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. By inserting in sub-clause (2) in the second line thereof after the letter (a) the words and figure “of subsection (1) of this section.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. By deleting from sub-clause (3) in the fourth line thereof the word “seven” and inserting in lieu thereof the word “fourteen.”</td>
<td></td>
</tr>
<tr>
<td>156</td>
<td>is amended by deleting from sub-clause (1) the words “or in the case of a private company any member or person mentioned in paragraph (b) of subsection (1) of section forty-three” appearing in the second to fourth lines and by deleting from the fifth line the word “seven” and inserting in lieu thereof the word “fourteen.”</td>
<td>140</td>
</tr>
<tr>
<td>157</td>
<td>is amended by deleting from sub-clause (1) in the tenth line thereof the word “fifteen” and inserting in lieu thereof the word “twenty-eight.”</td>
<td>141</td>
</tr>
<tr>
<td>158</td>
<td>is amended as follows:—</td>
<td>142</td>
</tr>
<tr>
<td></td>
<td>1. By inserting at the beginning of sub-clause (1) the following words and figure:—&quot;subject to subsection (7) of this section.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. By inserting in sub-clause (1) in the first line thereof after the word “shall&quot; the words &quot;at the statutory meeting held in accordance with section one hundred and twenty of this Act and.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. By deleting from sub-clause (4) in the third line thereof the words &quot;first annual general meeting&quot; and inserting in lieu thereof the words &quot;statutory meeting held in accordance with section one hundred and twenty of this Act.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. By deleting from sub-clause (6) in the fourth line thereof the words &quot;first annual general meeting&quot; and inserting in lieu thereof the words &quot;statutory meeting held in accordance with section one hundred and twenty of this Act.&quot;</td>
<td></td>
</tr>
</tbody>
</table>
### Schedule—continued.

<table>
<thead>
<tr>
<th>Clause Number.</th>
<th>Amendment.</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>158—cont.</td>
<td>5. By inserting after sub-clause (6) a new sub-clause to stand as sub-clause (7), as follows:—&lt;br&gt; (7) Notwithstanding anything to the contrary contained in this section, it shall not be necessary for a proprietary company to appoint an auditor if and when the majority in number of the members of the company and irrespective of their shareholding, voting in person or by proxy at the statutory meeting or at an annual general meeting of the company, carry a resolution directing that the company shall not appoint an auditor or auditors; and when such a resolution is carried and whilst such resolution remains unretracted by a subsequent resolution similarly carried, the provisions of this section shall not apply.</td>
<td></td>
</tr>
<tr>
<td>159</td>
<td>is amended by amending sub-clause (1) as follows:—&lt;br&gt; 1. By inserting in paragraph (b) in the second line thereof after the word &quot;officer&quot; the words &quot;a director.&quot;&lt;br&gt; 2. By inserting in paragraph (d) in the second line thereof after the word &quot;exceeding&quot; the words &quot;two hundred and.&quot;</td>
<td>143</td>
</tr>
<tr>
<td>160</td>
<td>is amended by amending sub-clause (1) as follows:—&lt;br&gt; 1. By inserting in the third line after the word &quot;sheet&quot; the words &quot;and profit and loss account or income and expenditure account.&quot;&lt;br&gt; 2. By inserting in paragraph (b) in the fourth line thereof after the word &quot;affairs&quot; the words &quot;and the profit and loss account is properly drawn up so as to exhibit a true and correct view of the results of the business of the company for the year, or the income and expenditure account is properly drawn up so as to exhibit a true and correct view of the income and expenditure of the company for the year.&quot;&lt;br&gt; 3. By inserting at the end of paragraph (b) the word &quot;and&quot; and by adding a new paragraph to stand as paragraph (c) as follows:—&lt;br&gt; (c) Whether in their opinion the register of members and other records which the company is by law or by its articles required to keep, have been properly kept.</td>
<td>144</td>
</tr>
<tr>
<td>161</td>
<td>is amended by adding to sub-clause (d) a new paragraph to stand as paragraph (d) as follows:—&lt;br&gt; (d) Every summons to attend issued by an inspector under this sub-section shall have the same force and effect as a subpoena issued to a witness out of the Supreme Court; and when the officer or agent of a company who has been so summoned and to whom the payment or tender mentioned in paragraph (b) of this sub-section has been made, fails to attend before the inspector in obedience to such summons, the inspector may by warrant under his hand order that such officer or agent be apprehended and brought before him on a day and at a time to be specified in the warrant; and such warrant shall be executed in the same manner and by the same persons as if it were a warrant issued by a Judge of the Supreme Court for the apprehension of a witness who had disobeyed a subpoena issued out of such Court. The exercise of the power conferred by this paragraph shall not in any way affect the liability of the officer or agent, against whom such power is exercised, to prosecution for an offence under paragraph (e) of this sub-section.</td>
<td>145</td>
</tr>
<tr>
<td>162</td>
<td></td>
<td>146</td>
</tr>
<tr>
<td>163</td>
<td></td>
<td>147</td>
</tr>
<tr>
<td>New Clause 148</td>
<td>Insert a new clause to stand as clause 148, as follows:—&lt;br&gt; 148. (1) The Governor, on the recommendation of the Attorney General, may appoint the Auditor General, the Registrar or any other competent person as an inspector to investigate the affairs of any company. The Attorney General shall not make any such recommendation unless he has first received a written report from the Commonwealth Police or the Registrar and the information contained in that report is such that he has reasonable cause to suspect that—&lt;br&gt; (a) the company is not carrying on business in good faith in the interests of shareholders; or</td>
<td></td>
</tr>
</tbody>
</table>
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>148—cont’d.</td>
<td>(b) that the directors, managers or officers of the company have been guilty of fraudulent or negligent conduct which has caused or is likely to cause serious loss to the company or the shareholders; or (c) that the company is endeavouring to raise capital from the public by unlawful or dishonest means.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) In relation to any investigations under this section— (a) the inspector so appointed shall have the same powers and duties as an inspector appointed by the Court, except that instead of reporting to the Court he shall report to the Governor; and (b) officers and agents of the company shall have the same duties and liabilities as if the inspector had been appointed by the Court.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3) If any officer or agent of the company refuses to attend before the Inspector or to produce to the inspector any book or document which it is his duty under this section so to produce or refuses to answer any question which is put to him by the inspector with respect to the affairs of the company he shall be liable to be proceeded against in the same manner as if the inspector had been appointed by the Court.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4) For the purposes of this section— (a) The expression &quot;officers&quot; includes former officers; and (b) the expression &quot;agents&quot; in relation to a company shall be deemed to include the bankers of the company, and any persons employed by the company as auditors, whether those persons are or are not officers of the company.</td>
<td></td>
</tr>
<tr>
<td>164</td>
<td>is amended by deleting from sub-clause (2) in the first line thereof the word &quot;twenty-one&quot; and inserting in lieu thereof the word &quot;twenty-eight.&quot;</td>
<td></td>
</tr>
<tr>
<td>165</td>
<td>is amended by deleting from the first and second lines thereof of sub-clause (1) the words &quot;private company or a&quot; and by deleting the words &quot;one month&quot; where they appear in the said sub-clause and inserting in lieu thereof in each case the words &quot;twenty-eight days.&quot;</td>
<td></td>
</tr>
<tr>
<td>166</td>
<td>is amended as follows:— 1. By adding to paragraph (b) of sub-clause (1) a new sub-paragraph to stand as sub-paragraph (v) as follows— (v) in the case of a company formed or intended to be formed by way of reconstruction of another company or group of companies, made and forwarded to the Registrar a statutory declaration that he was a shareholder in such other company or in one or more of the companies of the said group, and that as such share­holder he will be entitled to receive and have registered in his name a number of shares not less than his qualification by virtue of the terms of an agreement relating to the said reconstruction. 2. By deleting from sub-clause (4) paragraph (b) thereof and re-numbering paragraphs (o), (d) and (o) as paragraphs (b), (c) and (d). 3. By deleting from paragraph (d) (re-numbered as (o)) the words &quot;private company or a.&quot;</td>
<td></td>
</tr>
<tr>
<td>167</td>
<td>is amended as follows:— 1. By deleting from sub-clause (1) in the sixth line thereof the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot; 2. By deleting from sub-clause (3) in the second line thereof the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
<td></td>
</tr>
<tr>
<td>168</td>
<td>is amended by deleting from sub-clause (1) in the tenth line thereof the words &quot;three years&quot; and inserting in lieu thereof the words &quot;one year.&quot;</td>
<td></td>
</tr>
</tbody>
</table>
| 169           | is amended by adding to sub-clause (2) a proviso as follows: Provided that where the said return or notification relates to the appoint­ment of a director (whether one of the first directors or a director appointed on a change of directors) not resident in the Commonwealth of Australia, the period within which the said return or notification is to be sent shall be three months from the date of the appointment.
A new clause is inserted to stand as 156 as follows:—

156. (1) When the rate or amount of remuneration of any director has been fixed or determined by a resolution carried by means of votes given by or on behalf of the director concerned, then any three or more shareholders, who are of the opinion that the rate or amount of the remuneration so fixed or determined is improper or unreasonable or unconscionable and detrimental to the best interest of the company and the shareholders, may appeal to the Court against the rate or amount of remuneration so fixed on such grounds aforesaid, and on such appeal the Court may affirm or vary the rate or amount of remuneration appealed against.

(2) For the purposes of this section—

(a) the remuneration of a director shall be deemed to include any salary, commission payment or reward (howsoever fixed or determined) receivable by him from the company for services rendered or performed by him as a manager or managing director, or in any capacity whatsoever; and

(b) a vote shall be deemed to be given on behalf of a director if it is given in respect of or by virtue of any shares held in trust for or on account of the director, or held by such director, or by the wife, husband or any child of such director, or which have been directly or indirectly acquired by the holder from such director gratuitously or for a nominal consideration.

(3) Appeals may be brought and conducted under this section within the time and in manner provided by rules of Court, and subject to any contrary provision in the rules, shall be heard and determined in Chambers, and the costs thereof and incidental thereto shall be in the discretion of the Court.

(4) (a) In the hearing and determination of every appeal under this section, the Court may act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and shall not be bound by any rules of evidence but may inform its mind on the matter in such a way as it thinks just.

(b) In determining the appeal the Court shall not be restricted to the specific allegations made in the course of such appeal.

(5) This section shall have effect notwithstanding the terms of any agreement heretofore or hereafter made.

171 is amended as follows:—

1. By deleting from sub-clause (1) in the fourth line thereof the words "one month" and inserting in lieu thereof the words "twenty-eight days."

2. By deleting from sub-clause (1) in the second and third lines of paragraph (a) thereof the words "one month" and inserting in lieu thereof the words "twenty-eight days."

3. By inserting in sub-clause (1) in the fifth line of paragraph (a) thereof after the word "director" the words "or any person mentioned in subsection (2), paragraph (b), of section one hundred and fifty-six of this Act."

4. By inserting in sub-clause (1) at the end of paragraph (b) thereof the word "and" and by inserting a new paragraph to stand as paragraph (c) as follows:—

(c) Nothing in this subsection shall be deemed to impose or be construed as imposing any obligation upon the directors of one company to furnish a certified statement as aforesaid concerning the remuneration paid to any of such directors as a director of another company, not being a subsidiary company to such first-mentioned company.

5. By inserting after sub-clause (4) new sub-clauses to stand as sub-clauses (5) and (6) as follows:—

(5) This section shall apply to a managing director and his emoluments shall include all fees, percentages, and other payments made or consideration given directly or indirectly to the managing director as such, and the money value of any allowances or perquisites belonging to his office.

(6) A resolution under paragraph (a) of the proviso to subsection (1) of this section, resolving that a statement shall not be furnished shall be of no effect unless the meeting at which the resolution was carried was called by fourteen days' notice in writing given to each shareholder.
<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>172</td>
<td>1. By inserting in sub-clause (4) in the second line thereof after the word &quot;the&quot; the word &quot;foregoing.&quot; 2. By inserting after sub-clause (5) a new sub-clause to stand as sub-clause (6) as follows:— (a) A director of a company who is in any way, whether directly or indirectly, interested personally in a contract or proposed contract with the company shall not be qualified to vote and shall not vote either personally or by proxy upon any resolution relating to such contract or proposed contract. (b) If any director shall in any respect contravene the provisions of paragraph (a) of this subsection, he shall be liable to a fine not exceeding two hundred pounds or to imprisonment for a period not exceeding one year, and also shall be disqualified for a period of five years from continuing to act as a director of the company.</td>
<td>158</td>
</tr>
<tr>
<td>177</td>
<td>is amended by deleting from sub-clause (3) in the fourth line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>163</td>
</tr>
<tr>
<td>178</td>
<td>is amended as follows:— 1. By deleting from sub-clause (1) in the eighth and ninth lines thereof the word &quot;nine-tenths&quot; and by inserting in lieu thereof the word &quot;four-fifths.&quot; 2. By deleting from sub-clause (2) in the fifth line thereof the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
<td>164</td>
</tr>
<tr>
<td>181</td>
<td>is amended as follows:— 1. Sub-clause (1) is amended— (a) by deleting from the first line the word &quot;twenty-one&quot; and inserting in lieu thereof the word &quot;twenty-eight.&quot; (b) by deleting from the third line of sub-paragraph (e) of paragraph (v) the word &quot;eighty-three&quot; and inserting in lieu thereof the word &quot;sixty-eight.&quot; (c) by deleting from the third line of sub-paragraph (f) of paragraph (v) the words &quot;eighty-six&quot; and inserting in lieu thereof the words &quot;seventy-one.&quot; 2. By inserting after sub-clause (3) a new sub-clause to stand as sub-clause (4) as follows:— (4) The Registrar may, on the application of any company, fix a day other than the twenty-first day of March as the day from which the time within which that company must file a return under this section is to be computed; and when a day has been fixed, this section shall be construed as regards the particular company as though the day so fixed were substituted for the twenty-first day of March wherever that day is mentioned in this section.</td>
<td>167</td>
</tr>
<tr>
<td>182</td>
<td>is deleted.</td>
<td></td>
</tr>
</tbody>
</table>
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
</table>
| 183           | is amended as follows:—  
1. By deleting from sub-clause (1) in the seventh line thereof the word “or” and inserting in lieu thereof the word “and.”  
2. By deleting from sub-clause (2) in the second line thereof the word “section” and inserting in lieu thereof the word “subsection.”  
3. By deleting from sub-clause (3) in the second line thereof the word “fourteen” and inserting in lieu thereof the word “twenty-eight.” | 168 |
| 184           | is amended as follows:—  
1. By deleting from paragraph (b) in the second line thereof the words “seven” and “fourteen” and inserting in lieu thereof the words “twenty-eight.”  
2. By adding after paragraph (f) a new paragraph to stand as paragraph (g) as follows:—  
   (g) This section shall apply in relation to all forfeited shares offered for sale after the date on which this Act receives the Royal Assent. | 169 |
| 185           | is amended by deleting from the second line the word “eighty-four” and inserting in lieu thereof the word “sixty-nine.” | 170 |
| 186           | is amended by amending sub-clause (1) as follows:—  
1. By deleting paragraph (c) and inserting in lieu thereof a new paragraph as follows:—  
   (c) A company registered under the Companies Act, 1893 as amended by the Companies Act Amendment Act, 1929; or  
2. By adding after paragraph (c) a new paragraph to stand as paragraph (d) as follows:—  
   (d) A company registered under this part of this Act; or  
3. By renumbering paragraph (d) as paragraph (e). | 171 |
| 187           | is amended by amending sub-clause (1) as follows:—  
1. By deleting paragraph (e) and inserting in lieu thereof a new paragraph as follows:—  
   (e) A company registered under the Companies Act, 1893 as amended by the Companies Act Amendment Act, 1929; or  
2. By adding after paragraph (f) a new paragraph to stand as paragraph (g) as follows:—  
   (g) This section shall apply in relation to all forfeited shares offered for sale after the date on which this Act receives the Royal Assent. | 172 |
| 188           | is amended by amending sub-clause (1) as follows:—  
1. By deleting paragraph (c) and inserting in lieu thereof a new paragraph as follows:—  
   (c) A company registered under the Companies Act, 1893 as amended by the Companies Act Amendment Act, 1929; or  
2. By adding after paragraph (c) a new paragraph to stand as paragraph (d) as follows:—  
   (d) A company registered under this part of this Act; or  
3. By renumbering paragraph (d) as paragraph (e). | 173 |
| 189           | is amended by amending sub-clause (1) as follows:—  
1. By deleting paragraph (e) and inserting in lieu thereof a new paragraph as follows:—  
   (e) A company registered under the Companies Act, 1893 as amended by the Companies Act Amendment Act, 1929; or  
2. By adding after paragraph (f) a new paragraph to stand as paragraph (g) as follows:—  
   (g) This section shall apply in relation to all forfeited shares offered for sale after the date on which this Act receives the Royal Assent. | 174 |
| 190           | is amended by amending sub-clause (1) as follows:—  
1. By deleting paragraph (e) and inserting in lieu thereof a new paragraph as follows:—  
   (e) A company registered under the Companies Act, 1893 as amended by the Companies Act Amendment Act, 1929; or  
2. By adding after paragraph (f) a new paragraph to stand as paragraph (g) as follows:—  
   (g) This section shall apply in relation to all forfeited shares offered for sale after the date on which this Act receives the Royal Assent. | 175 |
| 191           | is amended by amending sub-clause (1) as follows:—  
1. By deleting paragraph (e) and inserting in lieu thereof a new paragraph as follows:—  
   (e) A company registered under the Companies Act, 1893 as amended by the Companies Act Amendment Act, 1929; or  
2. By adding after paragraph (f) a new paragraph to stand as paragraph (g) as follows:—  
   (g) This section shall apply in relation to all forfeited shares offered for sale after the date on which this Act receives the Royal Assent. | 176 |

New Clause 177  
Insert a new clause to stand as clause 177 as follows:—

177. A company, society or association applying for registration as a company under this part of this Act and having in its name or title the word "co-operative" or any other word importing a similar meaning shall contain in its memorandum and articles of association the provisions—  
(a) that the rate of dividend on the shares of the company shall not in respect to any year exceed an amount which is five pounds per centum per annum in excess of the Commonwealth Bank rate of interest for the time being on fixed deposits for two years;  
(b) that before declaring a dividend out of the profits for the then last financial year of the company, the directors may in their discretion provide for the payment of a dividend upon the shares which had been issued and were held by shareholders during any one or more of the three preceding financial years in respect of which no dividend has been declared. Provided that such dividend shall be payable to the persons registered as owners of such shares at the date of the declaration of such dividend;  
(c) that all surplus profits in any year in which a dividend for such year shall be declared, after setting aside to the credit of any reserve fund, as may from time to time be authorised by the memorandum or articles of association of the company, shall be distributed by way of bonus, either in cash or bonus shares or debentures in proportion to the business done by shareholders with the company, or to profits
<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>177—contd.</td>
<td>earned by the company on such shareholders’ business. Provided that the company may at any time elect to treat the amount of the accretion to the reserve fund in any year as being surplus profits for such year available for distribution by way of bonus under this paragraph; (d) that every shareholder qualified to vote shall have an equal voting power irrespective of the number of shares held by him; and (e) such other provisions as may be prescribed.</td>
<td>178</td>
</tr>
<tr>
<td>192</td>
<td>is amended by deleting sub-clause (1) and inserting in lieu thereof a new sub-clause as follows:— (1) In the liquidation of a company registered under the Companies Act, 1893, as amended by the Companies Act Amendment Act, 1929, or of a company registered under this part of this Act no shareholder shall receive in the liquidation any amount exceeding the capital paid up in respect of the shares held by him with the dividends (if any) due and any other moneys to which he may then be entitled under the memorandum or articles of association of the company as then in operation. As to any surplus funds in the hands of the liquidator after paying all debts and expenses of the winding up and after paying to the shareholders the full amounts to which they are respectively entitled under the foregoing provisions of this subsection the liquidator shall treat and apply such surplus funds as if they were surplus profits available for distribution under paragraph (c) of section 177 of this Act but payable only to the shareholders who have done business with the company during the three last completed financial years and the broken period prior to liquidation and in proportion to the business done by such shareholders with the company or at the election of the liquidator in proportion to the profits earned by the company as such shareholders’ business.</td>
<td>179</td>
</tr>
<tr>
<td>193</td>
<td>is deleted and a new clause is inserted in lieu thereof as follows:— (1) After the commencement of this Act, no society, other than a consumers’ society, shall be registered as a co-operative society under the Co-operative and Provident Societies Act, 1903; but a consumers’ society may apply for registration as a co-operative society under the said Act or as a company under this part of this Act. (2) In the purposes of this section a “Consumers’ Society” means a society constituted primarily for the benefit of consumers as distinct from a society constituted primarily for the benefit of producers, and which the Governor may by notice published in the Government Gazette declare to be a consumers’ society within the meaning of this section.</td>
<td>180</td>
</tr>
<tr>
<td>194</td>
<td>is amended by inserting after sub-clause (2) a new sub-clause to stand as sub-clause (3) as follows:— (3) (a) None of the following persons, shall, except by the express leave of the Court, be qualified for appointment or act as liquidator of a company— (i) a director, or officer or employee of the company; (ii) a person who is a partner of or in the employment of an officer or director or employee of the company;</td>
<td>181</td>
</tr>
<tr>
<td>195</td>
<td>182</td>
<td></td>
</tr>
<tr>
<td>196</td>
<td>183</td>
<td></td>
</tr>
<tr>
<td>197</td>
<td>184</td>
<td></td>
</tr>
<tr>
<td>198</td>
<td>185</td>
<td></td>
</tr>
<tr>
<td>199</td>
<td>186</td>
<td></td>
</tr>
<tr>
<td>200</td>
<td>187</td>
<td></td>
</tr>
<tr>
<td>201</td>
<td>188</td>
<td></td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
<td>Clause re-numbered as</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------</td>
<td>----------------------</td>
</tr>
<tr>
<td>202—contd.</td>
<td>(iii) a body corporate; (iv) a person who is or becomes indebted to the company in an amount exceeding two hundred and fifty pounds. (b) Any person disqualified by paragraph (a) of this subsection who acts as liquidator of a company shall be liable to a fine not exceeding fifty pounds.</td>
<td></td>
</tr>
<tr>
<td>203</td>
<td>is amended by numbering the existing provisions as sub-clause (1) and inserting a new sub-clause to stand as sub-clause (2) as follows:— (2) Without limiting the generality of paragraph (vi) of subsection (1) of this section, the Court may, if it is satisfied that directors have acted in the affairs of the company in their own interests rather than in the interest of the members as a whole, or in any other manner whatsoever which in the opinion of the Court is unfair or unjust to other members, order the company to be wound up.</td>
<td>189</td>
</tr>
<tr>
<td>204</td>
<td>is amended by deleting from the seventh and eighth lines of paragraph (i) the words “three weeks” and inserting in lieu thereof the words “twenty-eight days.”</td>
<td>190</td>
</tr>
<tr>
<td>205</td>
<td></td>
<td>191</td>
</tr>
<tr>
<td>206</td>
<td></td>
<td>192</td>
</tr>
<tr>
<td>207</td>
<td></td>
<td>193</td>
</tr>
<tr>
<td>208</td>
<td></td>
<td>194</td>
</tr>
<tr>
<td>209</td>
<td>is deleted.</td>
<td>195</td>
</tr>
<tr>
<td>210</td>
<td></td>
<td>196</td>
</tr>
<tr>
<td>211</td>
<td></td>
<td>197</td>
</tr>
<tr>
<td>212</td>
<td></td>
<td>198</td>
</tr>
<tr>
<td>213</td>
<td></td>
<td>199</td>
</tr>
<tr>
<td>214</td>
<td></td>
<td>200</td>
</tr>
<tr>
<td>215</td>
<td></td>
<td>201</td>
</tr>
<tr>
<td>216</td>
<td>is amended by deleting from sub-clause (1) in the second line of paragraph (ii) thereof the word “twenty-nine” and inserting in lieu thereof the word “fourteen.”</td>
<td>202</td>
</tr>
<tr>
<td>217</td>
<td>is amended as follows:— 1. By inserting in sub-clause (1) in the second line thereof after the word “liquidator” the words “unless the Court otherwise directs.” 2. By deleting from sub-clause (3) in the fourth and fifth lines thereof the words “two hundred and forty-five and two hundred and forty-six” and inserting in lieu thereof the words “two hundred and twenty-nine and two hundred and thirty.”</td>
<td>203</td>
</tr>
<tr>
<td>218</td>
<td>is amended as follows:— 1. By deleting from sub-clause (6) in the first line thereof the word “seven” and inserting in lieu thereof the word “fourteen.” 2. By inserting in sub-clause (8) after the word “appointment” in the third line the words “and whether any, and what, security or additional security is to be given by any official liquidator at any time subsequent to his appointment.”</td>
<td>204</td>
</tr>
<tr>
<td>220</td>
<td></td>
<td>205</td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
<td>Clause re-numbered as</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>221</td>
<td>is amended by deleting sub-clause (4) thereof.</td>
<td>206</td>
</tr>
<tr>
<td>222</td>
<td>is amended as follows:</td>
<td>207</td>
</tr>
<tr>
<td>223</td>
<td>1. By inserting after sub-clause (1) a new sub-clause to stand as sub-clause (2) as follows:—&lt;br&gt; (2) Where at any general meeting of creditors and contributors there shall arise any conflict of opinion as between a majority of the creditors present at such meeting on the one hand and the contributories present at the meeting on the other hand, the decision of the said majority of the creditors shall prevail.</td>
<td>208</td>
</tr>
<tr>
<td>224</td>
<td>is amended by deleting sub-clauses (2), (3) and (4) as sub-clauses (3), (4) and (5).</td>
<td>209</td>
</tr>
<tr>
<td>225</td>
<td>is amended by deleting from sub-clause (2) in the second line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>210</td>
</tr>
<tr>
<td>226</td>
<td>is amended as follows:</td>
<td>211</td>
</tr>
<tr>
<td>227</td>
<td>1. By deleting from sub-clause (1) in the second and third lines thereof the words &quot;at such times as may be prescribed, but,&quot;</td>
<td>212</td>
</tr>
<tr>
<td>228</td>
<td>2. By deleting from sub-clause (3) in the first line thereof the word &quot;may&quot; and inserting in lieu thereof the words &quot;shall within three months after the date of the lodging of the account&quot; and by deleting from the second line of the said sub-clause the words &quot;an authorised&quot; and inserting in lieu thereof the words &quot;a registered.&quot;</td>
<td>213</td>
</tr>
<tr>
<td>229</td>
<td>is amended by deleting from sub-clause (1) in the fourth line thereof and from sub-clause (2) in the fifth line the word &quot;sixteen&quot; and inserting in lieu thereof in each case the word &quot;one.&quot;</td>
<td>214</td>
</tr>
<tr>
<td>230</td>
<td>is amended by deleting from sub-clause (6) in the fourth line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>215</td>
</tr>
<tr>
<td>231</td>
<td></td>
<td>216</td>
</tr>
<tr>
<td>232</td>
<td></td>
<td>217</td>
</tr>
<tr>
<td>233</td>
<td></td>
<td>218</td>
</tr>
<tr>
<td>234</td>
<td></td>
<td>219</td>
</tr>
<tr>
<td>235</td>
<td></td>
<td>220</td>
</tr>
<tr>
<td>236</td>
<td></td>
<td>221</td>
</tr>
<tr>
<td>237</td>
<td></td>
<td>222</td>
</tr>
<tr>
<td>238</td>
<td></td>
<td>223</td>
</tr>
<tr>
<td>239</td>
<td></td>
<td>224</td>
</tr>
<tr>
<td>240</td>
<td></td>
<td>225</td>
</tr>
<tr>
<td>241</td>
<td></td>
<td>226</td>
</tr>
<tr>
<td>242</td>
<td></td>
<td>227</td>
</tr>
<tr>
<td>243</td>
<td>is deleted.</td>
<td></td>
</tr>
</tbody>
</table>
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>244</td>
<td>is amended by deleting from sub-clause (2) in the third line thereof the word &quot;ten&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>228</td>
</tr>
<tr>
<td>245</td>
<td>is amended by deleting from sub-clause (1) in the first line of paragraph (c) thereof the word &quot;extraordinary&quot; and inserting in lieu thereof the word &quot;special.&quot;</td>
<td>229</td>
</tr>
<tr>
<td>246</td>
<td>is amended by deleting from sub-clause (1) in the second line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>230</td>
</tr>
<tr>
<td>247</td>
<td>is amended by deleting from sub-clause (3) in the fifth line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>231</td>
</tr>
<tr>
<td>248</td>
<td>is amended as follows:—</td>
<td>232</td>
</tr>
<tr>
<td>249</td>
<td>1. By deleting from sub-clause (2) in the fifth and sixth lines thereof the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
<td>233</td>
</tr>
<tr>
<td>250</td>
<td>2. By deleting from sub-clause (3) in the first line thereof the words &quot;one week&quot; and inserting in lieu thereof the words &quot;fourteen days.&quot;</td>
<td>234</td>
</tr>
<tr>
<td>251</td>
<td>is amended by deleting from sub-clause (1) in the first line of paragraph (a) thereof the word &quot;seventy-five.&quot;</td>
<td>235</td>
</tr>
<tr>
<td>252</td>
<td>is amended by deleting from sub-clause (1) in the second line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>236</td>
</tr>
<tr>
<td>253</td>
<td>is amended by deleting from sub-clause (3) in the fifth line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>237</td>
</tr>
<tr>
<td>254</td>
<td>is amended as follows:—</td>
<td>238</td>
</tr>
<tr>
<td>255</td>
<td>1. By deleting from sub-clause (1) in the ninth line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>239</td>
</tr>
<tr>
<td>256</td>
<td>2. By deleting from sub-clause (4) in the third line thereof the word &quot;local.&quot;</td>
<td>240</td>
</tr>
<tr>
<td>257</td>
<td>3. By deleting from sub-clause (5) in the fifth line of sub-paragraph (ii) of paragraph (a) thereof the word &quot;ninety&quot; and inserting in lieu thereof the word &quot;seventy-five.&quot;</td>
<td>241</td>
</tr>
<tr>
<td>258</td>
<td>is amended by deleting from the third line of the proviso the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>242</td>
</tr>
<tr>
<td>259</td>
<td>is amended by deleting from sub-clause (4) in the third line thereof the word &quot;local.&quot;</td>
<td>243</td>
</tr>
<tr>
<td>260</td>
<td>is amended by deleting from sub-clause (3) in the fifth line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>244</td>
</tr>
<tr>
<td>261</td>
<td>is amended as follows:—</td>
<td>245</td>
</tr>
<tr>
<td>262</td>
<td>1. By deleting from sub-clause (2) in the fifth and sixth lines thereof the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
<td>246</td>
</tr>
<tr>
<td>263</td>
<td>2. By deleting from sub-clause (3) in the first line thereof the words &quot;one week&quot; and inserting in lieu thereof the words &quot;fourteen days.&quot;</td>
<td>247</td>
</tr>
<tr>
<td>264</td>
<td>is amended as follows:—</td>
<td>248</td>
</tr>
<tr>
<td>265</td>
<td>1. By deleting from sub-clause (1) in the ninth line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>249</td>
</tr>
<tr>
<td>266</td>
<td>2. By deleting from sub-clause (4) in the third line thereof the word &quot;local.&quot;</td>
<td>250</td>
</tr>
<tr>
<td>267</td>
<td>3. By deleting from sub-clause (5) in the fifth line of sub-paragraph (ii) of paragraph (a) thereof the word &quot;ninety&quot; and inserting in lieu thereof the word &quot;seventy-five.&quot;</td>
<td>251</td>
</tr>
<tr>
<td>268</td>
<td>is amended by deleting from the third line of the proviso the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>252</td>
</tr>
<tr>
<td>269</td>
<td>is amended by deleting from the second line the word &quot;sixty-four&quot; and inserting in lieu thereof the word &quot;forty-eight&quot; and by deleting from the second line of the third paragraph the word &quot;thirty&quot; and inserting in lieu thereof the word &quot;fifteen.&quot;</td>
<td>253</td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
<td>Clause renumbered as</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
<td>---------------------</td>
</tr>
<tr>
<td>267</td>
<td>is amended by deleting from the second line the word &quot;sixty&quot; and inserting in lieu thereof the word &quot;forty-four.&quot;</td>
<td>251</td>
</tr>
<tr>
<td>268</td>
<td></td>
<td>252</td>
</tr>
<tr>
<td>269</td>
<td></td>
<td>253</td>
</tr>
<tr>
<td>270</td>
<td></td>
<td>254</td>
</tr>
<tr>
<td>271</td>
<td>is amended as follows:— 1. By deleting from sub-clause (2) in the last line thereof the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
<td>255</td>
</tr>
<tr>
<td>272</td>
<td></td>
<td>256</td>
</tr>
<tr>
<td>273</td>
<td></td>
<td>257</td>
</tr>
<tr>
<td>274</td>
<td>is amended as follows:— 1. Paragraph (a) of sub-clause (1) is amended by deleting from the second line the words &quot;an extraordinary&quot; and inserting in lieu thereof the words &quot;a special&quot; and by deleting from the ninth line the word &quot;twenty-two&quot; and inserting in lieu thereof the word &quot;seven.&quot;</td>
<td>258</td>
</tr>
<tr>
<td>275</td>
<td></td>
<td>259</td>
</tr>
<tr>
<td>276</td>
<td>is amended by deleting from sub-clause (1) in the first line thereof the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>260</td>
</tr>
<tr>
<td>277</td>
<td>is amended as follows:— 1. By deleting from sub-clause (1) in the fifth line thereof the words &quot;an extraordinary&quot; and inserting in lieu thereof the words &quot;a special.&quot;</td>
<td>261</td>
</tr>
<tr>
<td>278</td>
<td></td>
<td>262</td>
</tr>
<tr>
<td>279</td>
<td>is amended by deleting from sub-clause (2) in the sixth to eighth lines thereof the words &quot;The costs of a solicitor exceeding ten pounds shall be taxed by the Master of the Court; the fees of any authorised auditor shall be fixed by the Registrar&quot; and inserting in lieu thereof the words &quot;The fees of any registered auditor shall be approved by the Registrar.&quot;</td>
<td>263</td>
</tr>
<tr>
<td>280</td>
<td></td>
<td>264</td>
</tr>
<tr>
<td>281</td>
<td></td>
<td>265</td>
</tr>
<tr>
<td>282</td>
<td></td>
<td>266</td>
</tr>
<tr>
<td>283</td>
<td></td>
<td>267</td>
</tr>
<tr>
<td>284</td>
<td>is amended by deleting from the second and third lines the words &quot;sections two hundred and eight and two hundred and nine&quot; and inserting in lieu thereof the words &quot;section one hundred and ninety-four.&quot;</td>
<td>268</td>
</tr>
<tr>
<td>285</td>
<td></td>
<td>269</td>
</tr>
</tbody>
</table>
### Schedule—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>286</td>
<td>is amended by deleting from sub-clause (1) in the third line of the proviso thereto and from sub-clause (2) in the sixth line of the proviso thereto the word &quot;twenty-two&quot; and inserting in lieu thereof in each case the word &quot;seven.&quot;</td>
<td>270</td>
</tr>
<tr>
<td>287</td>
<td></td>
<td>271</td>
</tr>
<tr>
<td>288</td>
<td></td>
<td>272</td>
</tr>
<tr>
<td>289</td>
<td></td>
<td>273</td>
</tr>
<tr>
<td>New Clause</td>
<td>insert a new clause to stand as Clause 274 as follows:—</td>
<td>274</td>
</tr>
<tr>
<td>New Clause 274</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**274.** Subject as hereinafter provided, nothing in this Act shall prejudice or in any way affect the right of the Crown to be paid debts owing to the Crown in priority of all other debts in the winding up of a company, and such priority of the Crown shall be preserved and shall continue and have effect accordingly.

Provided that—

(a) the priority of the Crown shall not extend to any corporate body representing the Crown actually engaged in trading and carrying on business as a State trading concern under the provisions of the *State Trading Concerns Act, 1916*: and

(b) this section shall be read subject to section two hundred and seventy-five of this Act.

| 290           | is amended as follows:—
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. By deleting from paragraph (b) of sub-clause (1) the words &quot;twenty-five&quot; in the second line thereof and the word &quot;two&quot; in the fourth line thereof and inserting in lieu thereof the words &quot;fifty&quot; and &quot;four.&quot;</td>
</tr>
</tbody>
</table>
|               | 2. By inserting after sub-clause (2) a new sub-clause to stand as sub-clause (3) as follows:—
|               | (3) The expression "clerk or servant" includes any commercial traveller, or insurance or time payment canvasser, or collector paid wholly or in part by commission. | 276                   |
|               |                                                                          | 277                   |
| New Clause    | insert a new clause to stand as Clause 278 as follows:—                 | 278                   |
| New Clause 278 | 

**278.** Where any company is being wound up any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

| 293           | is amended as follows:—
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. By deleting from sub-clause (1) in the second line of the proviso thereto the words &quot;a fraudulent&quot; wherever they appear and inserting in lieu thereof the words &quot;an undue.&quot;</td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (1) in the second line of the proviso thereto the words &quot;a fraudulent&quot; wherever they appear and inserting in lieu thereof the words &quot;an undue.&quot;</td>
</tr>
<tr>
<td></td>
<td>3. By deleting from sub-clause (4) in the second line of paragraph (b) thereof the word &quot;twenty-eight days&quot; and inserting in lieu thereof the words &quot;twenty-eight days&quot;</td>
</tr>
<tr>
<td></td>
<td>4. By deleting from sub-clause (2) from the fifth to seventh lines thereof the words &quot;seizure and in the case of an equitable interest, by the appointment of a receiver&quot; and inserting in lieu thereof the words &quot;the sale of the land or of any interest in the land.&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>is amended by deleting from sub-clause (1) and the first and second lines of sub-clause (2) the words &quot;books of account&quot; and inserting in lieu thereof the word &quot;accounts.&quot;</td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------</td>
</tr>
<tr>
<td>299</td>
<td>is amended as follows:</td>
</tr>
<tr>
<td></td>
<td>1. By deleting from sub-clause (1) in the ninth line thereof the word “seven” and inserting in lieu thereof the word “fourteen.”</td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (3) in the first line thereof the word “five” and inserting in lieu thereof the word “fourteen.”</td>
</tr>
<tr>
<td>300</td>
<td>is amended by deleting from sub-clause (1) in the fifth line thereof the word “fourteen” and inserting in lieu thereof the word “twenty-eight.”</td>
</tr>
<tr>
<td>301</td>
<td>is amended as follows:</td>
</tr>
<tr>
<td></td>
<td>1. By deleting from sub-clause (1) in the third and fourth lines thereof the words “at such intervals as may be prescribed” and inserting in lieu thereof the words “not less than once a year”: and by inserting in the fifth line of the said sub-clause after the word “form” the words “verified by a statutory declaration in the form prescribed by Rules of Court.”</td>
</tr>
<tr>
<td></td>
<td>2. Sub-clause (3) is amended by deleting from the third line the word “twenty” and inserting in lieu thereof the word “five.”</td>
</tr>
<tr>
<td>302</td>
<td>is amended by deleting from sub-clause (2) in the second line thereof the word “seven” and inserting in lieu thereof the word “fourteen.”</td>
</tr>
<tr>
<td>303</td>
<td>is amended as follows:</td>
</tr>
<tr>
<td></td>
<td>1. By deleting from sub-clause (2) in the first and seventh lines thereof the words “one month” and inserting in lieu thereof the words “twenty-eight days.” and by deleting from the third line the word “month” and inserting in lieu thereof the words “said twenty-eight days.”</td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (3) in the third line thereof the words “one month” and inserting in lieu thereof the words “twenty-eight days.”</td>
</tr>
<tr>
<td></td>
<td>3. By deleting from sub-clause (5) in the fifth line thereof the word “twenty” and inserting in lieu thereof the word “six.”</td>
</tr>
<tr>
<td>304</td>
<td>is amended by deleting from sub-clause (2) a new sub-clause to stand as sub-clause (3) as follows:</td>
</tr>
<tr>
<td></td>
<td>(3) This section and section three hundred and two of this Act shall extend to a case where the dissolution occurred before the commencement of this Act as well as to a case where the dissolution occurs after such commencement.</td>
</tr>
<tr>
<td>305</td>
<td>is amended by deleting from sub-clause (2) in the sixteenth line thereof the word “twenty” and inserting in lieu thereof the word “six.”</td>
</tr>
<tr>
<td>306</td>
<td>is amended by inserting after sub-clause (2) a new sub-clause to stand as sub-clause (3) as follows:</td>
</tr>
<tr>
<td>307</td>
<td>is amended as follows:</td>
</tr>
<tr>
<td>308</td>
<td>is amended by deleting from sub-clause (2) in the second line thereof the word “seven” and inserting in lieu thereof the word “fourteen.”</td>
</tr>
<tr>
<td>309</td>
<td>is amended as follows:</td>
</tr>
<tr>
<td>310</td>
<td>is amended by deleting from sub-clause (2) a new sub-clause to stand as sub-clause (3) as follows:</td>
</tr>
<tr>
<td>311</td>
<td>is amended by deleting from sub-clause (2) in the sixteenth line thereof the word “twenty” and inserting in lieu thereof the word “six.”</td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------</td>
</tr>
<tr>
<td>318</td>
<td></td>
</tr>
<tr>
<td>319</td>
<td></td>
</tr>
<tr>
<td>320</td>
<td></td>
</tr>
</tbody>
</table>
| 321           | Sub-clause (1) is amended as follows:—  
1. By inserting at the end of paragraph (ii) the words “except by leave of the Court.”  
2. By deleting from paragraph (iv) in the twelfth line of sub-paragraph (a) thereof the words “three weeks” and inserting in lieu thereof the words “twenty-eight days.”  
3. By deleting from paragraph (iv) in the fourteenth line of sub-paragraph (b) thereof the word “ten” and inserting in lieu thereof the word “fourteen.” | 307                  |
<p>| 322           |           | 308                  |
| 323           |           | 309                  |
| 324           |           | 310                  |
| 325           |           | 311                  |
| 326           |           | 312                  |
| 327           |           | 313                  |
| 328           |           | 314                  |
| 329           |           | 315                  |
| 330           |           | 316                  |
| 331           |           | 317                  |
| 332           | Is amended by deleting from paragraph (i) in the third line thereof the word “six” and inserting in lieu thereof the word “fourteen.” | 318                  |
| 333           |           | 319                  |
| 334           |           | 320                  |
| 335           |           | 321                  |
| 336           |           | 322                  |
| 337           |           | 323                  |
| 338           |           | 324                  |
| 339           |           | 325                  |
| 340           |           | 326                  |
| 341           |           | 327                  |
| 342           |           | 328                  |
| 343           | Is amended by deleting from sub-clause (2) in the eighth line of the proviso thereto the word “thirty” and inserting in lieu thereof the word “sixteen.” | 329                  |
| 344           |           | 330                  |
| 345           |           | 331                  |</p>
<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause renumbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>346</td>
<td>is amended by deleting sub-clause (1) and inserting in lieu thereof a new sub-clause as follows: —</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1) In this part, and for the purposes thereof—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot; &quot; certified &quot; means certified in the prescribed manner to be a true copy or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a correct translation.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot; carries on business &quot; includes establishing or using a share transfer or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>share registration office ; and &quot; to carry on business &quot; has a corre-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>sponding meaning.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot; company &quot; extends to and includes any unincorporated body or association</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of persons which may sue or be sued or hold property in the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>name of the secretary or other officer of the body or association duly</td>
<td></td>
</tr>
<tr>
<td></td>
<td>appointed for that purpose, and which shall not have its head office</td>
<td></td>
</tr>
<tr>
<td></td>
<td>or place of business in this State.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot; prospectus &quot; means any prospectus, notice, circular advertisement, or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>other invitation offering to the public for subscription or purchase</td>
<td></td>
</tr>
<tr>
<td></td>
<td>any shares or debentures of the company.</td>
<td></td>
</tr>
<tr>
<td>348</td>
<td>is amended as follows: —</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. Sub-clause (1) is amended—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) By deleting from the second line the words &quot; one month &quot; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>inserting in lieu thereof the words &quot; twenty-eight days.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) By deleting from paragraph (c) in the first and second lines thereof</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the words &quot; in the State or country in which it is incorporated &quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and inserting in lieu thereof the words &quot; normally resident in</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the Commonwealth of Australia.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) By deleting from paragraph (e) in the second and third lines thereof</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the word &quot; forty-nine &quot; and inserting in lieu thereof the word</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot; thirty-five. &quot;</td>
<td></td>
</tr>
<tr>
<td>349</td>
<td>is amended as follows: —</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. Sub-clause (2) is deleted and a new sub-clause is substituted in lieu thereof as follows: —</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) The office shall be accessible to the public for not less than four</td>
<td></td>
</tr>
<tr>
<td></td>
<td>hours between the hours of eight o'clock in the morning and ten</td>
<td></td>
</tr>
<tr>
<td></td>
<td>o'clock in the evening each day on at least two days in each week.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (3) in the fifth line of paragraph (a) thereof</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the words &quot; one month &quot; and inserting in lieu thereof the words &quot; six</td>
<td></td>
</tr>
<tr>
<td></td>
<td>months. &quot;</td>
<td></td>
</tr>
<tr>
<td>350</td>
<td>is amended by deleting from sub-clause (2) in the fifth line thereof the word</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot; forty-eight &quot; and inserting in lieu thereof the word &quot; thirty-four. &quot;</td>
<td></td>
</tr>
<tr>
<td>351</td>
<td>is amended by deleting from sub-clause (2) in the last line of paragraph (a) thereof</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the figures &quot; 1934 &quot; and inserting in lieu thereof the figures &quot; 1939. &quot;</td>
<td></td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
<td>Clause re-numbered as</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------</td>
<td>----------------------</td>
</tr>
<tr>
<td>354</td>
<td>is amended as follows:—</td>
<td>340</td>
</tr>
<tr>
<td></td>
<td>1. By deleting from sub-clause (1) the words commencing in the sixth line with the word &quot;and&quot; and ending in the tenth line with the word &quot;aforesaid.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (4) in the first and second lines thereof the words &quot;private or proprietary.&quot;</td>
<td></td>
</tr>
<tr>
<td>355</td>
<td>is amended by deleting from paragraph (iii) in the second and third lines of the proviso to paragraph (b) thereof the word &quot;fifty-four&quot; and inserting in lieu thereof the word &quot;forty.&quot;</td>
<td></td>
</tr>
<tr>
<td>356</td>
<td>is amended by inserting in sub-clause (1) in the sixth line thereof after the first word &quot;in&quot; the words &quot;three consecutive issues of the.&quot;</td>
<td></td>
</tr>
<tr>
<td>357</td>
<td>2. By deleting from sub-clause (3) in the third and fourth lines thereof the word &quot;fifty-two&quot; and inserting in lieu thereof the word &quot;thirty-eight.&quot;</td>
<td></td>
</tr>
</tbody>
</table>

New Clauses

Insert new clauses to stand as clauses 344, 345 and 346 as follows:—

344. (1) If any company to which this Part applies goes into liquidation in the country or the State in which it is incorporated, the person whose name has been filed under section three hundred and forty-four of this Act as agent of the company shall forthwith file with the Registrar notice of the liquidation and of the appointment of the liquidator, and such liquidator shall, until a liquidator for Western Australia is appointed by the Court, have the powers of a liquidator for Western Australia.

(2) Any creditor or contributory of such a company going into liquidation as aforesaid may apply to the Court for an order that the affairs of the company so far as Western Australian assets are concerned, be wound up in Western Australia, and on such order being made, the provisions of this Part relating to the winding up of a company incorporated in Western Australia shall, with such adaptations as are necessary, extend and apply accordingly.

345. If any company to which this Part applies is dissolved in the country in which is incorporated, the person whose name has been filed under section three hundred and thirty-four of this Act as agent of the company shall forthwith file notice of the dissolution with the Registrar, who shall thereupon remove the name of the company from the register.

346. (1) Where the Registrar has reasonable cause to believe that a company to which this Part applies has ceased to have a place of business or to carry on business in Western Australia he may serve on the company a written notice, inquiring whether the company has a place of business or is carrying on business in Western Australia.

(2) If the Registrar does not receive an answer to his inquiry within one month after service of the notice, if served on the company at an address within the Commonwealth, or within three months, if served on the company at an address outside the Commonwealth, he shall, within fourteen days after the expiration of one month or three months (as the case may be) serve a further notice referring to the first notice, and stating that no answer thereto has been received and that if an answer to the second notice is not received within one month, if the notice is served on the company at an address within the Commonwealth, or within three months, if the notice is served on the company at an address outside the Commonwealth, from the service of such second notice, a notice will be published in the Government Gazette with a view to striking the name of the company off the register.

(3) If the Registrar receives an answer to either notice to the effect that the company has no place of business or is not carrying on business in Western Australia, or does not receive an answer to his second notice within the time mentioned in subsection (2), he may publish in the Government Gazette and serve on the company a notice that at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register.

(4) At the expiration of the said three months the Registrar may, unless cause to the contrary is shown by the company, strike its name off the regis-
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
</tr>
</thead>
</table>

357—contd.  

...and having done so publish in the *Government Gazette* a notice that the name of the company has been struck off the register; and on the publication in the *Government Gazette* of this notice the company shall cease to be registered as a company to which this Part applies:  

Provided that the liability (if any) of every director, managing officer and member of the company and of the person whose name has been filed under section three hundred and thirty-four as the agent of the company shall continue and may be enforced as if the name of the company had not been struck off the register.  

(5) The company, or any member or creditor thereof aggrieved by the company having been struck off the register, may, within two years after the publication of the notice in the *Government Gazette* under sub-section (4) of this section, apply to the Court for an order restoring the name of the company to the register. The Court, if satisfied that the company at the time of the striking off had a place of business or was carrying on business in Western Australia, or that for any other reason it is just that the name of the company be restored to the register, may order the name of the company to be restored to the register. Thereupon the company shall be deemed to have continued to be a company registered under this Part as if its name had not been struck off the register, and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off the register.  

(6) Any notice under this section may be served on the company in manner prescribed by section three hundred and thirty-four of this Act, or by posting it in a prepaid registered letter addressed to the company at its head office.

---

358  
359  
360  
361 is amended by deleting from the twelfth line thereof the word "forty-eight" and inserting in lieu thereof the word "thirty-four."  
362 is amended by deleting from the third line of sub-clause (1) and from the fourth line of sub-clause (3) the word "forty-eight" and inserting in lieu thereof in each case the word "thirty-four."  
363 is deleted.  
364 is amended as follows:—  
1. By deleting from sub-clause (1) in the sixth line thereof the word "forty-eight" and inserting in lieu thereof the word "thirty-four."  
2. By deleting from sub-clause (2) in the ninth line thereof the word "twenty-nine" and inserting in lieu thereof the word "twelve."  
365 is deleted.  
366  
367 is deleted.  
368  
369 is amended by deleting from sub-clause (4) in the last line thereof the word "sixty-five" and inserting in lieu thereof the word "fifty-three."  
370 is amended by inserting in the third line after the word "and" the word "also" and by adding at the end thereof the words "and of all matters by this Act directed or authorised to be inserted therein."  
371 is amended by deleting from the first line the word "shall" and inserting in lieu thereof the word "may."
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>372</td>
<td>is amended by deleting from sub-clause (1) in the twelfth line thereof the word &quot;thirty-four&quot; and inserting in lieu thereof the word &quot;seventeen&quot; and from the fourteenth line the word &quot;sixpence,&quot; and inserting in lieu thereof the words &quot;one shilling.&quot;</td>
<td>359</td>
</tr>
<tr>
<td>373</td>
<td>is amended by deleting from the fifth line the word &quot;thirty&quot; and inserting in lieu thereof the word &quot;twenty-eight&quot; and from the seventh line the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td>360</td>
</tr>
<tr>
<td>374</td>
<td>is deleted.</td>
<td>361</td>
</tr>
<tr>
<td>375</td>
<td>is deleted.</td>
<td>362</td>
</tr>
<tr>
<td>376</td>
<td>is deleted.</td>
<td>363</td>
</tr>
<tr>
<td>377</td>
<td>is deleted.</td>
<td>364</td>
</tr>
<tr>
<td>378</td>
<td>is deleted.</td>
<td>365</td>
</tr>
<tr>
<td>379</td>
<td>is deleted.</td>
<td>366</td>
</tr>
<tr>
<td>380</td>
<td>is deleted.</td>
<td>367</td>
</tr>
<tr>
<td>381</td>
<td>is amended.</td>
<td>368</td>
</tr>
<tr>
<td>382</td>
<td>is amended.</td>
<td>369</td>
</tr>
</tbody>
</table>
| 383           | 1. By deleting from sub-clause (3) the words "an authorised auditor or" appearing in the first, sixth and seventh lines thereof.  
2. By deleting from sub-clause (4) in the eleventh line the words "one hundred and four" and inserting in lieu thereof the word "three." | 370 |
| 384           | is amended as follows:— | 371 |
| 385           | 1. By deleting from sub-clause (1) in the fourth and seventh lines thereof the words "one month" and inserting in lieu thereof the words "twenty-eight days."  
2. By deleting from sub-clause (3) in the second line thereof the words "an authorised" and inserting in lieu thereof the words "a registered." | 372 |
| 386           | is amended as follows:— | 373 |
| 387           | 1. By deleting from sub-clause (3) in the fifth line thereof the word "fifty-nine" and inserting in lieu thereof the word "fifty-four."  
2. By deleting from sub-clause (6) in the first line thereof the word "fifty-eight" and inserting in lieu thereof the word "fifty-three." | 374 |
| 388           | is amended as follows:— | 375 |
| 389           | 1. By adding to sub-clause (1) in the second line thereof after the word "in" the words "addition to."  
2. By deleting from paragraph (b) of sub-clause (1) the words "fifty-five" wherever they appear and inserting in lieu thereof the word "fifty." | 376 |
<p>| 390           | is amended as follows:— | 377 |
|               | 1. Sub-clause (1) is amended by deleting the existing provisions and inserting a paragraph to stand as paragraph (a) of sub-clause (1) as follows:— | 378 |
|               | 1 (a) Subject as hereinafter provided in this subsection it shall not be lawful for any person to go from house to house, or from place to place whether by appointment or otherwise offering to any member of the public shares for subscription or purchase or in exchange for other shares. | 379 |</p>
<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
</tr>
</thead>
</table>
| 380—cont.     | 2. Sub-clause (2) is incorporated as paragraph (b) of sub-clause (1) and is amended as follows:—  
   (i) By deleting from the seventh line the word "dealer" and inserting in lieu thereof the word "broker."  
   (ii) By deleting from the seventeenth line the words "this subsection shall not apply" and inserting in lieu thereof the words "paragraph (a) and for paragraph (b) of this subsection shall not apply in the case of shares of any company which, after notice of intention in the form prescribed to apply for exemption from the provisions of the said paragraphs or of either of them has been advertised in the Government Gazette and in a daily newspaper published in Perth and generally circulating throughout the State has applied to the Minister for such exemption and the application has on the recommendation of a law officer been granted;  
   (iii) The provisions of paragraph (b) of this subsection shall not apply:—  
   (iii) By deleting paragraphs (c) and (d).  
   3. By renumbering sub-clauses (3), (4), (5), (6), (7), (8) and (9) as (2), (3), (4), (5), (6), (7) and (8). |
| 391           |           |
| 392           | 1. By deleting from the heading the word "dealers" and inserting in lieu thereof the word "brokers."  
   2. By deleting the word "dealers" wherever it appears and inserting in lieu thereof the word "brokers."  
   3. By deleting the definition of "exempted share dealer."  
   4. By deleting from the definition of "recognised stock exchange" in the fourth line thereof the word "dealers" and inserting in lieu thereof the word "brokers." |
| 393           |           |
| 394           | 1. By deleting from the word "dealers" wherever it appears and inserting in lieu thereof the word "brokers."  
   2. By deleting paragraphs (d) and (e) and renumbering paragraph (f) as paragraph (d). |
| 395           | 1. By deleting the words "dealer" or "dealers" wherever they appear and inserting in lieu thereof the words "broker" or "brokers" as the case may be.  
   2. By deleting from paragraph (b) in the sixth line thereof the word "ninety-three" and inserting in lieu thereof the word "seventy-eight."  
   3. By deleting from paragraph (c) in the second line thereof the letters and word "(b), (c), (d) and (e)" and inserting in lieu thereof the letters and words "(b) and (c) of the said section."  
   4. By deleting from paragraph (d) in the second line thereof the letter "(f)" and inserting in lieu thereof the letter "(e)."  
   5. By deleting from paragraph (e) in the third line thereof the word "ninety-three" and inserting in lieu thereof the word "seventy-eight."  
   6. By deleting from paragraph (f) in the second line of sub-paragraph (ii) thereof the word "three" and inserting in lieu thereof the word "five." |
<p>| 376           |           |
| 377           |           |
| 378           |           |
| 379           |           |
| 380           |           |</p>
<table>
<thead>
<tr>
<th>Clause Number.</th>
<th>Amendment.</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>395—contd.</td>
<td>5. By deleting from paragraph (g) (paragraph (f) as renumbered) in the third and fourth lines thereof the word &quot;ninety-nine&quot; and inserting in lieu thereof the word &quot;eighty-three.&quot;</td>
<td></td>
</tr>
<tr>
<td>396</td>
<td>is amended as follows:—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. By deleting the word &quot;dealer&quot; wherever it appears and inserting in lieu thereof the word &quot;broker.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. By deleting from paragraph (a) of sub-clause (2) the words &quot;one month&quot; appearing in the first line thereof and the word &quot;seven&quot; appearing in the ninth line thereof and inserting in lieu thereof the words &quot;twenty-eight days&quot; and &quot;fourteen&quot; respectively.</td>
<td></td>
</tr>
<tr>
<td>397</td>
<td>is amended by deleting from sub-clause (1) in the first line thereof the word &quot;dealer&quot; and inserting in lieu thereof the word &quot;broker.&quot;</td>
<td></td>
</tr>
<tr>
<td>398</td>
<td>is deleted.</td>
<td></td>
</tr>
<tr>
<td>399</td>
<td>is amended as follows:—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. By deleting the words &quot;dealer&quot; or &quot;dealers&quot; wherever they appear and inserting in lieu thereof the words &quot;broker&quot; or &quot;brokers,&quot; as the case may be.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (1) in paragraph (a) thereof the letters and words &quot;(d), (e) and (f) of section three hundred and ninety-five&quot; and inserting in lieu thereof the letters and words &quot;(d) and (e) of section three hundred and eighty.&quot;</td>
<td></td>
</tr>
<tr>
<td>400</td>
<td>is amended by deleting from sub-clause (1) in the second and fourth lines thereof the word &quot;dealers&quot; and inserting in lieu thereof the word &quot;brokers.&quot;</td>
<td></td>
</tr>
<tr>
<td>401</td>
<td>is amended by deleting in the fourth line thereof the word &quot;dealers&quot; and inserting in lieu thereof the word &quot;brokers.&quot;</td>
<td></td>
</tr>
<tr>
<td>402</td>
<td></td>
<td></td>
</tr>
<tr>
<td>403</td>
<td></td>
<td></td>
</tr>
<tr>
<td>404</td>
<td></td>
<td></td>
</tr>
<tr>
<td>405</td>
<td>is amended by deleting from sub-clause (2) in the first and second lines thereof the words &quot;has underwritten or sub-underwritten&quot; and inserting in lieu thereof the words &quot;underwrites or sub-underwrites.&quot;</td>
<td></td>
</tr>
<tr>
<td>406</td>
<td></td>
<td></td>
</tr>
<tr>
<td>407</td>
<td></td>
<td></td>
</tr>
<tr>
<td>408</td>
<td></td>
<td></td>
</tr>
<tr>
<td>409</td>
<td>is amended by amending paragraph (a) of sub-clause (1) as follows:—</td>
<td></td>
</tr>
</tbody>
</table>
|               | 1. By deleting from the first line the words "other than" and inserting in lieu thereof the word "including."
|               | 2. By deleting from sub-paragraph (ii) the word "investment" and inserting in lieu thereof the word "investments." |
| 410           | |
| 411           | |
| 412           | |
| 413           | |
| 414           | |
| 415           | |
1.

SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment.</th>
<th>Clause re-numbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>416</td>
<td>is amended by inserting in sub-clause (1) in the fourth line thereof after the word “do” the words “or refrain from doing.”</td>
<td>400</td>
</tr>
<tr>
<td>417</td>
<td>is amended by inserting after sub-clause (3) a new sub-clause to stand as sub-clause (4) as follows: —</td>
<td>401</td>
</tr>
<tr>
<td></td>
<td>(4) Where any company or director or officer of any company or any liquidator satisfies the Registrar that the circumstances were or are such that it or he was or will be unable to file with deliver or send to the Registrar any return, account or other document or to give notice to him of any matter within the time prescribed in relation thereto by or under this Act or that there was or will be reasonable excuse for its or his delay in filing delivering or sending such return account or other document or giving such notice and the Registrar is of the opinion that the rights of other persons have not been or will not be prejudiced thereby, the Registrar may if he thinks fit grant to such company, director or officer or liquidator such extension of the time prescribed as aforesaid as he may deem reasonable.</td>
<td>402</td>
</tr>
<tr>
<td>419</td>
<td></td>
<td>403</td>
</tr>
<tr>
<td>420</td>
<td></td>
<td>404</td>
</tr>
<tr>
<td>421</td>
<td></td>
<td>405</td>
</tr>
<tr>
<td>422</td>
<td></td>
<td>406</td>
</tr>
<tr>
<td>New Clause 407</td>
<td>Insert a new clause to stand as clause 407 as follows: —</td>
<td>407</td>
</tr>
<tr>
<td></td>
<td>(1) The Registrar may from time to time destroy the whole or such part as he thinks fit of any annual return, certificates and other documents filed, sent or delivered by a company pursuant to section one hundred and seventeen of this Act and any annual summary of capital and list of members filed sent or delivered pursuant to section thirty of the Companies Act, 1893-1939. (2) The Registrar shall not exercise the power conferred by subsection (1) of this section save with respect to documents which have been filed sent or delivered for more than ten years.</td>
<td>408</td>
</tr>
<tr>
<td>423</td>
<td>is amended as follows: —</td>
<td>409</td>
</tr>
<tr>
<td></td>
<td>1. By deleting from sub-clauses (1) and (4) the word “Court” and inserting in lieu thereof the word “Registrar.”</td>
<td>410</td>
</tr>
<tr>
<td></td>
<td>2. By deleting sub-clauses (2) and (3) and inserting in lieu thereof a new sub-clause as follows: —</td>
<td>410</td>
</tr>
<tr>
<td></td>
<td>(2) The Registrar may if he thinks fit, approve of the applicant being registered as so qualified as an auditor or as a liquidator as the case may be; and upon payment of the prescribed registration fee shall make a record of the registration and issue to the applicant a certificate of registration in the prescribed form.</td>
<td>411</td>
</tr>
<tr>
<td>424</td>
<td>is amended by inserting in the second line after the word “liquidator” the words “or when any such registration is cancelled.”</td>
<td>412</td>
</tr>
<tr>
<td>425</td>
<td>is amended as follows: —</td>
<td>413</td>
</tr>
<tr>
<td></td>
<td>1. By deleting from sub-clause (1) in the sixth line and in sub-clause (2) in the sixth line the word “twenty-three” and inserting in lieu thereof the word “eight.”</td>
<td>414</td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (4) in the fourth line thereof the words “one month” and inserting in lieu thereof the words “twenty-eight days.”</td>
<td>415</td>
</tr>
<tr>
<td>426</td>
<td>is amended by inserting in sub-clause (2) in the second line thereof after the word “and” and in sub-clause (3) in the second line thereof after the word “and” the words “in the opinion of the Registrar.”</td>
<td>416</td>
</tr>
<tr>
<td>Clause Number</td>
<td>Amendment</td>
<td>Clause renumbered as</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------</td>
<td>---------------------</td>
</tr>
<tr>
<td>427</td>
<td>is amended as follows:—</td>
<td>412</td>
</tr>
<tr>
<td></td>
<td>1. By deleting the word &quot;Court&quot; wherever it appears and inserting in lieu thereof the word &quot;Registrar.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (1) in the second and third lines thereof of paragraph (b) the words &quot;the Registrar&quot; and inserting in lieu thereof the words &quot;any inspector.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. By deleting from sub-clause (1) in the thirteenth line thereof the words &quot;Rules of Court&quot; and inserting in lieu thereof the words &quot;the regulations.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. By deleting from sub-clause (1) in the fifteenth line thereof the words &quot;by order direct the cancellation&quot; and inserting in lieu thereof the word &quot;cancel.&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. By deleting sub-clause (2) and by renumbering sub-clauses (3) and (4) as sub-clauses (2) and (3).</td>
<td></td>
</tr>
<tr>
<td>428</td>
<td>is amended by inserting in sub-clause (1) in the third line of paragraph (a) thereof after the word &quot;capital&quot; the words &quot;maintenance by liquidators of the securities given by them as required by this Act.&quot;</td>
<td>413</td>
</tr>
<tr>
<td>429</td>
<td>is amended as follows:—</td>
<td>414</td>
</tr>
<tr>
<td>430</td>
<td>1. By deleting sub-clause (2) thereof and inserting in lieu thereof a new sub-clause as follows:—</td>
<td>415</td>
</tr>
<tr>
<td></td>
<td>(2) The Governor may by regulations—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) alter or add to any of the forms contained in the Schedules (other than the second Schedule) to this Act; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) alter or add to the scales of fees contained in the Tenth Schedule to the Act, provided that no fee now prescribed in the said scales of fees shall by any such regulations be increased.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. By deleting from sub-clause (2) in the first line thereof the words &quot;table for form when altered&quot; and inserting in lieu thereof the word &quot;alteration,&quot; and by deleting from the third line the words and figure &quot;subject to subsection (2) thereof.&quot;</td>
<td></td>
</tr>
<tr>
<td>431</td>
<td>is amended by inserting in sub-clause (2) in the last line thereof after the word &quot;pre-paid&quot; the word &quot;registered.&quot;</td>
<td>416</td>
</tr>
<tr>
<td>432</td>
<td>is amended by adding to sub-clause (4) after paragraph (d) thereof a new paragraph as follows:—</td>
<td>417</td>
</tr>
<tr>
<td></td>
<td>(e) liquidation of a company.</td>
<td>418</td>
</tr>
<tr>
<td>433</td>
<td>is amended by deleting from sub-clause (1) in the fifth and sixth lines thereof the word &quot;twenty-one&quot; and inserting in lieu thereof the word &quot;twenty-eight.&quot;</td>
<td>419</td>
</tr>
<tr>
<td>434</td>
<td>is amended by deleting from sub-clause (1) in the third line thereof the word &quot;thirty-eight&quot; and inserting in lieu thereof the word &quot;twenty-three.&quot;</td>
<td>420</td>
</tr>
<tr>
<td>435</td>
<td>is amended by deleting from sub-clause (1) in the third line thereof the word &quot;thirty-eight&quot; and inserting in lieu thereof the word &quot;twenty-three.&quot;</td>
<td>421</td>
</tr>
<tr>
<td>436</td>
<td>is deleted.</td>
<td>422</td>
</tr>
<tr>
<td>437</td>
<td>is deleted.</td>
<td>423</td>
</tr>
<tr>
<td>438</td>
<td>is deleted.</td>
<td>424</td>
</tr>
<tr>
<td>439</td>
<td>is deleted.</td>
<td>425</td>
</tr>
<tr>
<td>440</td>
<td>is deleted.</td>
<td>426</td>
</tr>
</tbody>
</table>
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Clause 427</td>
<td>Insert a new clause to stand as clause 427 as follows:—</td>
</tr>
<tr>
<td>427. (1)</td>
<td>The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of any fund or scheme for the benefit of any employees of a company whether such fund or scheme was established before or is established after the commencement of this Act.</td>
</tr>
<tr>
<td>427. (2) In this section—</td>
<td></td>
</tr>
<tr>
<td>&quot;Company&quot; includes any company or society formed, whether before or after the commencement of this Act in pursuance of any Act, or Imperial Act or of letters patent or royal charter or otherwise duly constituted according to law; and also a company registered under Part XI. of this Act.</td>
<td></td>
</tr>
<tr>
<td>&quot;Employee&quot; includes a director or any person at any time in the employment of a company, and his wife, child, grandchild, parent, and any dependent of any such person and any other person entitled to or capable of receiving any benefit under any fund or scheme.</td>
<td></td>
</tr>
<tr>
<td>&quot;Fund or Scheme&quot; includes any provident superannuation, sick, accident, assurance, unemployment, pension, co-operative benefit, or other like fund, scheme, arrangement, or provision.</td>
<td></td>
</tr>
<tr>
<td>428</td>
<td>is deleted.</td>
</tr>
<tr>
<td>429</td>
<td>is amended by numbering the existing provisions as sub-clause (1) and inserting a new sub-clause to stand as sub-clause (2) as follows:—</td>
</tr>
<tr>
<td>429. (2)</td>
<td>Subsection (1) of this section shall apply to a company registered under Part XI. of this Act which commits any contravention of such subsection within this State.</td>
</tr>
<tr>
<td>430</td>
<td>is amended by deleting from the fourth line the word &quot;justices&quot; and inserting in lieu thereof the words &quot;a stipendiary magistrate or a resident magistrate.&quot;</td>
</tr>
<tr>
<td>431</td>
<td>is amended by deleting from the third line the word &quot;two&quot; and inserting in lieu thereof the word &quot;on.&quot;</td>
</tr>
<tr>
<td>432</td>
<td>is amended by adding at the end of sub-clause (1) the symbol and figures &quot;-1939&quot; and by deleting from sub-clause (2) in the fourth line thereof the word &quot;forty-seven&quot; and inserting in lieu thereof the word &quot;thirty&quot; and from the fifth line of the said sub-clause the word &quot;fifty-three&quot; and inserting in lieu thereof the word &quot;thirty-six.&quot;</td>
</tr>
<tr>
<td>433</td>
<td>is deleted.</td>
</tr>
<tr>
<td>434</td>
<td></td>
</tr>
<tr>
<td>435</td>
<td></td>
</tr>
<tr>
<td>436</td>
<td></td>
</tr>
<tr>
<td>437</td>
<td></td>
</tr>
<tr>
<td>438</td>
<td></td>
</tr>
<tr>
<td>Article Number</td>
<td>Amendment</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------</td>
</tr>
<tr>
<td>SECOND SCHEDULE</td>
<td>TABLE A.</td>
</tr>
<tr>
<td>1</td>
<td>is amended by deleting from the second line the figures &quot;1940&quot; and inserting in lieu thereof the figures &quot;1941.&quot;</td>
</tr>
<tr>
<td>3</td>
<td>is amended by deleting from the fifth line the words &quot;an extraordinary&quot; and inserting in lieu thereof the words &quot;a special.&quot;</td>
</tr>
<tr>
<td>6</td>
<td>is amended by deleting from the last line the figures and brackets &quot;67 (1)&quot; and inserting in lieu thereof the figures and brackets &quot;62 (2).&quot;</td>
</tr>
<tr>
<td>11</td>
<td>is amended by deleting from paragraph (a) in the fourth line the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
</tr>
<tr>
<td>19</td>
<td>is amended by deleting from the fifteenth line thereof the words &quot;one month&quot; and inserting in lieu thereof the words &quot;twenty-eight days.&quot;</td>
</tr>
<tr>
<td>34</td>
<td>is amended by deleting from the first line the word &quot;extraordinary&quot; and inserting in lieu thereof the word &quot;special.&quot;</td>
</tr>
<tr>
<td>37</td>
<td>is amended by deleting from the first line the word &quot;extraordinary&quot; and inserting in lieu thereof the word &quot;special,&quot; and by deleting from the last line of paragraph (b) the figures &quot;72&quot; and inserting in lieu thereof the figures &quot;67.&quot;</td>
</tr>
<tr>
<td>41</td>
<td>is amended by deleting from the first and second lines and from the seventh line the words &quot;an extraordinary&quot; and inserting in lieu thereof the words &quot;a special&quot;; by deleting from the second line the word &quot;extraordinary&quot; and inserting in lieu thereof the word &quot;special,&quot; and by deleting from the fourth line the figures &quot;138&quot; and inserting in lieu thereof the figures &quot;121.&quot;</td>
</tr>
<tr>
<td>42</td>
<td>is amended by deleting from the first line the figures and brackets &quot;141 (2)&quot; and inserting in lieu thereof the figures and brackets &quot;124 (1),&quot; and by deleting from the second line the word &quot;seven&quot; and inserting in lieu thereof the word &quot;fourteen.‖</td>
</tr>
<tr>
<td>44</td>
<td>is amended by deleting from the first and second lines the words &quot;an extraordinary&quot; and inserting in lieu thereof the words &quot;a special.&quot;</td>
</tr>
<tr>
<td>46</td>
<td>is amended by deleting from the first and sixth lines the word &quot;fifteen&quot; and inserting in lieu thereof in each case the word &quot;thirty.&quot;</td>
</tr>
<tr>
<td>48</td>
<td>is amended by deleting from the first line the word &quot;fifteen&quot; and inserting in lieu thereof the word &quot;thirty.&quot;</td>
</tr>
<tr>
<td>49</td>
<td>is amended by deleting from the sixth line the word &quot;ten&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
</tr>
<tr>
<td>61</td>
<td>is amended by deleting from the eighth line the word &quot;extraordinary&quot; and inserting in lieu thereof the word &quot;special.&quot;</td>
</tr>
<tr>
<td>New Article 71</td>
<td>Insert a new article to stand as Article 71 as follows:—</td>
</tr>
<tr>
<td>72</td>
<td>is amended as follows:—</td>
</tr>
<tr>
<td>Article Number</td>
<td>Amendment</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------</td>
</tr>
</tbody>
</table>
| 72—contd.      | 2. By inserting in paragraph (c) after the word "bankrupt" the words "or takes the benefit whether by assignment, composition or otherwise of any law relating to bankrupt or insolvent debtors."  
3. By deleting from paragraph (d) the figures "246" and "299" and inserting in lieu thereof the figures "230" and "286."  
4. By deleting from the fourth line of the proviso the figures "172" and inserting in lieu thereof the figures "168." |
| 73             | 74        |
| 74             | 75        |
| 75             | 76        |
| 76             | 77        |
| 77             | 78        |
| 78             | 79        |
| 79             | 80        |
| 80             | is amended by deleting from the first line the word "extraordinary" and inserting in lieu thereof the word "special." |
| 81             | 82        |
| 82             | 83        |
| 83             | 84        |
| 84             | 85        |
| 85             | 86        |
| 86             | 87        |
| 87             | 88        |
| 88             | 89        |
| 89             | 90        |
| 90             | 91        |
| 91             | 92        |
| 92             | 93        |
| 93             | 94        |
| 94             | 95        |
| 95             | 96        |
| 96             | 97        |
| 97             | 98        |
| 98             | is deleted and a new article is inserted in lieu thereof as follows:—  
98. The directors shall cause to be kept proper accounts in which shall be kept full true and complete accounts of the affairs and transactions of the company.  
99             | 99        |
iv.
SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Article Number</th>
<th>Amendment</th>
<th>Article renumbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>99</td>
<td>is amended by deleting from the second line the figures “148” and inserting in lieu thereof the figures “151.”</td>
<td>100</td>
</tr>
<tr>
<td>100</td>
<td>is amended by deleting from the fourth line the word “seven” and inserting in lieu thereof the word “fourteen.”</td>
<td>102</td>
</tr>
<tr>
<td>101</td>
<td>is amended by deleting the figures “158,” “159,” and “160” and inserting in lieu thereof the figures “142,” “143,” and “144.”</td>
<td>103</td>
</tr>
<tr>
<td>102</td>
<td>is amended by deleting from the third line the word “seven” and inserting in lieu thereof the word “fourteen.”</td>
<td>104</td>
</tr>
<tr>
<td>103</td>
<td>is amended by deleting from the second line the figures “1940” and inserting in lieu thereof the figures “1941.”</td>
<td>106</td>
</tr>
<tr>
<td>104</td>
<td>is amended by deleting from the fifth line the words “an extraordinary” and inserting in lieu thereof the words “a special.”</td>
<td>106</td>
</tr>
<tr>
<td>105</td>
<td>is amended by deleting from the twelfth line the words “one month” and inserting in lieu thereof the words “twenty-eight days.”</td>
<td>107</td>
</tr>
<tr>
<td>106</td>
<td>is amended by deleting from the second line the word “extraordinary” and inserting in lieu thereof the word “special.”</td>
<td>108</td>
</tr>
<tr>
<td>107</td>
<td>is amended by deleting from the first line the word “extraordinary” and inserting in lieu thereof the figures “141” and inserting in lieu thereof the figures “141.”</td>
<td>108</td>
</tr>
<tr>
<td>108</td>
<td>is amended by deleting from the second line the words “an extraordinary” and inserting in lieu thereof the words “a special”; by deleting from the second line the word “extraordinary” and inserting in lieu thereof the word “special,” and by deleting from the fourth line the figures “138” and inserting in lieu thereof the figures “121.”</td>
<td>108</td>
</tr>
<tr>
<td>109</td>
<td>is amended by deleting from the first and second and seventh lines the words “an extraordinary” and inserting in lieu thereof the words “a special”; by deleting from the second line the word “extraordinary” and inserting in lieu thereof the word “special,” and by deleting from the fourth line the figures “138” and inserting in lieu thereof the figures “121.”</td>
<td>108</td>
</tr>
<tr>
<td>110</td>
<td>is amended by deleting from the first line the figures and brackets “141 (2)” and inserting in lieu thereof the figures and brackets “124 (1)”; and by deleting from the second line the word “seven” and inserting in lieu thereof the word “fourteen.”</td>
<td>108</td>
</tr>
<tr>
<td>111</td>
<td>is amended by deleting from the first and second lines the words “an extraordinary” and inserting in lieu thereof the words “a special.”</td>
<td>108</td>
</tr>
<tr>
<td>112</td>
<td>is amended by deleting from the first and sixth lines the word “fifteen” and inserting in lieu thereof each case the word “thirty.”</td>
<td>108</td>
</tr>
<tr>
<td>Article Number</td>
<td>Amendment</td>
<td>Article re-numbered as</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>39</td>
<td>is amended by deleting from the first and second lines the word &quot;fifteen&quot; and inserting in lieu thereof the word &quot;thirty.&quot;</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>is amended by deleting from the sixth line the word &quot;ten&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>is amended by deleting from the eighth line the word &quot;extraordinary&quot; and inserting in lieu thereof the word &quot;special.&quot;</td>
<td></td>
</tr>
<tr>
<td>New Article 63</td>
<td>Insert a new article to stand as Article 63 as follows: — 63. The directors may delegate to any one or more of their number and/or to any one or more of the officers of the company power to operate upon any bank account of the company and may at any time cancel or vary any such delegation.</td>
<td></td>
</tr>
<tr>
<td>63</td>
<td>is amended as follows: — 1. By deleting from paragraph (a) the figures &quot;167&quot; and inserting in lieu thereof the figures &quot;162.&quot; 2. By inserting in paragraph (c) after the word &quot;bankrupt&quot; the words &quot;or takes the benefit whether by assignment composition or otherwise of any law relating to bankrupt or insolvent debtors.&quot; 3. By deleting from paragraph (d) the figures &quot;246&quot; and &quot;399&quot; and inserting in lieu thereof the figures &quot;230&quot; and &quot;285.&quot; 4. By deleting from the proviso in the fourth line thereof the figures &quot;172&quot; and inserting in lieu thereof the figures &quot;162.&quot;</td>
<td>64 65</td>
</tr>
<tr>
<td>64</td>
<td>is amended as follows: —</td>
<td></td>
</tr>
<tr>
<td>65</td>
<td></td>
<td></td>
</tr>
<tr>
<td>66</td>
<td></td>
<td></td>
</tr>
<tr>
<td>67</td>
<td></td>
<td></td>
</tr>
<tr>
<td>68</td>
<td></td>
<td></td>
</tr>
<tr>
<td>69</td>
<td></td>
<td></td>
</tr>
<tr>
<td>70</td>
<td></td>
<td></td>
</tr>
<tr>
<td>71</td>
<td></td>
<td></td>
</tr>
<tr>
<td>72</td>
<td>is amended by deleting from the first line the word &quot;extraordinary&quot; and inserting in lieu thereof the word &quot;special.&quot;</td>
<td>73</td>
</tr>
<tr>
<td>73</td>
<td></td>
<td></td>
</tr>
<tr>
<td>74</td>
<td></td>
<td></td>
</tr>
<tr>
<td>75</td>
<td></td>
<td></td>
</tr>
<tr>
<td>76</td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td></td>
<td></td>
</tr>
<tr>
<td>78</td>
<td></td>
<td></td>
</tr>
<tr>
<td>79</td>
<td></td>
<td></td>
</tr>
<tr>
<td>80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>81</td>
<td></td>
<td></td>
</tr>
<tr>
<td>82</td>
<td></td>
<td></td>
</tr>
<tr>
<td>83</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article Number</td>
<td>Amendment</td>
<td>Article renumbered as</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------</td>
<td>----------------------</td>
</tr>
<tr>
<td>83</td>
<td>84</td>
<td></td>
</tr>
<tr>
<td>84</td>
<td>85</td>
<td></td>
</tr>
<tr>
<td>85</td>
<td>86</td>
<td></td>
</tr>
<tr>
<td>86</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>87</td>
<td>88</td>
<td></td>
</tr>
<tr>
<td>88</td>
<td>89</td>
<td></td>
</tr>
<tr>
<td>89</td>
<td>90</td>
<td></td>
</tr>
</tbody>
</table>
| 90             | is deleted and a new Article is inserted in lieu thereof as follows:—  
|                | 90. The directors shall cause to be kept proper accounts in which shall be kept full, true and complete accounts of the affairs and transactions of the company.  
| 90             | 91        |
| 91             | 92        |
| 92             | is amended by deleting from the second line the figures “148” and inserting in lieu thereof the figures “131.”  
| 93             | 94        |
| 94             | is amended by deleting from the fourth line the word “seven” and inserting in lieu thereof the word “fourteen.”  
| 95             | 96        |
| 96             | 97        |
| 97             | 98        |
| 98             | 99        |
| 99             | 100       |

<table>
<thead>
<tr>
<th>Table C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>7</td>
</tr>
<tr>
<td>8</td>
</tr>
<tr>
<td>10</td>
</tr>
<tr>
<td>14</td>
</tr>
</tbody>
</table>
### SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Article Number</th>
<th>Amendment</th>
<th>Articles renumbered as</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>is amended by deleting from the sixth line the word &quot;ten&quot; and inserting in lieu thereof the word &quot;fourteen.&quot;</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>is amended by deleting from the eighth line the word &quot;extraordinary&quot; and inserting in lieu thereof the word &quot;special.&quot;</td>
<td></td>
</tr>
<tr>
<td><strong>New article</strong></td>
<td><strong>Insert a new article, to stand as Article 33, as follows:</strong></td>
<td>34</td>
</tr>
<tr>
<td>33</td>
<td>33. The directors may delegate to any one or more of their number and/or to any one or more of the officers of the company power to operate upon any bank account of the company and at any time may cancel or vary any such delegation.</td>
<td>34</td>
</tr>
<tr>
<td>34</td>
<td>is amended as follows:— 1. By inserting in paragraph (b) after the word &quot;bankrupt&quot; the words &quot;or takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors.&quot; 2. By deleting from paragraph (c) the figures &quot;240&quot; and &quot;290&quot; and inserting in lieu thereof the figures &quot;230&quot; and &quot;285.&quot; 3. By deleting from paragraph (f) the figures &quot;172&quot; and inserting in lieu thereof the figures &quot;158.&quot;</td>
<td>35</td>
</tr>
<tr>
<td>35</td>
<td></td>
<td>36</td>
</tr>
<tr>
<td>36</td>
<td></td>
<td>37</td>
</tr>
<tr>
<td>37</td>
<td></td>
<td>38</td>
</tr>
<tr>
<td>38</td>
<td></td>
<td>39</td>
</tr>
<tr>
<td>39</td>
<td></td>
<td>40</td>
</tr>
<tr>
<td>40</td>
<td></td>
<td>41</td>
</tr>
<tr>
<td>41</td>
<td></td>
<td>42</td>
</tr>
<tr>
<td>42</td>
<td>is amended by deleting from the first line the word &quot;extraordinary&quot; and inserting in lieu thereof the word &quot;special.&quot;</td>
<td>43</td>
</tr>
<tr>
<td>43</td>
<td></td>
<td>44</td>
</tr>
<tr>
<td>44</td>
<td></td>
<td>45</td>
</tr>
<tr>
<td>45</td>
<td></td>
<td>46</td>
</tr>
<tr>
<td>46</td>
<td></td>
<td>47</td>
</tr>
<tr>
<td>47</td>
<td></td>
<td>48</td>
</tr>
<tr>
<td>48</td>
<td></td>
<td>49</td>
</tr>
<tr>
<td>49</td>
<td></td>
<td>50</td>
</tr>
<tr>
<td>50</td>
<td></td>
<td>51</td>
</tr>
<tr>
<td>51</td>
<td>is deleted and a new article is inserted in lieu thereof as follows:— 52. The directors shall cause to be kept proper accounts in which shall be kept full time and complete accounts of the affairs and transactions of the company.</td>
<td>52</td>
</tr>
<tr>
<td>52</td>
<td>is amended by deleting from the first line the words &quot;books of account&quot; and inserting in lieu thereof the word &quot;accounts.&quot;</td>
<td>53</td>
</tr>
<tr>
<td>53</td>
<td></td>
<td>54</td>
</tr>
</tbody>
</table>
Article Number. | Amendment. | Article re-numbered as
--- | --- | ---
54 | is amended by deleting from the second line the figures "148" and inserting in lieu thereof the figures "131." | 55
55 | is amended by deleting from the fourth line the word "seven" and inserting in lieu thereof the word "fourteen." | 56
56 | is amended by deleting from the second line thereof the figures "158," "159" and "160" and inserting in lieu thereof the figures "142," "143" and "144." | 57
57 | | 58
58 | | 59
59 | | 60

### THIRD SCHEDULE.

is amended as follows:
1. By deleting from the heading the words "limited by shares."
2. By inserting in Article 9 in the third line thereof after the word "shareholders" the words "not being directors."
3. By inserting in Article 22 in the second line thereof after the word "thereof" the words "or of any real or leasehold estate belonging to the company."

### FOURTH SCHEDULE.

is amended as follows:
1. Wherever the Companies Act, 1940, is cited it is amended to read the Companies Act, 1941.
2. By deleting from the seventh line the figures "62" and inserting in lieu thereof the figures "57."
3. By inserting after the words "names, descriptions and addresses of directors or proposed directors" the following words: "Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment."
4. By deleting from the note at the end of the form in the second line thereof the figures "55" and inserting in lieu thereof the figures "50."

### FIFTH SCHEDULE.

is amended as follows:
1. Wherever the Companies Act, 1940, is cited it is amended to read the Companies Act, 1941.
2. By adding immediately before the words "date of holding last annual meeting" the following words: "name(s) of the auditor(s) of the company at the date of this return."

### SIXTH SCHEDULE.

is amended as follows:
1. Wherever the Companies Act, 1940, is cited it is amended to read the Companies Act, 1941.
2. Form A is amended—
   (a) By adding immediately before the words "date of holding last annual meeting" the following words: "name(s) of the auditor(s) of the company at the date of this return."
SIXTH SCHEDULE—continued.

(b) By deleting from the note to the form in the first and second lines thereof the words “private company or a.”
(c) By deleting the references to a “private company” appearing in the first to tenth lines on page 328 of the Bill.
(d) By deleting the words “or transferred” in the penultimate footnote and by deleting the whole of the last footnote to the said form.

3. Form B is amended by adding at the end of the form a note as follows:

Note.—In the preparation of the foregoing balance sheet regard should be had to the requirements of the following sections of the Act, namely:—Section sixty-one (commissions and discounts), section sixty-two (outstanding loans), section sixty-three (statement re redeemable preference shares), section sixty-four (discount on shares), section seventy-one (re interest on share capital), section ninety-six (re re-issued debentures), section one hundred and thirty-two (preliminary expenses, etc.), section one hundred and thirty-four (subsidiary companies).

4. Form C is amended by numbering the note to the form on page 332 of the Bill as “(a)” and adding a paragraph to the said note to stand as paragraph (b) as follows:

(b) In the preparation of the foregoing balance sheet regard should also be had to the requirements of the following sections of the Act, namely:—Section sixty-one (commissions and discounts), section sixty-two (outstanding loans), section sixty-three (statement re redeemable preference shares), section sixty-four (discount on shares), section seventy-one (re interest on share capital), section ninety-six (re re-issued debentures), section one hundred and thirty-two (preliminary expenses, etc.), section one hundred and thirty-four (subsidiary companies).

SEVENTH SCHEDULE.

is amended by deleting the figures “1940” appearing in the eighth line thereof and inserting in lieu thereof the figures “1941.”

EIGHTH SCHEDULE.

is amended as follows:—

1. By deleting from the first and third lines the figures “137” and inserting in lieu thereof the figures “141.”
2. By deleting from the second line the figures “1940” and inserting in lieu thereof the figures “1941.”

NINTH SCHEDULE.

is repealed and a new Schedule is inserted in lieu thereof as follows:—

Ninth Schedule.

Provisions which do not apply in the case of a winding-up subject to supervision of the Court:—

Meetings of creditors and contributories (s. 201).
Statement of company’s affairs to be submitted to Official Liquidator (s. 202).
Report by Official Liquidator (s. 203).
Power of Court to appoint Liquidator and appointment and powers of provisional Liquidator (s. 204).
General provisions as to Liquidators (s. 204, except subsection (9)).
Exercise and control of Liquidators’ powers (s. 208).
Books to be kept by Liquidator (s. 209).
Payments by Liquidator into bank (s. 210).
NINTH SCHEDULE—continued.
Audit of Liquidators' accounts (s. 211).
Release of Liquidators (s. 213).
Meeting of creditors and contributories to determine whether
Committee of Inspection shall be appointed (ss. 201 and 214).
Constitution and proceedings of Committee of Inspection (s. 216).
Appointment of Special Manager (s. 224).
Power to order public examination of promoters, directors, etc.
(s. 229).
Power to restrain fraudulent persons from managing companies
(s. 230).
Delegation to Liquidator of certain powers of Court (s. 233).

TENTH SCHEDULE.

The rules for proceedings for winding-up companies by order of the Court are
amended as follows:

1. By amending the fees for the production of any document in the Supreme
   Court from 15/- to 12/-.
2. By amending the fee for the production of any document in the Local
   Court from 10/- to 12/-.
3. By adding to paragraph B at the end thereof the following words and
   figures:—
   For registration of a company under Part XII. of the Act:
   (i) where the number of members as stated in the
   articles of association of the company does
   not exceed 100 .... .... .... .... 5 0 0
   (ii) Where the number of members, as stated in the
   articles of association of the company, ex­
   ceeds 100, but is not stated to be unlimited,
   a fee of 5/- (with an additional 2/- for every
   50 members or less number than 50 members
   after the first 100)
   (iii) For registration of any increase in the number
   of members made after the registration of the
   company in respect of every 50 members or
   less than 50 members of such increase .... 2 0
   Provided that no company shall be liable to pay on the
   whole a greater fee than 20/- in respect of its number
   of members, taking into account the fee paid in the
   first registration of the company.
   (iv) Where the number of members is stated in the
   memorandum or articles of association (or
   other document or documents of a similar
   effect) to be unlimited .... .... .... .... 20 0 0
   (v) Where no reference to the number of members
   is made in the memorandum or articles of
   association or other document or documents of
   similar effect .... .... .... .... 25 0 0
4. By deleting from paragraph C in the first line thereof the figures “31”
   and inserting in lieu thereof the figures “30.”
5. By deleting from paragraph C in the second line thereof the figures
   “32” and inserting in lieu thereof the figures “31.”
6. By deleting from the twenty-third and twenty-fifth lines of paragraph
   C the words “one month” and inserting in lieu thereof the figures “28 days.”
7. By deleting from the last line of paragraph C the figures “315” and
   inserting in lieu thereof the figures “301.”

ELEVENTH SCHEDULE.
The rules for proceedings for winding-up companies by order of the Court are
amended as follows:

1. Wherever the Companies Act, 1940 is cited in the said rules and forms
   thereto, it is amended to read the Companies Act, 1941.
### ELEVENTH SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Article Number</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Rule 2 is amended by deleting from the first line the word “seven” and</td>
</tr>
<tr>
<td></td>
<td>inserting in lieu thereof the word “fourteen.”</td>
</tr>
<tr>
<td>3.</td>
<td>Rule 4 is amended by deleting from the seventh line the word “four” and</td>
</tr>
<tr>
<td></td>
<td>inserting in lieu thereof the word “seven.”</td>
</tr>
<tr>
<td>4.</td>
<td>Rule 6 is amended by deleting from the second line thereof the word</td>
</tr>
<tr>
<td></td>
<td>“twelve” and inserting in lieu thereof the word “fourteen.”</td>
</tr>
<tr>
<td>5.</td>
<td>Rule 17 is amended by deleting from the fourth line the word “four” and</td>
</tr>
<tr>
<td></td>
<td>inserting in lieu thereof the word “seven.”</td>
</tr>
<tr>
<td>6.</td>
<td>Rule 23 is amended by deleting from the fifth line the word “or” and</td>
</tr>
<tr>
<td></td>
<td>inserting in lieu thereof the word “for.”</td>
</tr>
</tbody>
</table>

The rules for meetings of creditors, contributories, or shareholders of a company under liquidation are amended as follows:—

1. Rule 1 is amended by deleting from the third line the word “seven” and inserting in lieu thereof the word “fourteen,” and by inserting in the fourth line thereof before the word “notice” the words “at least fourteen days.”

2. Rule 16 is amended by deleting from the last line the word “twenty-one” and inserting in lieu thereof the word “twenty-eight.”

### TWELFTH SCHEDULE.

is amended as follows:—

1. By inserting on the Assets side of the form after the words “in debentures or shares in any other companies” the words “in subsidiary companies.”

2. By deleting from the Assets side of the form the words “directors and.”

3. By deleting the reference to the Companies Act, 1940 appearing in footnote (a) and inserting in lieu thereof the words “the Companies Act, 1941.”

4. By inserting at the end of the form a note as follows:—

   Note.—In the preparation of the foregoing balance sheet regard should be had to the requirements of the following sections of the Act, namely:—Section sixty-one (commissions and discounts), section sixty-two (outstanding loans), section sixty-three (statement re redeemable preference shares), section sixty-four (discount on shares), section seventy-one (re interest on share capital), section ninety-six (re-issued debentures), section one hundred and thirty-two (preliminary expenses, etc.), section one hundred and thirty-four (subsidiary companies).

### THIRTEENTH SCHEDULE.

is amended as follows:—

1. Wherever the Companies Act, 1940, is cited in the forms it is amended to read the Companies Act, 1941.

2. Forms A to D inclusive are amended by deleting from the first line of the said forms the figures “25” and “430” and inserting in lieu thereof in each case the figures “24” and “415.”

3. Form E is amended—
   (a) By deleting from the first and second lines the figures “161” and inserting in lieu thereof the figures “145.”
   (b) By deleting from the first line the figures “430” and inserting in lieu thereof the figures “415.”
   (c) By deleting from the last line the figures “50” and inserting in lieu thereof the figures “20.”

4. Form F is amended—
   (a) By deleting from the first line the figures “348” and “430” and inserting in lieu thereof the figures “334” and “415.”
   (b) By inserting in the fourth line after the word “proposed” the word “(is).”
Ixiii.

SCHEDULE—continued.

<table>
<thead>
<tr>
<th>Article Number</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>THIRTEENTH SCHEDULE—continued.</td>
<td></td>
</tr>
<tr>
<td>5. Form G is repealed and a new form is inserted in lieu thereof as follows:—</td>
<td></td>
</tr>
<tr>
<td>Form G.—(Sections 336 and 415).</td>
<td></td>
</tr>
<tr>
<td>The Companies Act, 1941.</td>
<td></td>
</tr>
<tr>
<td>CERTIFICATE OF REGISTRATION.</td>
<td></td>
</tr>
<tr>
<td>This is to certify that a company called the formed and incorporated in and carrying on business in Western Australia, did, on the day of 19 J, duly register under Part XI. of the Companies Act, 1941.</td>
<td></td>
</tr>
<tr>
<td>The name and place of abode or business of the person appointed by such company as agent to carry on its business in Western Australia are:—</td>
<td></td>
</tr>
<tr>
<td>The registered office of the said company is situated at</td>
<td></td>
</tr>
<tr>
<td>Given under my hand this day of 19</td>
<td></td>
</tr>
<tr>
<td>Registrar.</td>
<td></td>
</tr>
<tr>
<td>6. Forms H and I are amended by deleting from the first line of the said forms the figures “369” and “430” and inserting in lieu thereof in each case the figures “366” and “415.”</td>
<td></td>
</tr>
<tr>
<td>7. Form J is amended—</td>
<td></td>
</tr>
<tr>
<td>(a) By deleting from the first line the figures “419” and “430” and inserting in lieu thereof the figures “403” and “415.”</td>
<td></td>
</tr>
<tr>
<td>(b) By deleting from the eighth line the word “Private.”</td>
<td></td>
</tr>
<tr>
<td>8. Form K is amended by deleting from the first line the figures “434” and “430” and inserting in lieu thereof the figures “419” and “415.”</td>
<td></td>
</tr>
</tbody>
</table>
Appendix II.

REPORT OF EVIDENCE.

INDEX TO WITNESSES.

Blanckensee, E., Stone, James & Co. 94
Briskham, A. G. H., Registrar of Companies, Adelaide 150
Boyson, O. J., Acting Registrar of Companies 27, 29
Curlowia, A. C., Secretary Chamber of Manufactures 8
Forbes, R. D'Oyley, Solicitor 10
Harper, C. W., Co-operative Federation of W.A. 112
Hatfield, K. W., Solicitor 1
Jackson, L. W., Solicitor, representing Fire Underwriters' Association 21, 46
Lamb, A. C. L., Perth Stock Exchange 38
Malloch, A. H., Malloch Bros. 104
Martin, A. H., Chartered Accountant 90
Merry, H. C. H., Chartered Accountant 75, 108
Miller, R. Goyne, Chartered Accountant 66, 118
Saw, E. S., Secretary, Perth Chamber of Commerce 44, 50, 56, 100
Telfer, A. H., Under Secretary for Mines 66
Walker, J. L., K.C., Solicitor General 121, 137

Letter from South-West Co-operative Dairy Farmers, Ltd. 165
REPORT OF EVIDENCE.

TUESDAY, 11th FEBRUARY, 1941.

Present:
Hon. B. NELSON, M.L.A. (Chairman).
A. V. R. Abbott, Esq., M.L.A.
Hon. G. P. Peat, M.L.C.
Hon. R. Craig, M.L.C.

KENNETH WATTS HATFIELD, Solicitor, Perth, examined:

1. The WPENESS: Mr. T. F. Davies, formerly Master of the Supreme Court, and I appear before this Joint Select Committee as representatives of the Law Society of Western Australia. The committee of that society has not had an opportunity of making an exhaustive study of the Act, but tenders the following observations, which may be of some value. The Bill as a whole, representing as it does a valuable progress in company administration, is approved.

2. Clause 3: The definition of mining purposes appears wide enough to cover quarrying. It is doubtful if this is intended. The point is that a no-liability company can be formed for mining purposes and that the definition of mining purposes in the Bill is wide enough to cover quarrying. It is doubtful whether the sponsors of the Bill intend that a quarrying company should be entitled to carry on as a no liability company.

3. The CHAIRMAN: I see no reason to suggest that any company should be registered under the no liability provision.

4. By Hon. A. THOMSON: Why do you think that a quarrying company should not be registered as a no liability company—?

5. By Mr. ABBOTT: What is the view of the Law Society—?

6. By the CHAIRMAN: Quarrying not being as speculative as mining—?

7. By Hon. R. CRAIG: To insert such words as 'but shall not include quarrying companies'—?

8. By the CHAIRMAN: Such a clause will apply only to local companies registered after the commencement of the new Act. By Sub-clause 6, however, the clause applies to foreign companies registered, or applying to be registered, under the new Act, and will thus include all existing foreign companies already carrying on business in this State, because these companies must apply to be registered under the new Act. It is obviously unreasonable that well known existing companies should be compelled to apply for the consent of the Governor to the use of their names in this State. If the Governor refused his consent, they would then be precluded from carrying on business at all under their correct names, and to carry on under any other names would be futile. It is suggested that Sub-clause 6 be amended so as to refer only to foreign companies which are not carrying on business in this State under the Companies Act 1903, immediately prior to the date on which the new companies Act is to come into force.

I could refer to the Royal Exchange Insurance Company or the Commonwealth Oil Refineries, Ltd., and consider the clause as drawn these foreign companies have to apply for registration under the Bill, and they must obtain the Governor's consent to the use of the terms 'Royal' or 'Commonwealth.' It is suggested that the provisions should refer only to foreign companies commencing to carry on business after the commencement of the new Act.

9. By Hon. H. SEDDON: Your suggestion is that those foreign companies now using those terms should be allowed to carry on with them—?

10. By the CHAIRMAN: I see no reason why such companies could not apply to the Governor-in-Council, because if they are well established there would be no fear of permission being refused. I do not suppose there would be. However, there is no guarantee in the Act that a company at present carrying on business will be granted permission by the Governor-in-Council.

11. In the Act relating to registration of firms passed last session there is a clause prohibiting the use of the terms 'Commonwealth' and 'State'—?

12. Under the Companies Act, however, companies can do so, by making application to the Governor-in-Council. It appears to me there is no hardship in that—

13. What I have indicated is the only possibility of hardship. The damage to a company by change of trading name would be considerable.

14. By Mr. ABBOTT: Do you think your objection would be met if the clause were amended to read that companies now using those terms should be allowed to retain them unless there was some special reason for objecting to their doing so, so that the existing practice would continue unless there was something very special to prevent it—?

15. I do not know what is meant by 'special.' What I have suggested would meet the objection. Presumably the companies now carrying on business under such names are unobjectionable, or they would have been prohibited from carrying on. I would point out that the Commonwealth Oil Refineries, Ltd., is a company incorporated outside Western Australia and consequently it is a foreign company. Dealing now with Clause 41, it is suggested that it should be made obligatory upon a company carrying on business in Western Australia to have a local register so that shares owned in Western Australia can be dealt with without the delay and expense now frequently occasioned. Examples can be cited to illustrate this suggestion. I do not know whether it can be done appropriately at this stage, but Clause 41 deals with share registers as that was what drew our attention to this phase, we inserted that reference here. The position is somewhat important. There are many foreign companies carrying on business in Western Australia, although incorporated in, say, England. Recent examples serve to illustrate the point. In one instance a person owned shares in a mining company, but he died. The shares were worth about £100. The person owned some other property here and probate was paid on the estate in Western Australia. The individual had other assets
18. By Mr. ABBOTT: Is there not also another matter of importance? If there is no local register and a company has assets in Western Australia, the company having headquarters located elsewhere in the State, then as the company's headquarters are located elsewhere, probate duty would have to be paid twice. It would have to be paid in this State and further probate duty would have to be paid in the State where the company was registered, so that double probate duty would have to be paid.—That is so. For instance, the shares of some shipping companies are owned here and therefore probate duty would have to be paid in Western Australia. Then when you apply to the particular capital city in Australia where the company may happen to be incorporated, you would have to pay probate duty again.

19. Whereas only one probate duty should be paid.—That is so, and there would be no need to make any application outside the limits of Western Australia if our suggestion were adopted.

20. By the CHAIRMAN: In the circumstances you mention, would you not receive a refund?—Mostly one would receive a refund, but I do not think that applies in Queensland.

21. I agree with you as to the necessity for a local register.—Quite so.

22. By Mr. RODDEREKA: Are there any disadvantages in having a local register? I mean any financial disadvantages.—No, but there are obvious advantages.

23. By Hon. L. CRAIG: Would it not be possible that a company having assets here and no local office would find difficulty in keeping a local register?—They have to have a registered office.

24. You say they should keep one?—We say it should be compulsory.

25. Would it not be possible that some such companies would not have offices here?—Foreign companies must have an office and a registered attorney. That is necessary under the Act to-day and under the provisions of the proposed Bill. You will find there are penal provisions.

26. By the CHAIRMAN: Is it not optional to have a local register now?—No.

27. And you want it made compulsory?—Yes. In nine cases out of ten, foreign companies do not have registers here and we think it should be made obligatory upon them to have them here. If a company is carrying on business in this State, it should have a local register.

28. By Hon. G. FRASER: Could companies avoid that obligation by appointing agencies?—No; they could not evade it.

29. By Hon. L. CRAIG: That would be necessary only when there were Western Australian shareholders?—I do not think the provision should be limited to that extent. If a company is carrying on business here, it should have a local register.

30. By Hon. H. SEDDON: Take certain London mining companies. I understand that the present position is that they have branch registers in Adelaide.—A lot of them have.

31. Under your proposed amendment it would be necessary for such companies to establish branch offices in Western Australia?—There would probably be additional offices in Western Australia. Most companies would probably assist from the fact that the Stock Exchange is the most important exchange dealing with mining shares. In addition to the register in Adelaide, they would require to have a register in Western Australia.

32. That would involve the companies in certain additional expense?—It is better for the mining companies to be involved in that one initial expense rather than that shareholders should be put to extra expense and delay. In the instance I have quoted it would have saved the individual a considerable sum of money.

33. That difficulty was due to war conditions?—Yes, but the proposal involved was an amendment which had been a considerable sum to the individual concerned.

34. By the CHAIRMAN: Then there is the probate aspect?—Yes, and that is serious. The expense in connection with the £100 would be considerable.

35. By Hon. L. CRAIG: But we cannot make laws to meet the circumstances of one case?—I have had instances of having to send matters to England for registering and the payment of English probate duty. Such matters involve considerable cost and they apply largely to mining shares. Present examples could be quoted by officers in the legal profession.

36. Does any other State insist on local registers?—I have not gone thoroughly into that question, but they do not to any I know. I think the suggestion for a local register is our own in Western Australia.

37. By Mr. RODDEREKA: Would it not be possible to make a great deal of expense?—No. I should say it would involve the additional expenses for all time, seeing that they already have offices and attorneys. Dealing with Clause 25, this does not expressly state whether the non-compliance therewith, no matter how small or immaterial, invalidates the contract between the applicant and the company. It seems to view of recent cases that even the slightest failure to comply with this clause may give the right to a shareholder to rescind, notwithstanding that he be prejudiced in any way. It is suggested that the clause might state whether non-compliance therewith does or does not give a right to rescind. I consider this point to be important.

38. Clause 25 deals with prospectuses and provides what a prospectus must contain. The clause provides penalties on the company's directors and officials for not complying with it; but it does not provide for the case of a shareholder who might discover that the prospectus did not comply completely with the clause. That shareholder might turn round and say, 'I have had shares issued to me contrary to the law and I want my money back.' There may be many cases in which there is some immaterial omission in a prospectus. For instance, provision is made that the names and addresses of vendors of property must be supplied. Take an example: it may be proposed to buy property from Thomas George Austrander Molloy and his address might be omitted from the prospectus. That would be an offence against the clause and a shareholder, on finding out the omission, would be entitled to rescind his contract with the company. While it is intended to protect a shareholder, is the clause meant to apply to such trifling omission which would mislead no one?

39. By Hon. H. SEDDON: Is it your contention that if the omission were immaterial, the shareholder would not be prejudiced?—Yes.

40. By Mr. ABBOTT: It might even be that the shareholder in question was one of the biggest participants in the formation of the company, and all the information might have been available to him; yet, if the prospectus were incorrect, he would have the right to rescind his contract?—He might have drawn the prospectus and yet, notwithstanding that he had all the facts at his disposal, he could turn round and say, 'You have left out the street address of the vendor,' he might be as well known as the Town Clerk and that gives me the right to rescind my contract.' The clause is intended to protect shareholders in respect of omissions which are material and with which they might have had decided him not to purchase shares in the company.

41. By Hon. L. CRAIG: You refer to omissions affecting the interests of a shareholder?—Yes.
40. A floating charge?—Yes. That only means that as soon as a demand is made it becomes a fixed charge. A floating charge is a charge on the assets of a company.

41. May not a case occur where debenture holders have a floating charge over the assets of a company and yet the company may practically discharge those assets and the debenture holders be unable to act on account of the fact that their interest has been paid?—A company may have given the company to dispose of goods in the ordinary course of business until the debenture becomes fixed or, as the lawyers may, crystallized. I did not quite follow the point you made.

48. A debenture is a floating charge. Suppose a company got into difficulties and in the ordinary course of business their assets had been sold out on the fact that they had sold some and incurred heavy debts. The value of the security would thus practically disappear. An omission or misunderstanding can discharge the assets in the ordinary course of business until the debenture becomes fixed or, as the lawyers may, crystallized. I did not quite follow the point you made.

50. They have not a stipulated security?—Yes, the whole of the assets.

51. Existing at the time—the whole of the assets of the company, present and future.

25. By Hon. L. Crauf: Could the assets be committed in any way, even though general trade might be in a parlous condition?—No.

53. Would debenture holders have priority over creditors?—Yes, a debenture is a first mortgage. It ranks in priority to any mortgage.

40. The floating charge over the assets of a company includes, or that there is a general charge over the whole of the assets?—A general charge.

50. They have not a stipulated security?—Yes, the whole of the assets.

51. Existing at the time—the whole of the assets of the company, present and future.

25. By Hon. L. Crauf: Could the assets be committed in any way, even though general trade might be in a parlous condition?—No.

53. Would debenture holders have priority over creditors?—Yes, a debenture is a first mortgage. It ranks in priority to any mortgage.

40. The floating charge over the assets of a company includes, or that there is a general charge over the whole of the assets?—A general charge.

50. They have not a stipulated security?—Yes, the whole of the assets.

51. Existing at the time—the whole of the assets of the company, present and future.
same effect as you say it would have, namely that it would lead to evasion. I think so.

62. You think that would result in certain omissions of the Act as at present?—From a lawyer's point of view, if I am asked to draw a deed to secure for a company, the first thing is to make sure that the charge is a first charge and is not likely to be postponed as regards amounts exceeding £50 in any one case.

63. Even over and above smaller charges?—Yes, at present there is a register in Western Australia which is postponed in favour of those. If a man advances £500 on the security of a bill of sale, he is entitled to the first charge and the same applies to a debenture. Suppose the debenture was for £1,000, it might happen that the amount of preference under Clause 290 would be very nearly equal to the value of the property. The present Act does give a preference on liquidation as against unsecured debts.

64. By Mr. RODOREDA: This would apply only to a company under a receiver for the purposes of carrying out the mortgagees' or its creditors' registration to the assets, but the company might not be wound up.

65. But there might be a winding up?—That would be a liquidation of the company. A receiver might come in and wind up the assets, but the company might not be wound up.

66. By the CHAIRMAN: A similar provision is found in the Acts of England, New South Wales, Victoria, South Australia, Queensland and Tasmania—I know it appears in the English Act—by which it is suggested, without the need for consideration appears to include a hire-purchase agreement, and it is suggested that all dealings of a company, including hire-purchase agreements and a hiring agreement over chattels, should be registered in one office so that one search discloses the position of the company with regard to its assets. Otherwise the position is that one search would have to be made at the Companies Office and at an additional office, the Bills of Sale Office, which is suggested is more cumbersome than the present method of registering documents at the Bills of Sale Office. If a search is to be made at the Companies Office to ascertain mortgages and charges, the search should be a complete search and a searcher should be able to ascertain with the full position of the company.

67. By Hon. L. CRAIG: That is a provision giving priority to wages over debentures?—Yes. I am merely pointing out the position to the committee.

68. By the CHAIRMAN: Will you now deal with Clause 104?—This is the clause that has occasioned the most comment and received the greatest consideration by the legal profession and the commercial community. The definition of a charge is contained in Clause 104, but it appears that no consideration has been given to the registration of hire-purchase agreements. The object of the group of clauses 104-114 is to enable in one office all dealings by a company with its assets, and paragraph (c) of Clause 104 deals with a mortgage or charge registered as a bill of sale. The definition under consideration appears not to include hire-purchase agreements, and it is suggested that all dealings of a company, including hire-purchase agreements and a hiring agreement over chattels, should be registered in the one office so that one search discloses the position of a company with regard to its assets. Otherwise the position is that one search would have to be made at the Companies Office and at an additional one, the Bills of Sale Office, which is suggested is more cumbersome than the present method of registering documents at the Bills of Sale Office. If a search is to be made at the Companies Office to ascertain mortgages and charges, the search should be a complete one and a searcher should be able to ascertain with the full position of the company. It is suggested, therefore, that consideration be given to the amendment of this clause to provide for the registration of hiring agreements over chattels to the Companies Office on, alternatively to the retention of the present system of registration at the Bills of Sale Office. The clause in its present form deals with only half the dealings by a company requiring registration. It would mean the introduction of a new system of registration which would not be a complete system of registration. You would not be getting much further than you are at present except that you would be duplicating the registration and the offices at which an inquirer would have to search to ascertain the position of the assets.

69. You say that everything pertaining to companies should be registered in the Companies Office?—Yes.

70. That would cause any interference with individual?—Clause 104 provides for the registration of certain securities that did not have to be registered before, for instance, a charge on the uncalled share capital of the company or a charge on goodwill. Such charges have not to be registered at present and do not come within the definition of "bill of sale" at the Bills of Sale Office. The charge would duplicate the searches of mortgagees and the inquiries to be made. We suggest that that might be more cumbersome than retaining the present system or providing that all documents appertaining to a company be lodged at one office so that one search would disclose the whole position of the company.

71. You desire all the publicity possible for the protection of the public?—I do not think there could be any objection to the registration because a company has to disclose for more confidential matters than the charges on its assets. It is suggested that the new method of registration, it should be an exhaustive one and only one search should be necessary to disclose the full position of the company.

72. Would it be possible for a company to obtain goods under the hire-purchase system and declare the shareholders if there was no hire-purchase agreement registered?—Yes, if it was not registered. I point out, however, that a bill of sale or hire-purchase agreement may be valid as between the parties. If a company gives a bill of sale for £10,000 and does not register it, provided there are no creditors and there is no liquidation, it is valid as between the company and the mortgagee. That applies to any bill of sale or hire-purchase agreement.

73. By Mr. ABBOTT: Apart from the particular question of goodwill and shares, the only mention that is in that, here, the shareholder would be in a position to ascertain the assets of the company whereas, without this, the shareholder might be prejudiced although the individual having a claim against the company would not be prejudiced—The shareholder would not be prejudiced. Under another section, the company must keep its own register of charges, and that is available to shareholders.}

74. By Mr. RODOREDA: Do you think the present method is satisfactory?—Yes. The dealings of a company over its chattels must be registered. Section 104 makes obligatory the registration of other securities that are now disclosed to the general public.

75. That would be satisfactory, provided a double registration was avoided?—I think so. I do not know that many companies give a charge on their uncalled capital by itself. The number of cases that would not include some registrable parts would be rare. The same could be said in connection with the charge on goodwill.

76. By Hon. L. CRAIG: A general overdraft is sometimes secured on a company's capital. Take the overdraft from a bank, that might well be given against the uncalled capital. Banks are jealous about anything being done to interfere with uncalled capital in such businesses—In the case of a general overdraft, the uncalled capital would not be mortgaged to the bank.

77. Mr. ABBOTT: The method here suggested would set up a new organisation. Perhaps Mr. Davies could say whether the old method would be equally effective, and would the setting up of a new organisation.

78. Mr. DAVIES: At present there is a Bills of Sale Office attached to the Supreme Court. There is also a Companies Office. At present some securities are registered in the Bills of Sale department. The Companies Office does not deal with the class of business that is contemplated by this Bill.

79. Mr. ABBOTT: Would that not entail some expense to the State without corresponding advantage?

80. Mr. DAVIES: It would mean transferring some of the business of the Bills of Sale Office to the Companies Office.

81. Mr. ABBOTT: Would that not mean opening a new set of books, and bringing new plant into operation, etc.?

82. Mr. DAVIES: New books would have to be opened in the Companies Office, but I do not know of the expense would be double.

83. Mr. ABBOTT: If the Bills of Sale Act was amended to provide that additional things were brought within the definition of a bill of sale, do you
not think all the necessary records should be kept under the present Bills of Sale Act?

84. Mr. DAVIES: I understand that is the suggestion underlying the remarks of the witness. If that is so, I agree with it.

85. The WITNESS: It does not matter where the search is made; so long as the documents are registered at the Bills of Sale Office, a search can be made immediately.

86. By the CHAIRMAN: Would it not facilitate the making of searches if everything was available in the Companies Office?—The situation of the office is not under a hire-purchase agreement. The type of registration is identified, and it would not matter whether the registration was at the Central Office, the Probate Office or the Bills of Sale Office, so long as the registrations were available. I would, however, point out that in the opinion of my organisation the present system of searching at the Bills of Sale Office is one of the worst that could be imagined. No card system is in use, but one has to go through a number of huge books in which thousands of bills of sale are entered. Suppose a man had to make a search over a period covering three years. He might find the number of registration referred to associated with the name of "Lancelet Walter Davies." The searcher would have to look down page after page covering the latter "D," and so usually miss the entry he was looking for. I suggest that a card system be put into use. The profession would be under a debt to the administration that provided such a system. To make a search of this description takes nearly half an hour, and there is always the possibility of missing the particular entry required. The searcher has to read through a mass of names to find the one he wants. True, the order is the order of the alphabet.

87. By Hon. G. FRASER: Not the order of date of registration?—The searcher may be looking for a particular man named Smith, and be looking back over the years. I suggest that a card system be put into use. The profession would be under a debt to the administration that provided such a system. To make a search of this description takes nearly half an hour, and there is always the possibility of missing the particular entry required. The searcher has to read through a mass of names to find the one he wants. True, the order is the order of the alphabet.

88. By Hon. W. SEDDON: Your point is that the whole of the registers should be in the one office?—Yes. It would be cheaper to amend the present system.

89. With regard to Clause 105, I have prepared the following:

This deals with the registration of documents. With regard to the proviso in paragraph 1, no reference appears to be made for documents which are registerable under the Land Act or the Mining Act. This appears to be important in view of the fact that hundreds of companies are engaged in mortgaging or charging mining tenements. It might be pointed out that a mortgage for, say, £100 over a mining tenement, or over a leasehold block of land otherwise than for securing the issue of debentures, does not come under the definition of a charge.

It is not necessary to register any documents registered under the Crown for entries act. That principle should apply to the Land Act and the Mining Act. If it is necessary to register a mortgage in the case of a mining tenement at the Mines Department, why should it be registered again at the Bills of Sale Office? The clause should be amended to exempt registration effected under the Mining Act and the Land Act.

90. By the CHAIRMAN: You say that should not be included. That clause should be amended. Should you register a mining tenement at one department there should not be any need to register that same document elsewhere.

91. If you had to make a search it would be necessary to go to all the offices?—That is so, but I do not suppose you can avoid that because you have a substantial registration system at all the offices, the Titles, the Mines and the Land Offices. With regard to Clause 107, no consideration appears to be given in this to the renting by a company of a property under the hire-purchase system. I had written there "The acquisition by a company of property under the hire-purchase system," but it should have been as I have already read "renting by a company of property under the hire-purchase system." Of course, a company under such a system really rents the goods, and it is from a creditor's point of view tantamount to acquiring the property under a charge, and the amendment of the section to include such a transaction might be considered. Undoubtedly a hire-purchase agreement a company does not give a charge. In the theory of law it is only renting the goods. So it might be desirable to include in Clause 107, property acquired under hire-purchase agreement. The effect is the same.

92. By Hon. G. FRASER: In your notes you called it "acquisition by a company of property under the hire-purchase system." That would be likening the hire-purchase system to an ordinary contract of sale—No, a contract of sale is totally different. In one case a person buys and in the other a person merely agrees to rent. As I have already explained, I should not have used the word "acquisition.

93. By Mr. RODOREDA: In effect, all hire-purchase agreements must be registered?—"A" might buy a truck under a hire-purchase agreement and half the way through the period of hire he sells it to "B," Ltd., which thus practically speaking acquires an interest subject to the charge back. "C," Ltd., is getting goods and making goods which, in fact, it does not own.

94. I next refer to Clause 108, which deals with the card system. My comments are—It provides for registration notwithstanding it is hoped that the prescribed form will be on the Public System. The present system adopted at the Bills of Sale Office is a cumbersome one, involves a long time for making a search, and the possibility of error is easy. No doubt a clerk's eyes become tired on reading page after page of names all in the one handwriting and a most satisfactory provision would be the introduction of a card system for the registrar mentioned.

Clause 107 deals with accounts to be kept by companies and the wording in one particular and material instance follows the wording of Section 42 of the Act. The clause in the Bill reads—"Every company shall cause to be kept proper books of accounts." In all other relevant legislation this reads: "Every company shall cause to be kept proper accounts."

The inclusion of the words "books of accounts" in the Bill excludes the use of the looseleaf system and the bookkeeping machines. The fact that modern legislation permits the looseleaf system and bookkeeping machines is commented on in the Australian Companies Acts at page 295 in these words—

It is to be observed that the use of mechanical means of accounting is facilitated by omission to any specific reference to "books of account."

The fact that the more recent Acts have authorised modernised systems of bookkeeping seems to indicate that changes in commercial practice have sanctioned these systems. Accordingly, it is recommended that Clause 147 and any other relevant clauses be altered to bring the Bill into conformity with similar legislation on this particular point.

95. By Hon. H. SEDDON: With such an amendment it would be possible to use any of the modern systems of bookkeeping?—Yes, that is the idea of changing the wording. Before I ask Mr. Davies to continue from this stage, I should like to inform the committee that the study of this Bill in the time at our disposal has been somewhat of a colossal task. Many of the clauses are still receiving the consideration of the Law Society and the society would like the opportunity to be recalled on other points on which to offer a view.

96. The CHAIRMAN: We shall be only too pleased to give the Law Society that opportunity.

97. By Mr. ABBOTT: Is it necessary to have both private and proprietary companies?—That is one of the points which are being investigated at the moment. Another point is the whole of the Liquidation sections.
FREDERICK DAVIES, Ex Master of the Supreme Court, examined:

106. The WITNESS: As regards Clause 413, the suggestion is to amend the definition of Registrar to include any duly appointed acting or deputy registrar, as in the South Australian Act. It may be open to question whether the present Registrar holding office under the Companies Act by virtue of being Registrar of the Supreme Court is the Registrar appointed under the Companies Act, 1893.

107. The WITNESS: But the duplication would not do any harm, would it—I ought to elaborate on that in order not to mislead. Section 56 of the Companies Act which might be applicable. Section 56 is one which makes a copy from an official source prima facie evidence in courts; but that is connected with Section 56 of the Evidence Act, which outlines quite a number of responsible officials whose appointments and signatures are taken judicial notice of by courts of law. If the Registrar of Companies happens not to be one of those, but you understand that in this case the Registrar of Companies happens to be at the present time the Registrar of the Supreme Court, who administers the Companies Act. The Registrar of the Supreme Court is one of the officials whose status and signature are covered by Section 56 of the Evidence Act.

108. By Hon. L. CRAIG: But he may not always be—Quite probably he may not be.

109. Do you consider that provision should be made for the Registrar of Companies to be an officer who can authenticate documents? The question is whether the language of the Bill, as it stands at present, should be altered to report the language of the former Act and make the position, unless it is contemplated, as now suggested, that the Registrar of Companies might be an official quite independent of the Registrar of the Supreme Court, in which case his appointment would be under the Companies Act. I would regard this as a minor matter. The clause refers to fees chargeable under the tenth schedule. Many of the fees set out are continued in the new Bill, but there are some new ones of that character which are necessarily introduced. I want to draw attention to the production fees which are set out at 15c, 15s, and 10s. for the production of information from the registry at the prescribed rates according to the court to which the production of the document is to be made. Why should there be any differentiation on account of the court to which production is to be made? I think the principle underlying this matter would be, I imagine, that no individual of the State is entitled to the exclusive right of an official's time unless he pays the rest of the State for the use of that time. If the time is the same in all cases, I cannot understand why the fees should not be the same. Either we have worked on the fee at the Supreme Court, about which I have always had some little doubt, I refer to the scale which provides for the imposition of a $1 production fee for any document from the court. Here I refer to the scale which provides for the imposition of a $1 production fee for any document from the court. Here I follow literally the South Australian provision, one is at a loss to understand why the production fee for producing a document in the Local Court, whereas in the Police Court the applicable fee is 12s. Those of us who happen to know the position realize that the two courts adjourn each other in the one building.

110. By the CHAIRMAN: Would the matter of status affect the position, or is there any difference in the status of the two courts?—The principle underlying this matter would be, I imagine, that no individual of the State is entitled to the exclusive right of an official's time unless he pays the rest of the State for the use of that time. If the time is the same in all cases, I cannot understand why the fees should not be the same. Either we have worked on the fee at the Supreme Court, about which I have always had some little doubt, I refer to the scale which provides for the imposition of a $1 production fee for any document from the court. Here I follow literally the South Australian provision, one is at a loss to understand why the production fee for producing a document in the Local Court, whereas in the Police Court the applicable fee is 12s. Those of us who happen to know the position realize that the two courts adjourn each other in the one building.

111. By Hon. L. CRAIG: You think that whatever the amount of the fee, the amount should be the same for the same service?—I think the cost to the State would be the same wherever the production was made.
112. The provision to which you have drawn attention will be confusing to the public—Yes.

113. By the CHAIRMAN: There is a maximum provided in the Police Court, and if a fee were to be charged there you would take that fee—I have been referring to the Supreme Court fee of $3.

114. But you mentioned fees of 15s., 12s., and 18s.—Those are proposed in the Bill.

115. And you suggest one fee—I cannot see any reason for differentiation.

116. I would suggest a fee of 10s.—I have no opinion on that matter. I have no suggestion to make.

117. By Mr. ABBOTT: Would you suggest that appropriate fees should be fixed by way of regulations rather than in the Bill, so that the fees could be varied from time to time without the necessity for the introduction of amending legislation?—But that is the difficulty. You already prescribe fees in Acts for various duties.

118. I realise that but I merely ask for your opinion on the point.—If you start out along those lines you should complete the work. That is my personal view.

119. The position does not connect with the company legislation would be better fixed by way of regulation than in the Act itself?—If this authority does not do it, some other authority will have to undertake the job.

120. By Mr. RODGERA: Fees are fixed under other Acts—Yes. Dealing now with Clause 416, you will notice that a penalty is provided amounting to $100. Such a penalty does not appear in the corresponding section of the South Australian Act. The general penalty section in the South Australian Act—Section 301—provides for a penalty of $20. I do not know where the proposal embodied in the Bill was taken from. I have no opinion on the matter myself; I merely point out the position. Coming now to Clauses 423 and 425, I consider the point I raise here as somewhat more important. Why require an auditor to provide a bond? We all understand the nature of the duties ordinarily performed by an auditor who is a trustee and how the financial administration of some other person or body. I can quite understand the necessity for a liquidator providing a bond, because such a man has to handle trust moneys and the practice has been for the court appointing a person as a liquidator to require him to provide a bond sufficient to cover the amount of the business with which he will be dealing. I suggest Subclause (8) of Clause 383 should be amended by striking out the words "auditor or" where those words occur in two places. Since I compiled my notes, my attention has been drawn to the amendments that have been passed by that Bill. The clause was not amended. In 1898, which actually makes provision along the lines I suggest. Apparently it was recognised there that it was necessary for any man who enters into a bond, and that such a course was not usually looked for. I do not know of any precedent for it myself. In the case of a liquidator, yes, but not of an auditor. As I say, the South Australian Act has been amended along the lines I have suggested, but I was not aware of that at the time I drafted my notes.

121. By the CHAIRMAN: I cannot see any reason for the inclusion of the reference to auditors—Clauses 423 and 427, read in conjunction with Clause 461, create some doubt as to whether applications for or cancellation of liquidators should be investigated in Chambers or not. The Bill provides the register to maintain the register and provides for the public to have access to the register to inspect in Chambers or not. The auditor was not to be appointed in open court.

122. By Mr. ABBOTT: Do you think the proceedings should be held in Chambers or in open court?—In Chambers if I can get a procedure relating to trustees under the Commonwealth Bankruptcy Act.

123. Do not you think that proceedings against a delinquent trustee should be in public?—No. But I do know of one case where proceedings were taken in open court.

124. But should not the proceedings be taken in open court?—It should be left to the option of the court to take the proceedings in Chambers or in open court, as the court thinks fit. In a minor matter the taking of the proceedings in Chambers might be more convenient and more expeditious. Such proceedings relate, generally speaking, to minor matters of administration.

125. By the CHAIRMAN: It would certainly be more economical?—Undoubtedly. I can say that in nearly all cases under the Commonwealth Bankruptcy Act, proceedings for the cancellation of the registration of a trustee are dealt with by a Judge in Chambers and dealt with a number of such cases. It was my duty as Registrar to bring the matter under the notice of the judge.

126. By Mr. ABBOTT: From your experience, do you not think that the proceedings should be open to the public, so that they might be reported?—Under the Bankruptcy Act the cancellation was gazetted, and therefore the public was notified.

127. But the reason for the cancellation was not given?—No. In some cases there was no delinquency.

128. By Hon. L. CRAIG: The cancellation might have been due to insolvency?—In one case a man was mentally. That was good reason for removing him. Clause 425 deals with power to make rules. I was wondering whether the power proposed to be conferred by this clause include authority to make a rule for such a matter as failure by a registered liquidator to maintain his bond. The bond is provided for by Clause 423, sub-clause 2. An analogous position under the Bankruptcy Act caused difficulty until it was provided for; but in that Act the power to prescribe a rule is conferred in wider terms (Section 127). I suggest that the power to make rules to cover the cancellation of a liquidator might be covered by sub-clause (e). That, however, is a minor matter.

129. By Hon. G. BESFORD: I take it your intention is that subclause (e) should be made plainer?—Yes. I suggest that in Clause 431 the word "registered" should be inserted before the word "letter" in the last line. As a registered letter is mentioned in the first part of the clause, it should be repeated in the latter part. I think it is merely an omission. With regard to Clause 430, I question whether paragraph (c) has been incorporated in Clause 226. In the New South Wales Act it appears as a subsection to Section 316, which is an analogous provision to Clause 226 in the Bill. It is suggested that the latter is the more appropriate setting. Notwithstanding that this Bill follows the South Australian Act, the New South Wales Act, in Section 316, deals with the Registrar's duty to see to the proper rendering of these returns. A deficiency would seem to me to be better provided for in that part of the Bill, rather than to have a provision disconnected and standing by itself. Clause 440 has to deal with "discovery in aid of execution." A judgment summons is directed to the direction of the person aggrieved or to recover any goods which may be in the person's possession. One might question why the limit of $50 was imposed as the amount of debt. Both under the Bill and the South Australian Act (Section 384) this limit is fixed. In both it is competent for a creditor to whom a sum exceeding $25 is due to petition for winding up. In the New South Wales and Queensland Acts this indebtedness must exceed £50. We go further and make it £25. The provisions of the Debtors Act, 1871, referred to under the Local Court Rules which are indicated here, cannot have any bearing on the amount I am speaking of because the clause in the Local Court Rules excludes liability to imprisonment. The Debtors Act aims at imprisonment in default of payment of a debt under certain circumstances. In an attempt to ascertain whether the policy of the Bill is to suggest winding up proceedings where the indebtedness of the company is substantial. That might be an answer, but it does not seem to be quite a satisfactory answer. It might be said that in order to limit the amount of the debt to £50 when a party is seeking to get discovery and ascertain whether there are means of recovery from a person who is not able to pay and may be hiding assets? Why protect him?
liability with regard to such share and stipulates that such transfer shall not relieve the transferee of any such liability. The reason for that, I suggest, would be a matter peculiarly within the knowledge of the person who effected the transfer. It might be difficult to prove anything if the items were on someone apart from the transferee. There is a precedent for the principle I am enunciating under Section 55 of the Commonwealth Insolvency Act. In the case of Ex parte Baker, the onus is cast upon the person seeking to get away with the preference to justify it. Unless some such provision is made here, it will be difficult to sheet home responsibility to a person endeavouring fraudulently to dispose of shares, to cast them on to a man or strick, and the company will never get its money from the transferee.

132. By Hon. L. Craig: You would put the onus on the transferee?—Yes.

133. The word “for” should read “for.” It means one pound per cent. In conclusion I wish to bring under the notice of the Chamber some matters that came to my knowledge only to-day. I received this morning a letter from Mr. A. T. Briskham, Registrar of Companies, Western Australia. The letter is addressed to me personally and reads as follows:

I have recently perused with great interest a summary prepared by a Perth solicitor of the new Companies Bill of Western Australia. By the way, we have not seen that summary.

I noted with a good deal of satisfaction that all the sections in the South Australian Act which were my personal draft had been included in your Bill. My main object in writing to you is to offer my assistance in order that you might be able to retain the most useful and important clauses in the Bill.

I shall be in Perth on Easter Monday as a delegate representing the professional section of our State service at the Australian Public Service Federation Conference which opens on Easter Tuesday. I understand that a select committee has been appointed to consider the Bill, and I am prepared to give any evidence which might assist you. I assisted the two select committees which sat in judgment on our legislation and consequently have had a lot of experience in combating the criticism of the various interested organisations.

If you think that I can be of assistance, might I suggest that you forward me a copy of your Bill so that I can be fully prepared. I am looking forward to meeting you, and trust that it will be of mutual advantage.

I thought that if the committee was sitting at that time—and that appears to be likely—this gentleman has had considerable experience of the legislation in South Australia on which our Bill is largely patterned, and his evidence, I imagine, would be of great utility.

The CHAIRMAN: We are grateful for his offer, which will be noted by the secretary.

136. By Hon. G. Fraser: From your evidence I gather that the committee of the Law Society is of opinion that the Bill is drawn on the right lines, subject to a few alterations suggested here to-day?

137. Mr. Hatfield: That is so.

138. By Mr. Davies: I do not think any one of us would say that our companies law was not overdue for redefinition and modernising. We know that it is antiquated.

139. Mr. Hatfield: Of course there is a big gap between some of the clauses, and those clauses are at the moment being studied and we would like to be heard on them at a later stage.

140. The CHAIRMAN: That will be arranged.

The Committee adjourned.
and asked that provision for the registration of foreign companies should be incorporated in that measure, more or less on the lines adopted in connection with local companies. Those provisions have been made in the Bill now before this committee, and members of my Chamber are satisfied that they meet requirements. There are one or two minor points arising out of that clause to which I will make reference. One point is in connection with the registration of directors. Directors of foreign companies have to be registered. A provision earlier in the Bill requires that full information concerning every director of such companies shall be given, such as the other directorships that may be held. Our members are of opinion that that is unnecessary. It might be difficult in many instances to obtain the full particulars concerning any particular director. If he was connected with an English company he might also be on the directorate of 20 or 40 other companies. It should be sufficient to supply the name and address of those directors. The South Australian Act provides that a full register of members shall be kept. We do not think that is necessary. Not much value is attached to a list of members of foreign companies, because such a list would merely be up to date and would not serve any good purpose.

133. By Hon. H. NEDDON: You raised the question of filling particular directorships other than those affecting the particular company. Do you know why that provision was introduced?—No.

134. Would it not be put in with a view to ascertain whether there were any directorships towards which the director could influence business, thus utilizing his position as a director of one company to put business in the way of another?—That might be so, but I do not think that that would have any adverse affect on the position.

135. Do you think it would be of advantage to amend the law to the effect that the directors and other persons concerned in to remain in abeyance? I think the provision was inserted so that no undue influence could be brought to bear in the way of trading. If a director is so powerful that he can influence business as between one company and another, I should say that was a domestic matter.

136. The significance of his action might not be apparent to his associate directors. The matter was not considered by us, but I do not see that that would be an objection.

137. By the CHAIRMAN: What objection have you to the registration of directors of foreign companies? Should not full publicity be given to any information appertaining to companies?—The provision would not do any harm, but we felt it might be difficult in some instances to obtain full particulars.

138. You would have no objection to the provision remaining in the Bill?—No.

139. By Hon. L. CRAIG: Take the case of Mr. W. F. Robinson. He was a director of West Australian Newspapers, Ltd. He was residing in England and was probably a director of 20 or 30 other companies. What influence he could have upon the West Australian Newspapers, Ltd., I do not know. Can you see any reason why all of Mr. Robinson's directorships should be made known?—No.

140. By Mr. ABBOTT: Should more publicity be given to such details in connection with a company than would be required in the case of a private individual?—No.

141. Then why should they be given in the case of a company?—We do not think it is necessary that such details should be given.

142. The WITNESS: The only point that has been considered is that in connection with the use of certain names such as "Royal" and "State." We agree that the provision is an excellent one, but are of opinion that some of the names should not be adopted of overcoming the difficulty concerning companies at present registered and making use of those names. I refer particularly to companies of the Royal Exchange Assurance Corporation Ltd., for instance, has been trading all over the world for more than a century and a half. We have no reason to suppose that the Bill would be retrospective. Its effect in this case would be to cause the company in question to change its name in one State.

143. You do not suggest that that would be necessary?—No. Some amendment should be made that would permit these companies to continue trading under their present name.

144. Would you favour a furniture company being called the "State" or "Royal" company?—We would not favour that. Difficulties are bound to arise if certain cases are picked out.

145. Do you not think the provision covers the case, without prejudice?—After all, it will only be necessary to obtain the consent of the Minister?—I understand so.

146. Would you have any objection to that?—As a matter of fact, now that a company is represented to you, there is much advantage in having a list of names suitable to a matter of fact, now that a company is represented to you, there is much advantage in having a list of names suitable to the Bill and to the Government of the day to select certain companies to trade as they are and to alter the names of others.

147. Don't you think it evident that you did not appear to the members of your committee that was inserted to safeguard interference with any of the companies that you have instanced, for instance, the Royal Insurance Co.?—It might. We looked at the matter from the point of view as to why it was inserted in the Bill, why it was provided that a company such as the Royal Exchange Assurance Corporation should be made to change its title.

148. By Mr. ABBOTT: Can the Chamber suggest any better authority to decide the question?—The only suggestion was that certain companies should be listed before the Act comes into force.

149. By Hon. G. FRASER: And who would list them?—I presume that would be a matter for consideration.

150. By Mr. ABBOTT: For the Minister again?—Yes, I suppose so.

151. By Hon. L. CRAIG: Yesterday it was suggested that certain foreign companies should not serve because they would not serve their shareholders. That would cover the case, I think. Have you any suggestion to make about that?—No.

152. It was suggested that this Bill should apply only to local companies?—Western Australian companies, yes.

153. And any foreign companies?—Yes.

154. By the CHAIRMAN: There is also the word "Commonwealth." The Commonwealth Government requested this Government to take steps, and it took steps last session, to prohibit the use of the words "Commonwealth" and "State" in the titles of firms?—Yes.

155. I do not know whether the Commonwealth Loan Company is a company or a firm. If it is a company, I don't know how we shall deal with it?—It is a firm, I think.

156. By Mr. ABBOTT: Did your organization consider Clause 103, which provides that in future any debenture charge granted by a company shall be subject to a priority claim for wages in the event of a receiver being appointed?—No. That clause of the Bill was not considered by my committee. In fact, there are numerous clauses of the Bill which deal with purely accountancy and legal points, and those clauses we deemed ourselves not competent to deal with, and so we left them to the accountancy institutes and to the Law Society to deal with. That was partly our idea in having a conference of these various organizations that were interested, before coming before this select committee. Our idea was that those points should be thrashed out between the different bodies interested.

157. By Hon. G. FRASER: That ought to be interesting knowledge?—Yes. We felt that it was a subject on which we required legal advice, and at this stage of proceedings my Chamber was not prepared to incur that expenditure. We did consider having our solicitors go through the whole Bill and report to us, but that would have been a costly proposition and just at the particular moment we thought the expense was not warranted.

158. By Mr. ABBOTT: But this is not a technical thing at all. It is a general principle?—I am not authorized to give an opinion on that aspect.

159. I only ask you formally?—As a matter of fact, we are of opinion that these particular clauses are matters for the accountancy institutes. Some of the points were brought up by members, but we decided to discuss them with other organizations so as to get a complete view.
176. By the CHAIRMAN: Are we to infer that later on you might come here to give further evidence?—Yes, we should do so at a future date.

177. By Mr. ABBOTT: The whole of the members of this committee are very liable to be influenced by the evidence they hear during these proceedings, irrespective of their own personal opinions. That is why I am personally anxious to find out what the various organisations think of some of what in my opinion are the important provisions of the Bill. Quite so.

178. What is your recommendation?—That the Bill should exempt those foreign companies already trading here and which are compiled with the existing Companies Act. Those companies do not register under the present Act but comply with its provisions. They lodge a power of attorney and obtain what is termed a certificate of compliance. Nevertheless such companies may not be able to register under the Act.

179. By Mr. ABBOTT: Do you consider that this provision may cause considerable difficulty in the future registration of foreign companies?—Yes, I am afraid it will.

180. I take it you consider the Government would require to have a more or less settled policy in connection with registration?—It is difficult to see how the Government could discriminate.

181. Would it be possible to insert in the measure a provision whereby a company could register and trade under its name in this State? Under the Firms Act it is not necessary that an individual should trade under his own name. Could some such provision be inserted in the Companies Bill so that any company trading in London, for instance, under one name would be entitled to trade here but not necessarily under its own name but under some other name?—At present any company by registering under the Firms Act it could comply with the provisions of the Companies Act.

182. That would not be feasible in all cases because the companies could not register?—No.

183. You suggest that they could be permitted to register and in order to enable companies to avoid difficulties they would register under the Firms Act in their names?—Yes, it would be possible but highly inconvenient. I should say a company would argue that it could not be expected to hold its goodwill under a new style.

184. By Hon. L. CRAIG: Nor would it be; an old-established company would lose by adopting that course?—Yes.

185. By Mr. ABBOTT: I am only putting it forward to you that if a company wished to adopt that course under the present Act it could not do so?—That is so.

186. Because no foreign company could be registered if its name was objected to and it might be absolutely impossible for any such company to amend its name?—Such a company could only amend its name under every jurisdiction where it operated and certainly not in one locality only.

187. I was asking for your opinion from a practical point of view?—I quite understand.

188. Now I suggest to you that you think it would be advisable that provision should be made to meet such cases so as to enable a company to trade under a different name in this State?—It would be possible to have some such provision that would enable a company to trade in this State as you indicate, but I do not think such a course would be considered practicable.

189. From your experience do you think it would be worth while having such a provision in the Bill?—I do not think it would; there would be no advantage taken to it. The clause at present is too dangerous. We desire as many as possible of the well-known foreign companies to operate under our jurisdiction and trade here.

190. By the CHAIRMAN: As the Bill stands, its provisions will not operate detrimentally regarding companies already registered in Western Australia; it is merely a matter of making application for a certificate as long as they are sure to secure the consent of the Governor.

191. Would it be highly improbable that the application of any established firm would be disallowed?—Yes, I think I mentioned that point.

192. To do otherwise would be incomprehensible, so there is not much danger in the clause as it stands. You must remember that both the State and the Commonwealth are trading?—I must confess I have not
stated the clause very deeply because I have not had much time to give consideration to the Bill. Is it not true that the consent of the Governor is required only with regard to companies that have the words "Commonwealth" and "Royal" in their names and that the prohibition will not apply to those companies whose names closely resemble those of companies already registered under the existing Act?

191. By Mr. RODOREDA: Yes—So that the Bill must be altered to allow such existing foreign companies to register with the consent of the Governor.

192. By the CHAIRMAN: Not necessarily. It would be necessary to deal with this position because, for instance, the Commonwealth trading here would be a foreign company using a foreign name as it were—Yes.

193. By the CHAIRMAN: Have we companies in this State whose names are identical?—We are bound to have some foreign companies with names which closely resemble those of local companies.

194. Are there any such companies already trading in the State?—The point has often arisen. I cannot recall a concrete case at the moment, but there are several.

195. By Hon. L. CRAIG: Do you think it advisable that the Minister should have power to prevent foreign companies already registered in this State from trading because the names of the companies may include the words "Commonwealth" or "Royal"? ! The Royal Exchange Association would be another point of the clause already deals with that point, and the Governor can consent to such companies registering.

196. Do you say they must alter them? The provision relates only to future companies, otherwise you would be taking away the discretion of the Minister?—No, the clauses apply to existing as well as future foreign companies.

197. Your recommendation is that all foreign companies taking advantage of such a clause such as "Commonwealth" should be allowed to continue to trade under that name; in your opinion, is it not advisable that the Minister should have discretion to permit that?—Yes. At the moment his discretion applies only to the use of certain words, such as "Royal".

198. Then you agree that the Minister should have the discretion?—Yes, if the clause is altered so that his discretion would apply not only to those names, but also to existing foreign companies registered in a name similar to or identical with that of an existing company. That would be reasonably satisfactory. Some companies might perhaps think the Minister might discriminate.

199. By the CHAIRMAN: You are referring to companies already trading in the State?—Yes. It is, at least, given them a let-out; but, as the clause stands at the moment, there would be an interregnum after the commencement of the Act, (c) under which the company could not trade with safety. Clause 28 is intended to apply to every company. Actually, it refers to powers which are to be implied in every memorandum of association. The result will be that instead of the present profuse forms of memoranda of association, the forms would be very much shortened, and that would be all to the good. While Clause 30 is intended to apply to all companies, the Third Schedule is headed "Implied Powers of Companies Limited by Shares." It would appear to exclude a company limited by a guarantee and an unlimited company. There are three types of companies; see Subclause 12 (b) and (c).

200. By Hon. L. CRAIG: Would you explain what a company limited by guarantee actually is?—We have had very little experience of them in this State. The definition is set out in the Bill; Subclause (b) of Clause 12.

201. In effect, it is the same as having shares which are limited?—Yes.

202. By Hon. H. SEDDON: The Big Bell company is of that type—I do not think anyone would consider listing a company limited by guarantee.

203. By Mr. ABBOTT: I have formed such a company. I consider it has certain advantages; but one member must be fully responsible for the debts and liabilities of the company, other members may be responsible for sums of any kind in a limited partnership. I have never been asked to constitute a company in that form. The point is not important, but the schedule appears to have the wrong heading. Dealing with Clause 40 and its Schedule, it is a reproduction of Section 28 of the existing Act. It reads—

Every share in a company limited by shares, excepting a non-livty company, and in any case of shares to be issued in the future and not having been otherwise determined by the memorandum or articles of incorporation by the company, shall be allotted and to be paid up in writing and filed with the Registrar at or before the issue of such shares.

This section is not reconcilable with Clause 64 of the Bill. Under Section 46, the contract has to be filed with the Registrar at or before the issue of the shares. Clause 64 does not contemplate any such procedure and has a different object. It requires, inter alia, that whenever a company makes any allotment of its shares, it shall within one month thereunder file with the Registrar, in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee (consisting of the names and addresses of all the allottees and the consideration, or where the allotment is made under a provision in the memorandum or articles, a statement to that effect identifying the particular provision and giving particulars of the consideration, etc.)—Failure to comply with this clause renders the responsible officer of the company liable to a fine, subject to a proviso which entitles the court to grant relief where it is satisfied that the omission has been done in good faith and not with fraudulent intent.

There is nothing which renders the holder of the shares liable in the event of liquidation of the company. Where Section 64 applies, it is to Section 61 way the provision would not render the shares subject to a calling liability on the liquidation of the company, but this intended result is not achieved whilst Clause 40 is retained in the new Bill. Clause 40 of the Bill and Section 29 of the existing Act reproduce in effect the provisions of Section 25 of the English Act of 1867 which had a very harsh operation on allottees of shares fully paid otherwise than for cash when inadvertently failed to comply with the section. Remedial legislation was therefore passed in various jurisdictions—but not in this State—to empower the court to grant relief in proper cases. Clause 64 of the Bill is intended to provide such relief and accordingly enacts that where shares in any company were issued prior to the commencement of the Act as fully or partly paid up for consideration other than cash, but no provision relating thereto was contained in the memorandum or articles and no contract was filed under Section 26 of the provisions of the existing Act or, (b) were allotted and taken in good faith and for a substantial consideration, then the allotment thereof were acquired by any person bona fide without notice of the omission aforesaid, the allottee or holder shall not be liable, etc. This provision is retrospective only and will not affect the overriding operation of Clause 40 as to future transactions. As to the six-year period mentioned in Clause 64, I can see no good reason for extending from the beneficial operation of the clause holders of fully paid shares allotted within six years of the commencement of the new Act. I think that Clause 40 and the provision relating to the six-year period should be deleted. Quite a lot of business men are familiar with the old Section 26. Unwary vendors, inadvertently themselves but possibly relying upon their solicitors, some of whom have always missed the effect of this section, have often found themselves liable to the liquidation of a company suddenly liable to pay the full £1 per share to the liquidator when for years they fancily imagined that the shares were fully paid up. It is very dangerous to issue fully paid up shares for a consideration other than cash unless you actually pass the cheques so that the shares are paid for in cash and the property sold paid for, unless you have the contract in writing and unless that is registered before the shares are issued. Up to date there has been no relief available to the vendor who has sold his property to the company for fully paid shares which have not been issued in the correct manner.
207. By Hon. L. CRAIG: You are talking about no liability companies—No. This applies to limited companies. A number of people have been caught in this position, and there have been serious difficulties between the accounts holders or solicitors, failed to issue fully paid up shares in the correct way. As I mentioned, the section had a very harsh operation in England, and consequently resulted in a number of years, some time after 1900. Now, however, the principle has been changed. It is recognised that it should be sufficient if in fact value was given for the shares. If value was not given the liquidator can have his argument with the shareholder and require him to pay for the shares. If value was given means that they are sold at nominal or inadequate value, but the company is required to make a return to the registrar whenever shares are issued on which cash is not actually paid.

208. What do you mean by "value"? A consideration—Yes. Actually a consideration.

209. It may not be value at all but may be a consideration?—So long as it is a consideration it does not matter whether it is adequate or not. The shares are issued either for actual cash or for a consideration other than cash, some valuable consideration. I think the draftsman probably forgot that the principle had been changed and that you could not have a section like the old Section 26 in company with new principles evidenced by Clause 64. It is very easy to remedy that by taking out Clause 29, and the only question is, is there any real good reason in denying the remedial operation of Clause 64 to those unfortunate people whose fully paid up shares were wrongly issued but within six years of the date of the Act? I see no good reason for that at all.

210. I do not know what you mean by "wrongly issued". Surely if shares in a limited company are issued as fully paid there is no liability?—That is not so under the existing Act. Under Section 26, which is identical with Clause 40 of the Bill, shares can be issued as fully paid up and a certificate issued under the seal of the company showing that they are fully paid up and the holder of the shares may have given full value for the issue of the shares otherwise than in cash—so he may have transferred land to the company—but if there has been no mention of those fully paid up shares in the memorandum and articles and no contract filed at the right time—at or before the issue of the shares—without any redress at all, the seller of the property to the company is liable when the company goes into liquidation to pay the liquidator the whole of the 20s. per share.

211. He has to prove that he paid a consideration?—No; that he did something that is a matter of red tape that he actually registered the contract at the Companies Office at the Supreme Court. The fact that he gave a consideration is quite useless to him. He is caught by Section 26 which has an extremely harsh operation on the unwary vendor.

212. By Hon. H. SEDDON: In the absence of Clause 40—Clause 64 would stand on its own feet.

213. It would be quite competent to deal with the position?—Yes, that would correspond with the new principle as evidenced by the latest Companies Acts in England and in other States. There may be the same operative in the South Australian Act, but I have not had time to read it.

214. By Mr. ABBOTT: Do you think that Clause 64 as it stands would be sufficient protection to creditors?—I think it would be for this reason: That so far as creditors are concerned they can be interested only in the shares being issued against cash or value. If, in fact, the shares turn out to have been issued for an absolutely nominal consideration, the liquidator could call for payment.

215. Without adequate value?—No. Actually that is a difficulty which would exist at the present time. Many of those shares transactions could have a consideration which would mean an adequate value, but so long as the contract were registered under Section 26, the liquidator would have no say.

216. In that case creditors would have a means of ascertaining what is the true position of the company relative to the property transferred because they could see the contract?—Yes. Clause 64 provides that a company will make a return and creditors will be able to sight it at the Companies Office.

217. This section was originally inserted in the Act to prevent a good deal of smart practice in regard to company formations where promoters and others obtained very large amounts of money, blatantly a nominal or inadequate consideration, and creditors relying on the fact that the company concerned should have or was likely to have assets representing the issued capital?

218. That was the object?—Yes.

219. Do you think that object should be done away with? You know that on occasions a property is very much over-valued when being sold to a company and the vendor has sole control?—Yes, as a rule, but sometimes the property is under-valued. I suggest that the object is not lost sight of at all. The only difference is that instead of the vendor himself being bound to see that the contract is registered to protect him, under the new principle the company itself and its directors are bound to make a proper return giving the same information, and they are liable to heavy penalties if they fail to do it.

220. A maximum penalty of £100?—Yes, and they could get relief from the court only on presenting a proper plea of inadvertence.

221. In your opinion Clause 64 is sufficient?—Well, it corresponds with the new legislation in England and in most of the other States, and I think it is only quite by accident that Section 26 has been left in the Bill.

222. You think it is sufficient?—I am sure it is, and I also consider that the present position has been crying out for remedial legislation for years.

223. By Hon. G. FRASER: Do you not think we should put something in Clause 64 to take the place of Clause 40?—I do not think you could add anything more to Clause 64. Provision is already made for a return to be lodged at the Companies Office for the information of any creditor proposing to deal with a company or of any shareholder. By paying 1s, he can find out the consideration for which the shares were issued.

224. By Mr. ABBOTT: Such a shareholder could get relief if it could be shown that he had paid adequate value?—That would be an alternative remedial measure, but the provision has not been made in that way in England.

225. By Hon. L. CRAIG: It is very seldom that such a matter is mentioned in the memorandum or articles of association—I am afraid so; many people have been caught. They have suddenly found that they had contributed to the assets of the company in order to pay the creditors. Probably they left the whole matter to a solicitor or to an accountant and he overlooked the point.

226. By Mr. ABBOTT: A company might issue bonus shares which might not be issued for cash and the shareholder might be responsible, in the event of the company going into liquidation, to pay the face value of those shares?—That is, unless a certificate has been filed in respect to the issue of those shares. Those shares would have been issued otherwise than for cash, so the company must either pay the dividend to the shareholder and get him to pay the money back to the company for the shares, or file a contract stating that the shares were issued in payment of a dividend or that the issuing of the shares cancelled the dividend. The large companies do not make mistakes; such mistakes are made only in the case of semi-public companies.

227. By Mr. RODOREDA: No other State has a section similar to Clause 64?—Not at present, because it is quite foreign to the new principle existing in all the Acts.

228. It is peculiar to Western Australia?—Yes; here we have a Bill containing a new principle, and at the same time it blocks the operation of that new principle by putting in the old section.

229. Every State has a provision similar to Clause 64?—Yes, or something like it, but none of the new Acts contains a provision like Clause 40 of this Bill. Certain things are the text of the old, and the legislation of other States has been modelled on the English Act. I think the provision has got into this Bill by accident.

230. By the CHAIRMAN: Perhaps the only reason for its inclusion is to give further protection?—But it cannot be reconciled with Clause 41 and cannot ride
Clause 64 says that a return has to be made within a month and Clause 40 provides that a contract may be set aside before the issue of the shares.

231. By Hon. L. CRAIG: I am not clear how the issue of bonus shares out of profits costs a liability on the shareholders. Bonus shares have recently been issued by the Swan Brewery out of profits!—The Swan Brewery is registered in Melbourne and would have to comply with the Victorian law in regard to the issue of bonus shares. I must assume that the Companies Act of Victoria has not a provision like Clause 40 of the Bill. If it had, there would be a case for legal argument that when a debt is owing on either side, it is not necessary to go through the idle procedure of handing the money backwards and forwards across the table, and that the mere set-off arising from the two debts, the one canceling the other, is sufficient payment for the shares. That argument is probably sound, and in nearly every case when bonus shares are issued in this State and we have a provision such as Clause 40, no one would take the risk but would always file a share contract.

232. For each shareholder—No, a contract relating to the whole of the shares. The provision in the articles usually reads that the secretary of the company may, as the agent of the various shareholders to whom the dividends are payable, sign a contract as required by Section 25 of the Companies Act.

233. And that is accepted?—It is always done in that way in Western Australia.

234. Local companies from time to time issue bonus shares out of profits and this is the first time I have heard of any such contract being required?—This is more or less done for the sake of precision. There is the argument that dividends create a debt and shareholders agree to take bonus shares and there is a set-off; but sometimes the shareholders do not agree to take the bonus shares and the directors force the shares on them. There must be an enabling clause in the articles reading that the secretary of the company can sign the contract with the various shareholders, as their agent. Why should we seek to require Clause 60 unless we know. It has a harsh operation; it is not fair. Clause 40 should come out and Clause 61 remain. I still argue that the six-year period should be deleted as well. That is reasonable and it is retrospective to the old Act.

235. By Mr. RODOREDA: Is there any reason why the six-year period should have been included?—No, except that it may be added to the nuisance of limitation. I cannot see any reason for its inclusion.

236. The CHAIRMAN: That can be investigated by the drafter.

237. The WITNESS: I will now deal with Clauses 163 and 260. Clause 163 provides that where a company is registered in behalf of the holders of debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then if the company is not at the time in course of being wound up, the debts referred to in Clause 260 (1) (a) and (b) of the Bill, as debts which in case of winding up have priority over claims of holders of debentures under any floating charge, shall be paid forthwith out of any assets coming to the hands of the receiver or person taking possession in priority to the claims of the debenture holders. The preferred debts are the wages and salaries set out in Clause 260. As at present drawn, Clause 163 is meaningless, because Clause 260 does not provide that the wages and salaries shall have priority over the debenture holder and Clause 263 merely invalidates debentures in certain cases. It was apparently intended to follow the plan of the New South Wales Act in which the section corresponding with Clause 230 of the Bill does provide for the priority referred to. The intended priority is only to apply to debentures secured by a floating charge, and will provide that the company has the right to give effect to the intention referred to, the clauses will be retrospective in operation and will therefore apply to the existing floating charge debentures of which a great number have been given by local companies to their bankers. It seems unreasonable that this type of security should be postponed to certain claims which would have no priority over other securities such as bills of sale and mortgages of land. I think that Clause 163 should be deleted.

238. By Hon. L. CRAIG: Does the English Act provide for the priority also?—I think so. The priority is only in regard to debentures and mortgages. That is probably all right in the circumstances, but in this State there exists what has become a common practice, and an unusual practice. Most banks, when taking security from a company by putting the company to the expense of specific mortgages over land and chattels, are prepared to take one security in the form of a debenture which is a floating charge. They have actually taken those securities in lieu of the normal mortgages against which there would be no priorities. So it seems to me, particularly as the clause is retrospective, we should not adopt the principle here.

239. By Mr. ABBOTT: Suppose it was so altered not to make it retrospective?—Then I would not mind; the banks would take mortgages and bills of sale in lieu of debentures.

240. By Hon. L. CRAIG: In your opinion is there no advantage in the clause? Do you suggest that people taking security would take a different form of security and therefore there would be no advantage in the clause?

241. By the CHAIRMAN: Do you not think it is reasonable that salaries and wages should have priority?

242. That is a principle which, if conceded to be reasonable, should apply to all securities.

243. Then there is no reason why it should not be so?—The only question is whether you are blocking the market for loans. One can argue that a financial institution which grants current account advances and works on a programme of expenditure from year to year might probably be expected to find the wages. Suppose it is a bank. A bank would watch the position of the company but perhaps not right up to the point of liquidation. Why should the bank, which may have determined the course of dealings with the company some time prior to liquidation proceedings, have to pay the wages which are due for the month before the liquidation?

244. It is reasonable to suppose that those who have been working for the company should get to that which they are entitled?—If it is right in principle, let the directors pay as is now provided in regard to insolvent companies. It is the directors who are responsible for carrying on that company several weeks longer than is safe. They are the only people who control the position.

245. Do you definitely consider that it should be a principle that wages and salaries should have priority?—I am interested now only in avoiding anomalies.

246. By Hon. H. SEDDON: Is not the purpose of Clause 163 to bring a company, in which a receiver has been appointed, on all fours with a company that has been wound up?—Yes.

247. By Mr. ABBOTT: If a bank exercised supervision over a company, would it not have put in a counterclaim before bankruptcy occurred? A bank might be willing to sit down and await events, knowing that its security was there.

248. By Mr. ABBOTT: The bank might not know what was occurring?—No. According to the Bill, however, the priority would not be there if a company went into liquidation.

249. By Mr. ABBOTT: If it were adopted, the proper method would be to put it into a separate measure and make it apply to all securities?—If it were adopted and it should apply to securities from private individuals.

250. By Hon. A. THOMSON: Have not wages a prior claim over other liabilities at present?—In the case of bankruptcy, yes, but not as against a mort-
gage who has lent his money, and who is not in control over the owners of the business who are carrying it on to a point where its funds are exhausted and it is unable to pay anyone.

251. By Mr. ABBOTT: Should wages paid in such instances take priority over the securities of the bank?—If the mortgagee had control all along the line, and could say at what point a company or individual must go into liquidation, that would be all right, but the mortgagee who may have lent £10,000 to the business on a fixed mortgage would not have that control.

252. By Hon. H. SEDDON: Would the debenture-holders be protected if the directors were made responsible for wages in the event of the company falling into an unsound position?—Already in the Bill such a principle is adopted in respect of no liability companies. One clause says that the directors of a no liability company shall be held personally responsible for four weeks' wages in the event of liquidation. Some witnesses have said that that would probably be too much. I do not suggest it is one that should be adopted in regard to any company. If someone is to be held liable for the wages, that should be the directors who were the people in control.

253. Would the position be met by the insertion of a proviso in the debenture to the effect that the directors shall be held responsible for any wages due?—That would have to go into the measure. They would not be liable for the wages unless they agreed in writing to meet such a liability.

254. By Hon. L. CRAIG: You claim that if the liability has to be met in the case of a no liability company, it should be met in the case of any type of company?—I do not say that. I mentioned what I did to illustrate the point that the mortgagee should not be called upon to meet that liability, but rather the directors were the people in control.

255. By Mr. RODORDA: Then Clause 103 would not serve any real purpose?—If it is not to apply to all securities, it could be voided.

256. By the CHAIRMAN: It would apply only in the case of bankruptcy?—If the principle were to be established, it is difficult to see why it should apply only in cases of bankruptcy. The clause is intended to apply as if the company was in liquidation, but is not.

257. By Hon. H. SEDDON: Suppose the clause was amended to provide that in cases where a debenture exists and receivership has been established, the directors would be held responsible for wages due?—I hardly think that would meet the case, and doubt whether such a principle could be adopted in so wholesale a fashion. In no other jurisdiction does the Companies Act make the directors personally liable for wages, and I do not think you could get that passed into law here.

258. By Hon. L. CRAIG: Is not this clause on all fours with the relative section in the English Act?—I have not looked up the English Act, but as it is in the New South Wales Act, it will probably appear in other Acts. In the New South Wales legislation there is provision for priority, but there is an obvious error here. No particularity is given by later clauses, so that Clause 103 cannot mean anything.

259. By Mr. ABBOTT: Do you suggest that in the event of the clause being retained, the directors should be made responsible for wages?—I think that is wrong in principle, and do not suggest it.

260. By the CHAIRMAN: Even in cases of bankruptcy it does not apply against mortgages?—No. All kinds of securities would be immune except the one selected security. We will deal with Clause 161 later. Section 119. These relate to registering mortgages, charges, etc. In their present form, the clauses would bring about the following result:

(1) A pre-existing bill of sale which should have been, but was not, registered under the Bills of Sale Act will be validated by the Companies Act, and will not become void against the liquidator or creditors even though it is not registered under the Companies Act.

My reason for this is—

Clause 114 provides that no charge requiring to be registered under Part III. of the Act shall require to be filed or registered or be subject to be subject to the Bills of Sale Act. Clause 119 requires a pre-existing bill of sale to be registered under the Companies Act. Clause 105 applies only to bills of sale executed after the commencement of the Act, until 1st January 1927. The liquidator would be in possession of existing bills of sale against the liquidator or creditors.

The Bills of Sale Act in this State differs considerably from Bills of Sale Acts in other jurisdictions. Although it is fairly full of traps for the unwary, amongst solicitors the impression is that the Act has worked favourably in the interests both of lenders and of receivers. We would not like to see the principle of the Act adopted in regard to securities over chattels from companies.

It happens that because of the form of our Bills of Sale Act it would not be easy to prepare proper transitional provisions when it comes to providing for an entirely different registry, where bills of sale by companies are to be registered.

261. So the first result is that a bill of sale already given by a company, that is to say a pre-existing bill of sale, which according to the Bills of Sale Act would not be void against the company and its creditors, that is to be immediately validated by this Bill, even though not registered under the Act. That of course is ridiculous.

262. By the CHAIRMAN: That is to say, it will have a prior right effect?—It would establish a pre-existing unregistered bill of sale. I think it would scarcely be convenient for me to take these paragraphs one at a time. Would you permit me to read them through, and after that to deal with them generally?

263. That will be the better course?—Thank you.

(2) A pre-existing bill of sale duly registered under the Bills of Sale Act will be validated as well even though it would, but for the Companies Act, have been invalidated against creditors under the Bills of Sale Act for want of proper form or mode of execution.

Reason: Same as for (1) above.

(3) Grantors of pre-existing bills of sale will not be under obligation for their own protection to register their securities under the Companies Act.

Reason: Section 119, dealing with pre-existing charges, provides that the failure of a company to comply with the section shall not prejudice any rights which any person in whose favour the charge was created may have thereunder.

(4) Even future bills of sale, given by companies after the Bill becomes law, may be held against bona fide purchasers for value.

Reason: It is doubtful whether any bona fide purchaser would be a "creditor" of the company, and if it not, then the bill of sale would not be void against him, there being no provision in the Bill similar to Section 27 of the Bills of Sale Act.

That section of the Bills of Sale Act does protect a purchaser of chattels against the rights of a prior unregistered grantee of a bill of sale. In other words—and this is quite right—if a man wants to buy the company's goods and goes to the Bills of Sale Office and finds there is no registration, he should be able to assume that the company owns the goods and that he will get the title to them if he pays for them.

(5) And pre-existing bills of sale, though not registered under either Act, or registered under the Bills of Sale Act and not under the Companies Act, will be valid against the grantee of a bill of sale and subsequent bona fide purchasers for value.

Reason: For some reasons as are given under (1) and (4) above.

(6) It will therefore be necessary for persons proposing to acquire or lend money on the security of a company's chattels to make double searches under the Companies Act and the Bills of Sale Act.

Already searching under the present Bills of Sale Act takes long enough; and it follows, from what I have said, that in my view at least, the double search would not even protect people.
(7) All the stringent provisions of the Bills of Sale Act as to describing the parties, stating true consideration, rate of interest, situation of chattels, and where the mortgagor, grantor, or secured party would be required to keep any record of the security, or to register, creditors' right to caveat, and other well known safeguards to creditors will not apply to bills of sale given by companies after the commencement of the Act. Thus there would be one law for individuals and another for companies in regard to bills of sale.

(8) Another reason why double searching will be unnecessary is that the Companies Act is silent as to bills of sale (such as leases of chattels and hire purchase agreements) which will still have to be registered under the Bills of Sale Act.

(9) Bailment agreements would still have to be registered under the Bills of Sale Act and would not require to be registered under the Companies Act.

(10) Section 120 will not permit of registration of partial satisfaction of bills of sale either as regards portion of the money secured or part of the chattels the subject of the security.

That is important in a way. I just draw attention to it. It should be altered.

(11) An unregistered bill of sale from a company executed after the commencement of the Act will be quite useless as a security; but under the Bills of Sale Act the grantee of an unregistered security from a company is protected if he goes into possession more than three months before the liquidation proceedings. Even though the grantee of a bill of sale executed by a company after the commencement of the Act went into possession, sold the mortgaged chattels and paid off the then existing creditors of the company, he would still be accountable to the company's liquidator and future creditors at whenever time the liquidation might take place.

That cannot be justified.

(12) Nearly all the important provisions of the Bills of Sale Act will have no application either to pre-existing or future bills of sale given by companies, and it is possible that a court would hold that none of the provisions of the Bills of Sale Act would be applicable, as being excluded directly and by inference. It will therefore be questionable whether companies will be able to give proper legal security over after-acquired chattels, causing considerable difficulties should not be experienced in New South Wales.

It is essential to the life of a business community, that a company should be able to do that. As to the amendments necessary to overcome these objections, there are, broadly speaking, two alternatives:

(1) With regard to securities over chattels, and also bailment agreements, to amend the sections so as to introduce all the provisions of the Bills of Sale Act, and to provide that as pre-existing bills of sale fall due for renewal under the Bills of Sale Act, they shall in lieu of being renewed under that Act be registered under the Companies Act, and place the obligation of so registering on the grantors and bailees, but at the expense of the grantees and bailees.

The object of making the lender of the money register his security is obvious. It will then be registered. If he does not register, it would be void against creditors.

If anyone dealing with the company in future would know that if he did not find any registration, he would be all right. Actually, under that plan it would be three years before one would be able to avoid double searching, because I am suggesting that we should only ask existing grantees to re-register under the Companies Act when their securities fall due for renewal under the Bills of Sale Act, which is every three years.

The second alternative is—

(2) To exude bills of sale from the charges requiring registration under the Companies Act so that they will continue to be registered and renewed under the Bills of Sale Act; or preferably to delete all sections of the Bill relating to filing mortgages and charges for registration. If the second alternative is adopted, the only securities left in Section 104 would be a mortgage on unclaimed share capital, which would rarely stand alone: there is usually a bill of sale with it; a mortgage on a chattel, but not paid, would be a matter of the same thing; a mortgage and a mortgage or charge on goodwill, on a patent or license under a patent, on a trade mark, or on a copyright, or on a license under copyright.

264. Mr. ABBOTT: All those things are set out on page 78 of the Bill?—Yes.

If the obvious mistakes were corrected, even then the result would still lead to considerable confusion unless all the provisions of the Bills of Sale Act were brought into the Companies Act, or the Companies Act were made not to affect documents that should be governed by the Bills of Sale Act. There can be no justification for one system of law in regard to chattel securities given by companies and a different system applying to those given by individuals. For instance, it would be believed by the Act that creditors who could stop a bill of sale being given by a private individual by executing, could not do the same thing if the individual happened to be a company. Then again the transitional provisions with regard to the two Acts would have to be carefully thought out so that the public would not be inconvenience in having two registries to contend with, and even then to find that unregistered prior securities could be valid against a subsequent bona fide bill of sale to secure money lent to a company. I do not know whether it would be worthwhile for me to expand these reasons. The position is difficult to understand. To a layman this is an extremely difficult branch of the law, which is too difficult for lawyers themselves to follow.

265. By Hon. L. CRAIG: And it might only prove confusing to us?—Yes.

266. By the CHAIRMAN: But your further extended exposition might give a general practitioner a wrong idea. Does your professional draftsmanship?—Yes, but the reasons I have already given will be sufficient.

267. By Hon. L. CRAIG: You say, in effect, that we are duplicating the Bills of Sale Act, and are therefore interfering with it?—Except for the position of the public regarding double searches, I would say that you are establishing a different system regarding companies which can give bills of sale unfettered by existing legislation requiring certain safeguards for creditors, which are laid down in the Bills of Sale Act, and that will not apply to other individuals. That cannot be justified.

268. There is no reason why companies should be dealt with differently from individuals?—None whatever. We shall never know where we stand if two entirely different systems are set up. In all sorts of ways the position would fail to give adequate protection to people dealing with companies.

269. The Bills of Sale Act is doing that?—Yes, and it is a very efficient Act, a much better one than those existing in other States.

270. By Mr. ABBOTT: Would I be correct in suggesting that when somewhat similar provisions were inserted in the English Act, their Bills of Sale Act was really not suitable or effective?—It was very different from our Bills of Sale Act. I had a look at the transitional provisions in the English Act, and without having compared them with the English Bills of Sale Act, it was obvious that some of the difficulties would not have been met. The New South Wales Act of 1818 contains transitional provisions; their present Act is dated 1936. The difficulties would not have been fully experienced in New South Wales because their Bills of Sale Act does not provide for creditors executing, but other difficulties should have arisen in that State.

271. In your personal opinion, would it be a good idea to have different methods of registration in respect of the securities of a company and those of an individual, or do you think one register would be more satisfactory?—There is one difficulty in having in which all securities from companies should be registered. In the first place the Bills of Sale Act only applies to securities over chattels.

272. That could be amended?—Yes. That is sufficient in a way but what you would contemplate when you search under the Bills of Sale Act to secure necessary information, and make a further search at the Titles Office to find what encumbrances the individual has granted over his land. This is a very natural thing you know exactly what you require to ascertain, but you would not then know, for instance, if the individual's interest under his mother's will had been mortgaged because you had to think in the meantime. In respect to a company, it would have to register various types of securities, but except for securities over chattels the remaining mortgages or charges do not matter.
because you seldom see them. A company could give other types of securities that would be effective though not registered.

273. Does that not mean that if the Bills of Sale Act were amended to make a charge on chattels and on goodwill registrable under that Act, the position would be met and would not that simplify the position and be preferable to having a separate system for companies?—No. Mr. ABBOTT: That is my conception for one consideration under the proposed Companies Act registration system would be much simpler than searching in the Bills of Sale registry on account of its inconvenient system.

274. By Hon. G. FRASER: Would you advocate a clause similar to that in the Voluntary Winding-up—All legal provisions would receive an alteration in the existing system. However competent a clerk may be, it is quite easy to miss an entry when a search is made under the existing system. We very often miss bills of sale under existing circumstances. A card system would be a great improvement.

275. By Mr. ABBOTT: In my opinion, no advantage is to be obtained by having a system of registration for companies and another for individuals, although there are many avenues that provide similar protection?—Yes.

276. You agree with that opinion?—Yes. The Bills of Sale Act is a very efficient measure and if other forms of security given by companies are to be registrable under those provisions, you will have all the protection that legislation could give.

277. And the system would be much simpler?—Yes.

278. By Hon. H. BIBBY: In that case, it would involve a double search?—No; the search would be made under the Bills of Sale Act only, at present. There would be no registration under the Companies Act at all.

279. By Hon. L. CRAIG: In effect, the companies would be treated as individuals?—Yes, as it is now.

280. The system is working very well indeed?—Yes.

281. By Mr. RODOR: The clauses of the Bill with which you are now dealing are new?—Quite new.

282. By Hon. G. FRASER: They are not embodied in any other Act?—They are not in our existing Act. The English Act provides for registration and so does the New South Wales Act and, I presume, the South Australian Act, but they have not got the same Bills of Sale Act. We certainly want to confine all the registrations to one registry, if possible.

283. Mr. ABBOTT: That is my suggestion.

284. By the CHAIRMAN: If that course were adopted, would it not cause a considerable expense to the public? Persons desiring to make a search under the Companies Act would have to go to the Bills of Sale Office?—They have been doing so for years. But if such income which do not relate to chattels are registered under the Bills of Sale Act, then I agree that some people would not think of searching for such charges under the Bills of Sale Act.

285. By Hon. G. FRASER: But if they went to the Companies Office to make such a search they would be told to go to the Bills of Sale Office?—Yes. Personally, I do not consider it necessary to have a registry for any charges given by companies other than securities over chattels.

286. By Mr. ABBOTT: From your practical experience, you do not consider Clause 214, Subclauses (f) and (g) to be of importance?—They are of no importance at all.

287. The law does not require amending in that direction?—Not at all. The Bills of Sale Act as it stands can operate.

288. By Hon. L. CRAIG: That would save considerable expense. These amendments would necessitate the enlargement of the Companies Office?—Yes. Clause 214 is consistent with Clause 24 in regard to the number of members who can demand a poll for the passing of a special resolution. The Chairman will declare the result unless he is asked by five members to conduct a poll. Later on, in the provision relating to the passing of special resolutions, the number of members to demand a poll is fixed by the articles. There is an inconsistency, I suggest that Clause 24 should be amended to conform to the other section. The articles should be allowed to operate so as to permit of the required number of shareholders calling for a poll. Clause 209 provides that where a company is being wound up by the court, any execution, etc., put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents and purposes, but the corresponding section applies to any kind of winding-up, but in the Bill the clause will only apply to winding-up by the court and under the supervision of the court; the Clause 298, I think Clause 298 would have a general application to all kinds of winding-up. This can be treated merely as a suggestion to the draftsman. I think a mistake has been made, and I have no hesitation that it should do so. Clause 298 provides that where the company is insolvent the same rules shall prevail and be observed with regard to (I am here omitting certain words) the priorities of debts and liabilities as are in force for the time being under the law of bankruptcy, etc. But Clause 298 provides for certain wages and salaries to be paid in priority to all other debts, the question whether Clause 298 is exhaustive on to priorities is or is still capable of letting in the other bankruptcy priorities under Clause 298 is left quite open, and on the authorities it is difficult to see what the answer to this question. The better opinion would be that Clause 298 is not exhaustive and I think the clause could be amended to conform to the principles of bankruptcy legislation in this country. It is merely a suggestion to the draftsman. The practitioner does not know the answer to that question and the Act should not be ambiguous.

289. By Mr. ABBOTT: Your suggestion is that it would be better to make the priorities consistent with the Bankruptcy Act?—Yes.

290. By Hon. L. CRAIG: The Bankruptcy Act provides for certain priorities and Clause 298 does the same?—But there is no provision in the Bankruptcy Act. The question is whether they are to be considered as priorities after the wages have been paid.

291. By Mr. ABBOTT: Can you name some of them?—Rents and rates and matters of that kind.

292. Your suggestion is that the same priorities should apply in a liquidation as apply in a bankruptcy?—Yes. I do not see any harm in the principle, as long as the provisions are made clear, because we have to advise them. Clause 291 provides that Clauses 265 and 296, requiring a foreign company to establish a local share register, shall only apply to companies engaged in, or authorized to engage in, the business of mining, or the acquiring, cutting or selling of indigenous timber, or the buying or selling of land, in this State. This clause appears to be wide enough to cover all foreign companies which are authorized by its memorandum to engage in one or more of such businesses, but whose principal object is quite different. Most companies at present would have power to buy and sell real estate, and the section should be amended so as to apply only to foreign companies actually carrying on one or more of the businesses mentioned therein. There appears to be a mistake in the drafting, to which I would draw attention. I do not understand why only Clauses 265 and 296 are referred to. Clauses 267 to 276 also deal with local registers. I know that the existing Act, as amended in 1904, does require certain foreign companies to open local share registers, but it seems that the Bill might easily make all foreign companies liable to establish registers, which I do not think is intended.

293. By Mr. ABBOTT: Do you not think it would be a wise provision to compel all foreign companies to keep registers here?—It might, from the point of view of the Government, because they would be stamp duty on transfers and it would probably affect debtors a little. But there are many foreign companies that have no shareholders here and never will have. It is not their purpose to sell shares in this State, and they would have to open a register that would be quite useless.

294. By the CHAIRMAN: The Law Society has suggested that a register should be opened?—By every company?

295. Yes?—I am afraid I cannot subscribe to that viewpoint at all. Nineteen out of twenty companies would open a register, and that is all there would be to it.
298. The benefit would not have to pay duty in the parent State—I cannot say offhand. What is 299. I was told that by a shareholder this morning. I refer to several companies with share registers 300. But with no names on them. The whole thing is 301. It is only asking them to keep a register. I agree it is not much to ask them to do. 302. That is a feature. I think that is a feature. 

303. CRAIG: Why are those schemes invalid?—On account of infringing what is called the 304. probate and there is no local register and shares are held in the 305. It would be of great advantage to shareholders here—Yes. But where there are no local shareholders the disadvantage would be a little more red tape for companies to comply with. 306. Very little—not much, as you say. I know a number of foreign companies that do not want to do it. 307. Which might or might not be used—Yes. 308. There is no local register and shares are held in the company, probate has to be sealed, sent to England and so on; whereas if there were a local register the shareholder could do certain things himself—It would be an advantage to those shareholders who live in this State. I cannot justify any argument against the suggestion. 309. It would be no hardship to a company but would be of great benefit to shareholders here—Yes. But where there are no local shareholders the disadvantage would be a little more red tape for companies to comply with. 310. The Bill proposes to recognise either a proprietary company or a private company, the restrictions regarding the constitution of each being slightly different, one being an easier set of restrictions than the other, but each type of private company is to have precisely the same advantages over a public company. Therefore one would assume that when the question of converting an existing company into one or other form of private company is considered, that form of private company with the fewer restrictions would be adopted and that is the private company as distinct from the proprietary company. The main restriction on the activities of a private company is that it shall not offer its shares for public subscription. In the case of a private company, its members must be limited to 50 and there must be some form of restriction in the articles against the transfer of shares. 311. But the number could be increased by the number of employees—that is so. I see no reason for the distinction. The English Act relates to a private company and calls it a private company; the New South Wales Act calls it a proprietary company. In the case of a private company, its members must be limited to 50 and there must be some form of restriction in the articles against the transfer of shares.
it does not go to the public for the money. In every other respect, it could be a public company. So far as I can see, it could be listed on the Stock Exchange once the shares have been privately issued. The shares could be sold on the Stock Exchange probably, because there are no restrictions on transfers.

320. By the Hon. L. CRAIG: But subject to its conditions—that is to say, the main condition is that there must be no restrictions on transfers. I imagine that it would be possible to have a private company that would comply with Stock Exchange conditions, and all it must not do would be to go to the public for money. Under this Bill a private company is not subject to all the restrictions usually required of the private companies. The point is that since the advantages are the same, I cannot see the advantage of a proprietary company over a private company, except as regards the inclusion of the word "Proprietary" in the name.

321. By the CHAIRMAN: The South Australian Act provides for both private and proprietary companies. I have not had time to read the South Australian Act, but the recognition of the two types of private company seems to me to be unnecessary.

322. Do you not think it would be helpful to the public to have the two types?—Yes, but it seems unnecessary to distinguish as to restrictions.

323. By Hon. G. FRASER: Your suggestion is that proprietary be deleted and private stand—Yes; a company could be registered as a private company and be called a proprietary company. We would then have to deal with either private companies or public companies.

324. By the CHAIRMAN: Probably the distinction would null one class as against the other classes—Possibly.

325. It might be more convenient to form a proprietary company for a certain section with these restrictions than it would be to take advantage of the provisions relating to a private company. I can appreciate that, but when you read the provisions relating to the two types of private company and find that one appears to be subject to greater restrictions than the other, you would then expect to find in either part of the Act some advantage accruing to that type, but no such advantage is provided.

326. By Mr. ABBOTT: You are really suggesting that a private company has all the advantages of a proprietary company but not so many disadvantages?—That is so.

327. By Hon. L. CRAIG: A proprietary company is not subject to a compulsory audit—All the advantages which the type of private company is offered are enjoyed alike by proprietary and private companies.

328. In effect, you cannot see any differences between the two?—No, except in form, and the fact that one has to restrict its activities to a greater degree than does the other.

329. You suggest that the word "private" be eliminated?—I think we should stick to the English practice, either the company is private or it is not. You can still call it "Something Proprietary Limited" and register it as a private company.

330. By the CHAIRMAN: Permitting the sections to remain, as they are would not have any detrimental effect. It would not do any harm except that people would puzzle themselves trying to find the distinction in advantages.

331. By Mr. ABBOTT: The result would be confusing, particularly to laymen?—To anybody.

332. By the CHAIRMAN: But there would be a difference?—It may be there, but I have not been able to find it.

333. Proprietary companies do not need to have directors. Not two directors as a public company must have, nor is it necessary to file its balance sheet and various things of that kind. It has certain advantages in regard to prospectuses; it files a statement instead of a prospectus.

334. By Mr. ABBOTT: Do you think that the proposed section, which is not to be placed on public companies are at advantage, or do you believe they will cause unnecessary trouble and worry?—I do not know that I would dare to criticize modern company legislation adopted in England and elsewhere because it must be for the general good of the community.

335. By the CHAIRMAN: In other words, you welcome the proposed new legislation?—I do; it is long overdue.

ALBERT HAROLD TELFER, Under Secretary for Mines, examined:

336. By the CHAIRMAN: Will you please read the statement you have prepared?—Yes.

As you will appreciate my interest in the Company Bill is concerned mainly with the provisions applicable to companies which may be formed for the purpose of engaging in mining operations, and I have confined my comments accordingly.

The history of mining in Western Australia records numerous "boom" periods. These have generally occurred as a result of the discovery of rich new deposits, or, in recent years, of periodic rises in the price of gold. There is no reason to suppose that similar "boom" periods will not again occur in the future.

During these times companies have been floated at great speed in order to catch the market at its height and undoubtedly in many cases the state of the market has proved a greater factor influencing the private company's possibilities of the mining properties to be worked.

In the case of new finds of any magnitude, the sound practice is for miles around has usually been prospected out, and companies have been floated in regard to holdings or options or holdings situated considerable distances from the actual find. Often prior to the flotation little or no work has been done on the holdings beyond reports as to the prospects being obtained from reputed mining experts for inclusion in the prospectuses.

The chances of success with companies of this nature can only be very remote and upon failure there is generally a certain amount of criticism levelled at the Government for not having provided some greater protection for investors.

There is also criticism from the legitimate sections of the industry, as such flotations lead to a quick collapse from which the industry takes a long while to recover. Undoubtedly the public is entitled to more information and more protection than is supplied at present. At the same time, it must be recognised that mining has always been a risky business for investors and always will be, for ore deposition is a natural process and subject to all the vagaries that characterise other natural forces, such as the weather.

The industry owes quite a lot to the speculative spirit of investors, as this spirit has often been responsible for providing the funds for the successful investigation of areas which would not otherwise have attracted attention.

Summing up the position, therefore, the underlying purpose of new legislation should be not to scare investors but to afford reasonable protection against the schemes of unscrupulous and fraudulent promoters.

This protection can best be given by providing for fuller information in prospectuses to prevent the publication of false or misleading statements. An attempt should be made to ensure that all the information which promoters possessed is contained in the prospectus, as it is to the investor a document of primary importance.

Clauses 54 to 60 are based on these lines but might be strengthened somewhat by the addition of subclauses to Clause 55 on the following lines:

1. Where any statement made by the prospectus or contained in what purports to be a copy of or extract from a report, memorandum or valuation of an expert is included in the prospectus, there shall be set forth the date on which the statement, report, memorandum or valuation was made, and whether the same was prepared by an expert for the purpose of the same being incorporated in
the prospectus, and also what are the qualifications of the expert as such making such statement, report, memorandum or valuation.

(2) A certificate from the Department of Mines containing full details of any mining title acquired or to be acquired under option shall be included.

337. By Hon. L. CRAIG: With regard to the proposed new clause, just read by you, an expert who would be asked to make a report would not be informed whether the report was going to be included in the prospectus—The prospectus should show whether the company had asked for that report.

338. The company may say that the report was so good that it was decided to include it in the prospectus. Yet so often have we provided new clause just proposed—That is so.

339. You say that the date on the report would show to the prospective shareholder whether the report was prepared for the prospectus or not. The date would indicate that. It seems to me that the position would not be improved very much. However the real purport is whether or not the report was made to be inserted in the prospectus?—That is so.

340. By Hon. H. SEDDON: Is it not a fact that, during boom periods there are numbers of such reports attached to prospectuses?—Usually.

341. Is it not so that very often persons who pose as experts have very poor qualifications?—That is so.

342. Your purpose then is to make it plain to the public just what type of man has prepared the report?—Yes, whether the man has qualifications to write such a report.

343. Have instances come under your notice of variations in the remuneration paid to experts according to the nature of the reports given?—There are considerable variations in the remunerations.

344. An expert may be asked to prepare a report on a mining property. If that report is not altogether looked into by the expert for the fee, there are instances of the expert receiving a much larger remuneration when the report is laudatory—That would not apply to a qualified man. He would receive a set fee whatever happened. In mining booms the qualifications of many of these so-called experts are unknown, and companies are apt to accept any reports that are made.

345. Your suggestion would overcome that danger—It should put a stop to reports being made by unqualified persons.

346. Then you suggest the issue of a certificate by the Mines Department. Have you heard of cases where a company has been floated without its title to the property?—Quite often. There are many ways in which mining companies can be floated. Under the Mining Act there are many different titles of varying importance and value. Quite often a company that is not altogether bonum fide will take the cheapest and quickest title it can get, although such a title will give it very little right later on to obtain a better title.

347. The certificate you propose would be a guarantee that no doubt would exist with regard to the title?—It would give the public full information as to the class of title, and whether the company had a statutory right to obtain a first title later on. We have temporary reserves and prospecting areas which are a poor form of title and give these companies very little prospect of obtaining anything better. On our certificate we would show the class of title that has been given. The best class of title is that to a gold mining lease.

348. Very frequently disputes arise over pegging. When a lease has been granted there can be no question as to the right of ownership?—That is so. Such a lease would run for 21 years and to that extent the company would have a lengthy title.

349. Clause 55 sets out certain conditions that have to be published in the prospectus. Do you think that would provide very much better safeguards than the existing provision?—Considerably more safeguards.

350. You think that should be applied to all no-liability companies?—Yes.

351. What would be the position of a company floated in another State? It has been pointed out that our conditions?—There would be a difference there. I think most of the other States have amended their Acts, so that people would be educated up to these conditions already. A foreign company does not have to comply with the full provisions of Clause 55.

352. Can you make any suggestions on that point?—Many companies are floated in Adelaide—Most of the mining companies are floated in the other States.

353. We want to safeguard our people here, for frequently they are the heaviest subscribers—it would be a good thing if this clause could be applied to this company, irrespective of whether it is floated in this State or not, provided it operated here. Most of the no-liability companies are floated in Adelaide.

354. By Hon. G. FRASER: Clause 55 is already in the South Australian Act?—Yes, and in that of New South Wales.

355. By the CHAIRMAN: Would it be unreasonable that experts should make known their qualifications?—No. Many suggestions have been made to the department on this subject, one being that the experts should be members of the Institute of Mining and Metallurgy. I do not think it would be possible to provide for any specific qualifications. Not all experts belong to the Institute. We have fully qualified geologists, and only two belong to the Institute, though at present many more are getting in touch with the Institute, and many of them are apt to accept the right class of director would receive a much larger remuneration when the report is laudatory. That would probably mean a certain amount of delay.

356. By Hon. H. SEDDON: Clause 190 deals with recovery of wages. A suggestion has been made that it might be sound policy also to include under that clause responsibility by directors for trading accounts. What has been your department's experience regarding mining companies operating in Western Australia?—We have had many complaints regarding no liability companies, and mainly in regard to wages. That has been the greatest trouble, and we have been able to get judgments, and have been recently able to recover wages. We have also had complaints from local traders. Under the Mining Act, these mining companies have to be worked on every working day; otherwise they are subject to forfeiture. Of course, the companies have to keep the men employed and to keep certain quantities of mining stores. It has been the department's experience that both the wages men and local storekeepers have been unpaid.

357. The effect of making directors responsible would tend to more effective control of the manager, who is often responsible for the incurring of these debts?—Yes. The directors would see to it. Most of those shows are in isolated places, where it is necessary to deal with the local trader.

358. By Mr. ABBOTT: But is not all mining of a speculative nature, so that no matter how much care is taken, no reasonable certainty can be given that the result of certain works will be profitable?—It is always uncertain.

359. And is it not a fact that directors may be doing some development work having taken every reasonable precaution to ensure that the result is likely to be profitable, and yet the result has not proved so?—Yes.

360. Would not the average monthly wages for a small mine be about £1,650?—A small mine could have considerably less than that amount per month, I should think.

361. Do you think the right class of director would take that responsibility on? Don't you think such a provision would be driving to a bad type of director who does not trouble—Directors would certainly have
to think about it before they went into it; but our experience has been that the workmen have been engaged and gone into the mine and finally been left without wages.

391. By Mr. ABBOTT: Do you think any such provision should apply to all companies engaged in mining irrespective of whether the concern is a liability, a no-liability or a limited liability company? You know that some of the last-mentioned companies have started with capital amounting to £5?—I certainly think the wages men should be protected. We have always found that the no-liability companies have been the worst offenders.

392. By Hon. L. CRAIG: What about trade debts? Should they be treated like trade debts at what different position. The directors would know what the wages would amount to, but they might not have knowledge of the trade debts incurred by the manager.

393. By Hon. H. SEDDON: Would they not obtain that knowledge when considering if they could meet their bills?—They probably would.

394. By Hon. G. FRASER: Any such provision would make the directors more careful—it should. I think most of the firms in the goldmining districts have provided to some extent for that phase, and I think they have a pretty good idea of what they are faced with.

395. By Hon. H. SEDDON: There are many instances in which those concerned have made bad debts?—That is so.

396. By Mr. ABBOTT: Would they not obtain that knowledge when considering if they could meet their bills?—They probably would.

397. By the CHAIRMAN: You consider that the provision regarding wages should apply to foreign companies as well?—Yes. Dealing with other matters, I also suggest that in the definition of "expert" provision should be made specifically for the inclusion of the word "geologist," as that type of individual is one often quoted in prospectuses. Subclause (4) of Clause 85 includes the following:—"The expression 'expert' includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him." I suggest that a geologist should also be included under that heading. However, that is a small matter.

398. By Hon. L. CRAIG: Is it not possible that a man may have had vast experience in mining operations and not be a geologist?—Yes, but I think the present definition would cover that position.

399. Is there such a designation as mining geologist?—No; "geologist" covers them all. Under Part V., "[Unlimited Liability Companies]" the word is so defined.

400. By the former the Companies Office will be kept fully informed by annual returns as to the position of all companies. This should act as a deterrent in regard to a practice which exists among some promoters, whereby a type of company practically penniless, most of the shares having been forfeited, remains dormant until some new gold find is recorded. The company is then reactivated. An option over a prospecting area in the vicinity of the find is obtained, and a parcel of shares then sold to a favoured group. The option is boomed for a while, shares rise and change hands, then comes a day when the option is turned down and the company again sinks into its previous moribund condition. We find that has occurred quite often with foreign no liability companies.

401. This provision means that they must supply annual returns?—Yes.

402. If they do not, is a penalty provided?—Yes. They must submit very complete returns. Failure to comply with the provision renders the company and every officer of the company liable to a fine of £5, and in addition, in default of £5 for every day during which the default continues; see Sub-clause 5 of Clause 192, page 149. The Bill, if passed, should ensure that future periods of inactivity in regard to mining company flotation will be penalised. The Bill would also bring this State into line with the several others which have of recent years amended their company law. This is desirable from a mining viewpoint, as Western Australia, the most important of the Australian mining companies is formed in all States with our mining titles as their basis. There is one other matter to which I
wish to refer, namely, Clause 105, the proviso to Sub-clause 1 which reads as follows:-

Provided always that where a charge on land is registered under the provisions of the Transfer of Land Act, 1893, or being land not under the provisions of that Act, is registered at the Registry of Deeds at Perth, such registration shall be deemed to be sufficient compliance with this section if such charge was lodged for registration as aforesaid, but this proviso shall not apply to any charge over land which was not in the State on 1 January, 1901.

I suggest that the mining section has been left out of the proviso to Sub-clause 2. Under Sub-clause 2 of Clause 31 of the Act, a company not registered under Part XI. of the Act is allowed to make a winding up petition in England. The effect of that section is that the company is allowed to make a winding up petition in England but that if the company is registered under Part XI. of the Act it would have to adjust the winding up petition in England with the consent of the Governor. I think that the mining section should also be left out of the proviso to Sub-clause 2.

There is a point of law which I have heard read about the Boulder company?—Yes.

399. What is your opinion on the action of the United Kingdom in preventing that company from registering in this State?—That company is in a most unfortunate position under the Excess Profits Tax. The English Act provides for a standard period; companies shall be taxed 100 per cent. above the profit for the whole year of the three years preceding the war. The taxing authority can therefore select out of the three years the year in which the company made the greatest profit; and the amount in excess of that profit is taxed at 100 per cent. In the case of the Great Boulder Company, the standard period comprised a time when the company was completing a considerable amount of development and installing new plant. The result was that its profit was very low for a period of several years. I think its profit was then in the vicinity of £25,000; this year it is nearly £450,000. The result is that the actual profit which can be distributed is £350,000, the balance going in taxation. Undoubtedly the company's profit for some years now will be a high one, and it will suffer greatly in comparison with other companies in the same belt.

400. And that is detrimental to the State?—Undoubtedly.

401. By Hon. A. THOMSON: The State is losing taxation?—The State is getting its taxation. Included in the taxation is the excess profits tax, the Commonwealth Gold Tax of so much per ounce and the State taxation, which is 5s. 10½d. in the pound. The shareholders get very little.

402. By Mr. ABBOTT: And the State as a whole does not get the benefit?—That is so.

403. Might not such taxation result in the company's reverting its assets, which are of a wasting nature?—It would shorten the life of the mine, of course.

404. The company might therefore reserve its profits for a number of years, rather than have them all taken in taxation?—That is so. It would have a reserve fund. All the foreign companies have such a fund.

405. By Hon. A. THOMSON: The company might cut its operations?—Yes. We have found that that is already happening. The gold yield for last year was slightly less than that for the previous year. The reason is that the companies are not producing so much rich ore. They are concentrating now on low-grade ore.

406. By the CHAIRMAN: Have you read the New South Wales Companies Act?—Not carefully.

407. Have you read the amendment of that Act?—Yes.

408. Do you think it would be wise to incorporate that amendment in our Bill?—I think it is a good provision. The system is adopted in all the other Acts. I think it is necessary to obtain the consent of the country in which the company is registered.

409. Or without winding up?—Yes.

410. Under our present Act it would be necessary for the Boulder Company to wind up?—Yes. The Boulder Company instituted winding up proceedings in England under the New South Wales legislation, I think it is necessary to obtain the consent of the country in which the company is registered.

411. That means that under the New South Wales Amendment Act, permission would have to be obtained from England?—Yes. The Boulder Company, however, is an English company and the English Government prevents them from transferring. The New South Wales Act would not affect a position such as that of the Boulder Company.
having to cease carrying on business or to change the name under which they have been carrying on, unless they have obtained the Governor's consent to retain that name.

By the CHAIRMAN: Would you be in favour of the word "State" being used in the name of a company? We have, for instance, in Western Australia the State Furniture Store. We have also the Commonwealth Loan Company. The provision is that the Governor has to consent to that. I take it that before giving such consent the Governor would consider whether the particular company concerned should be allowed to retain that name.

410. By Hon. G. FRASER: Did you not suggest that no present local company will have to obtain the Governor's consent?—Yes. The Bill clearly applies not only to present local companies but also to present and future foreign companies. This is a point on which I will be addressing you on behalf of the Underwriters' Association. If I deal with it now, however, there will be no more time for me to deal with him, I can give you a few instances. Take the Royal Exchange Assurance Company, a well-known and a long-established company. If this Bill between laws, that company will have to apply to the Governor for his consent. That consent may or may not be given; we do not know. This is not a matter, however, with which we are concerned here.

By the CHAIRMAN: Would it not be unreasonable if the Governor's consent was not given?—Personally I think it would be, but the company would fear that the Governor might refuse his consent. If he did so, we have an impossibly on the company would have to go out of business in this State. The same remarks apply to the Commonwealth Insurance Company.

411. Any happening of that kind would be detrimental to the State and would not be likely to occur?—The point I make is that present foreign companies that have been carrying on business here should not be placed in jeopardy of having to cease business in this State.

412. By Hon. G. FRASER: There is a vast difference between names including the words "Royal," "State" and "Commonwealth."—Yes. The Commonwealth Insurance Company is operating in Western Australia and has been carrying on for many years. If the company is told that it must cease carrying on business under that name, it must cease business altogether because it could not change its name for this State.

413. The Commonwealth authorities have asked that the use of such words be disallowed under the Registration of Firms Act. The Commonwealth authorities have been carrying on business here should not be placed in jeopardy of having to cease business in this State. The Commonwealth authorities have asked that the use of such words be disallowed under the Registration of Firms Act. The Commonwealth authorities have been carrying on business here should not be placed in jeopardy of having to cease business in this State.

414. I do not think they did.—Were not the Commonwealth authorities really saying, "We want you to check up in future?"—I am not in a position to say what they might have said. I can only say that it was a clear and definite statement that the use of such words should not be allowed.

415. By the CHAIRMAN: Do you not think it would be a form of imposition for companies to use names containing the word "State," seeing that we have State Hotels and a State Shipping Service?—I see your point, and I feel sure my clients would agree with you, but they disagree that any existing company should be interfered with in its operations.

416. Well, they are here. How would you deal with them?—They should be allowed to continue in business.

417. That would not be fair competition?—On the other hand, if they are not allowed to continue, an extreme hardship will be inflicted upon them.

418. By Hon. A. THOMSON: In what way would extreme hardship be inflicted upon them?—Take the Commonwealth Insurance Company, which has been carrying on business here, for, say, twenty years. It has done good service in this State and has issued policies, and no doubt it has a number of policy-holders in this State. If this provision became law, it would have to apply for the consent of the Governor and that might be refused. The result would be that it would have to cease forthwith to carry on business. I suppose it would cease when the new measure came into force. The company would doubtless advise its policy-holders that it was not continuing to carry on business and that policies should be transferred elsewhere. Possibly claims might be made against the company.

420. Hon. A. THOMSON: Why should that stage be reached? Surely the company could change the name and add, "Late Commonwealth Insurance Company." I cannot see that the alteration of the name would access into the company's ceasing business. If it did, it could not have been of much value to the State.

421. By Hon. L. CRAIG: The business would have a goodwill value?—That is not the only point, though does apply to local companies. You might have a foreign company incorporated in England under a Royal Charter 200 or 300 years ago and registered throughout the world, and now that company might be told, "You cannot carry on business under that name,"

422. Do you think that the Minister in charge would adopt that attitude to a company that had been operating under the Royal Charter for 200 or 300 years? I do not think he would as regards the Royal Exchange Assurance Co., but I have great doubt about the Commonwealth Insurance Company. In regard to the Royal Exchange Co., I hope it is possible that even if the company was objected to by the Minister, it would have the right to trade in this State under another name or under an approved name?—I cannot recall any provision conferring that power.

423. We know that a company may register a firm name and trade under it?—That is so.

424. Take the Commonwealth Insurance Company: Suppose we said, "We cannot allow you to trade under that name, but we are prepared to allow you to carry on business under another name"?—I do not think that would work satisfactorily in practice. The Commonwealth Insurance Company is a foreign company. It must carry on business under that name and under no other name.

425. It has a right at present to carry on under a firm name?—Yes.

426. Assume that we said we would allow the company to register subject to its carrying on under another name in this State, would that be a useful provision to place in the Commonwealth Bill, but in the event of our not approving of your suggestion?—It might be useful in some cases. In regard to the insurance companies, it would be quite useless. I am certain that they would not carry on under other than their normal names. If one of them registered as a firm under some other name, it would have to give ample evidence of identification with its proper name. If it registered as "Porth Insurance Company," the name would have to be followed by the words "Late Commonwealth Insurance Company," and that addition would have to be displayed prominently. Otherwise nobody would recognize the company. On the other hand, if that was done, it would not meet your point.

427. Mr. ABBOTT: I was asking generally; I had not insurance companies particularly in mind?—I do not think it would be as regards the Commonwealth Insurance Company, and that person came to Western Australia, and suppose the company was not allowed to operate in Western Australia. What would be the position of the policyholder who had come to Western Australia?—If it were a personal accident policy, the policy would still be effective in Victoria.

428. The insurer would have to send his premium to Victoria?—Yes. I take it that in practice he would cancel his Victorian policy and take out cover with an insurance company here.

429. That illustrates the damage that would be done?—Clearly. Before coming here, I had not the slightest inkling that there was any intention of applying this
provision to present local companies. I discussed the point with the Solicitor-General, and he agreed with me that the only drawn the clause with the object that it should be applied to future local companies. When I pointed out that the clause, as drawn, would apply to present local companies, he told me that was not his intention. Apparently we are not quite at one on the point and my instructions have been based on the understanding that the provision is not intended to apply to present companies; but that, is not intended to have retrospective effect.

441. By the CHAIRMAN: I think it was to a certain extent. We have a 'State Furniture Store', and other concerns that carry the name 'State', which are not associated with the State at all. The damage there has already been done and we want to get rid of that. We can it be done unless we have a special Act? You can do it by making this clause retrospective which, I submit, you have not done. At the same time if you make it retrospective you will be doing grave harm to reputable companies.

442. If they asked for registration they would be registered? Everyone here recognises the Commonwealth Insurance Company as a reputable company and its existence would be placed in jeopardy by a provision such as this.

443. But why should companies that are not reputable be allowed to carry on? I suggest that the proper way to be to prevent the mistake in the future is that to say, prevent any such company from being formed in the future.

444. Hon. L. CRAIG: You are not suggesting, Mr. Chairman, that the Commonwealth Insurance Company is not a reputable company?

445. The CHAIRMAN: No. What I mean is that a company should not use the word 'State' or 'Commonwealth' unless the concern has nothing whatever to do with the State or Commonwealth.

446. Hon. L. CRAIG: A concern like the Commonwealth Insurance Company has built up a certain goodwill.

447. Mr. ABBOTT: Had they any right to use the title they now have?

448. Hon. L. CRAIG: How are we going to stop it?

449. The WITNESS: Assuming it is a reputable company the passing of such a clause would have a damaging effect on its goodwill. Parliament should hesitate before making such a clause retrospective.

450. By the CHAIRMAN: Do you suggest that we should give the State hotels another name, call them something else?—I certainly do not suggest that, but I do suggest that the only proper way to deal with a reputable company is to permit it to continue and do business in the future. I feel that the clause as it is used for such a firm name would be stopped. It is an extremely serious matter as far as the people I represent are concerned, and I speak frankly to you when I say that they would strongly oppose any possibility of such legislation going through.

It would be to the utmost disadvantage to them if they were turned out of business. The Commonwealth Insurance Company would not try to carry on business under any other name. It is not reasonable to say to a company like the Commonwealth Insurance Company, "Let it go through; we think it will be all right for you." Certainly they would feel very strongly on the subject if they were obliged to say, "We desire to carry on business; please allow us to do so." The clause as drawn, up at present will not apply retrospectively to local companies, and there is no reason why it should apply retrospectively to foreign companies. That would be anomalous. My submission is that the amendment should be made to apply to everyone in the future. It should not be retrospective. It should have force really as from the commencement of the new Act. Regarding other matters, I think it is an idea that the State Furniture Company is a firm. Is that firm not still carrying on business?

451. The CHAIRMAN: Yes, it is, but that matter is being attended to.

452. By Hon. L. CRAIG: The point you are making is that the clause in the Bill should not apply retrospectively to foreign companies or to local companies. —Yes, and at the moment it does not apply retrospectively to local companies. Next with regard to Clause 121, I have this comment to offer: A proviso might be included to safeguard the position of persons who are at present secretaries of companies of any rate, who are secretaries of companies at the date on which the new Act will come into force. There probably are many instances of extremely satisfactory company secretaries who might not possess the necessary formal qualifications which may be prescribed by the Governor by regulation.

463. By Hon. H. SEDDON: Do not you think that discretionary power should be given in those cases where people are now acting as secretaries and there would be some power given to the Minister to deal with a case like that. I agree as you suggest that a hardship may arise, but do you not think that discretionary power should be given to the Minister to deal with such cases?—Yes, discretionary power should be given to permit a person to continue to act as secretary of a company in circumstances where it would be inequitable for the clause to be made to apply only to those who might be appointed in the future. That is not a matter of great moment. Existing secretaries will not continue in office for so very long.

465. By the CHAIRMAN: It would be unreasonable to ask a man who was eminently satisfactory and had held the office for many years to comply with these conditions now?—Yes. Some of the occupants of these positions may be 60 years of age. All future secretaries should, however, possess the necessary qualifications.

466. By Mr. RODOREDA: Do you look upon this clause as retrospective?—Yes. The Bill says that the director shall appoint a secretary.

467. The qualifications would not apply until the regulations were framed, and I do not think the regulations would be retrospective—I should say the regulations would set out the qualifications required. It seems to me the clause throws the onus upon all companies, present and future, to appoint secretaries. As soon as the Act comes into force a secretary will have to be appointed formally in every instance.

468. By Hon. L. CRAIG: Do not you think this should apply only in the future? I do not suggest that anyone would or should apply to a partnership pastoral company, for instance, for in that case one of the partners usually carries out the secretary's duties. I understood that the office is held by my clients, but as a man in the street I must agree with your suggestion. The objection of having special provisions for private and proprietary companies is to enable people to carry on a business with the minimum amount of trouble and at the least expense.

469. The funds of some of these private companies would not permit of the appointment of a special secretary. The secretary would not necessarily have to be a full-time man. Of course he or his agent would have to be present at the registered office, but could not a public accountant be appointed to fill the office at a small fee of, say, 10 guineas per annum?

470. The secretary would have to keep the books, and the partners in a private company might not desire their books kept by a public accountant?—I do not suggest why, in the ease of a private company, the secretary should be a man possessed of certain qualifications.

471. I cannot see it, either. A private company is generally a family affair. —As a solicitor I have one that this provision should apply only to public companies. I now come to the third point in my statement—With regard to Clause 183, Subclause 2 appears to contain a slight printing error. I note with one that this provision should apply only to public companies.
The Chamber of Mines is in accord with such an amendment. It considers that 30 days would be a more reasonable time to allow. A notice may be posted to a shareholder who is away on holidays, and he may not return before the time has elapsed, with the result that his shares are forfeited.

406. I am connected with a company some of whose shareholders live out of Wyndham. In such instances the directors should be given discretionary power—That difficulty could be overcome if special notices were sent out beforehand.

405. The secretary may not remember that certain shareholders live away from Perth. In all probability the directors would know that some of the shareholders lived a long way from the city.

404. But shares might change hands in the meantime. In the case of big public companies the directors would not know where the shareholders lived.

403. By Hon. G. FRASER: Directors usually fix the date when a call must be paid some weeks ahead. They may meet on the 1st July and decide that the call shall be paid on the 31st of that month. The secretary would send out the necessary notices forthwith.

402. By Hon. H. REDDON: The call might be payable 14 days after the date when the making of the call was declared. It must not be less than 14 days.

401. By Hon. L. CRAIG: Companies seem to prefer giving the minimum amount of notice, so that as little publicity as possible can be given to the matter. Directors should be given discretionary power in cases where it is not possible for the call to be paid within a given time. That might leave the way open to undue practices on the part of the directors.

400. But if a man's shares are forfeited through no fault of his own, the hardship is a great one. Yes.

409. Don't you think the case would be met if the period were made 30 days in every case? That would give a certain amount of notice. But then again, if you make the first period 30 days, you are hampering the getting-in of capital quickly in case of necessity.

408. By Hon. L. CRAIG: I do not think there can be such urgency in the case of these companies—I would make it six weeks instead of three weeks, for the purposes of forfeiture.

407. By the CHAIRMAN: The secretary of the Chamber of Commerce suggested 21 days as a reasonable time, so that 30 days would be quite reasonable. Apparently he is aiming at the same point as I am. The longer the period for payment of calls, the longer the period before those details can be sold for non-payment of calls. In my own experience I have had some instances of shares being forfeited where the shareholder could not reasonably fix up the payment within the time allowed.

406. By Hon. L. CRAIG: All I ask is that the maximum reasonable time should be allowed before a shareholder's shares are forfeited. It should be a considerable time, many shareholders reside in distant parts of the State where communications are not too good.

405. Hon. A. THOMSON: There is air mail nowadays.

404. By Hon. H. REDDON: As regards Subsection (b), providing a maximum period of 14 days between calls, have you any suggestion to make?—The Chamber of Mines sees no objection whatever to that proposal. Were you thinking the period was too short?

403. Too short between calls? It might be, I have no instructions on that point, so I do not think I had better talk about it.

402. By the CHAIRMAN: That has been the usual practice?—Yes. I think it is identical with the existing provision.

401. By Hon. G. FRASER: Have you had experience of hardship being occasioned in that respect?—No. I do not feel that there is any hardship, and I do feel that a company should be permitted to call up the balance payable on shares in accordance with the company's requirements. For my part I feel that the 14 days is correct; that is, speaking personally. My next point is Clause 348, Subsection (1) (a) a foreign company is required to file at the Registrar of Companies' office a list of directors of the company in the State or country in which it is incorporated. This list must contain the particulars required by Clause 170 of the Bill. In practice it is submitted that this will prove extremely difficult, as regards companies incorporated in England. Amongst the particulars which must be given under the definition names and surnames, nationality and nationality of origin, and particulars of other directorships held by each director. Directors of a company incorporated in England might well be directors of a very large number of other companies. Now, in addition to that, the directors concerned may quite frequently resign from one directorship to another, and it is submitted that it would be sufficient for the purposes of this Bill if foreign companies were required to file a list of all directors in this State or all directors normally resident in Australia, together with the necessary particulars relating to such directors.

I shall illustrate more particularly what I mean by looking back to the Royal Exchange Insurance Company. Lord Cambridge, if there is such a person, may be a director of the Royal Exchange Insurance Company, and of a hundred and one other companies in England, many of which directorships may be due to foreign companies. Now, a foreign company has to file here a list of the directors of a company in the country in which it is incorporated under this Bill. That is a list of particulars of all other directorships held by any of its directors. Now, if we have say five loads on our board of directors in England, each of those directors might be a director in 100 other companies, each of them might have to advise the Registrar of Companies of all alterations which occur. Every time a director in England secures a new directorship in England we have to file the office of the Registrar of Companies here of that, and every time he loses a directorship we have to tell that office here.

400. By Hon. L. CRAIG: You think it sufficient to confine that provision to Australia?—Yes. In my opinion it is sufficient to give a list of directors in this State. Of course, there may not be any. As regards the directors of a company having its incorporation in Australia, such as in New South Wales or Victoria, the matter would be fairly simple because we would not find the intermingling of directorships as in England, but if we are to take in the English companies and comply with all these requirements, and then have to advise the Registrar of Companies here of that, and every time he loses a directorship we have to tell that office here.

409. By Hon. L. CRAIG: You think it sufficient to confine that provision to Australia?—Yes. In my opinion it is sufficient to give a list of directors in this State. Of course, there may not be any. As regards the directors of a company having its incorporation in Australia, such as in New South Wales or Victoria, the matter would be fairly simple because we would not find the intermingling of directorships as in England, but if we are to take in the English companies and comply with all these requirements, and then have to advise the Registrar of Companies here of that, and every time he loses a directorship we have to tell that office here.

408. By Hon. L. CRAIG: Do not you think we should have all the information and publicity possible regarding these matters?—Yes. I do not think it would be reasonable to leave a man out merely because he lived in England. This is a matter for the convenience of the public, and the public is entitled to the information—I quite understand what you have in mind. I can quite agree with the contents of this if it is to be applied to local companies, but the position of foreign companies is a little different.

407. If they are operating in this State, we should know something about them?—Quite so, but in the vast majority of instances, if those other companies here they are not selling shares here or acquiring shareholders in this State. You are out to protect shareholders under this provision.

406. We are out to protect the public?—Practically none of the insurance companies would be shareholders in this State. Certainly I do not think any English insurance company would.

405. By Hon. L. CRAIG: You might have big insurance companies having local offices here, in New Zealand and in the Eastern States. Take the Colonial Mutual Life Assurance Co. as an instance. That company would have several directors in other parts of the world and it would have to give notice regarding all their directorships. The C.M.L. would have many prominent men on the English board, ex-Governor-
General, and so on. These men are probably directors of banks and all sorts of institutions. They may have 50 or 60 directorships throughout the world—Very easily.

484. Each one of those would have to be registered—One. Only the directors in the country where the company is incorporated.

485. That is worse still?—Why it should be limited to that, I fail to appreciate. To be consistent, it should refer to all directors wherever resident. All this will involve a tremendous job and I do not know whether the objection you are seeking to attain will be commensurate with the work involved.

CHAIRMAN: Hon. A. THOMSON: Take the position of an insurance company that has four or five what are referred to colloquially as "pups." Would that have any bearing on the position you have in mind?—In practice, the registration of those other companies is not known to the public.

487. By the CHAIRMAN: But that is information that the public could get?—Yes.

488. By Hon. G. FRASER: That information could be supplied by the investing public?—Yes, if the investing public wanted it. My difficulty is that the companies I am representing do not fall into the category of those that are directing the shareholders.

489. We are not out after them but after the others—but in doing so you are placing onerous conditions on the more responsible companies that are willing to co-operate with you in every reasonable way to protect the public, but in this instance they ask if this is not just a little unreasonable. We are worried about the position of English directors. We could give you information regarding the Australian directors with ease, but fancy getting out a list from England and then every third week or so receiving notifications of changes in directorships. All that information has to be notified locally within ten days.

490. By the CHAIRMAN: I quite appreciate the difficulty—To be frank, I do not see how we can get over that difficulty except by eliminating the necessity to give particulars of the other directorships held. We could reasonably be asked to give the names, addresses and occupations, but I do not know about the other directorships held by these people. Therein is the trouble.

491. By Hon. G. FRASER: There would not be any difficulty with regard to directors resigning, because you could stop the names of other particulars—No. We could give you the names, occupations, and so on, but every time there is an alteration we have to notify the authorities accordingly. But the difficulty would arise when one of the directors personally acquired a directorship in another company. We would be required to make that information available and we might never know.

492. By Mr. RODESOEA: And you would never be up to date with your information?—No.

493. By Hon. L. CRAIG: If we were to confine this provision to Australian directors, it would simplify matters—Yes.

494. By the CHAIRMAN: Or those in New Zealand?—Yes, if the provision were made to apply to Australians, that would cover what you have in mind, and then the position would be pretty straightforward. Under Clause 349, Subclause (2), of the Bill, the registered office of a foreign company is to be accessible to the public for at least five days each week. It is suggested that some small amendment might be made to cover cases where one or more public holidays occur during the week in question.

495. By Hon. L. CRAIG: Except registered holidays?—Yes.

496. Do you think that private pastoral companies should be forced to provide an office accessible to the public?—I think some provision should be made compulsory on companies so doing.

497. In effect, they are partnerships?—That is quite true, but do not forget that they should keep open a registered office for the service of process.

498. If I can see the difficulty in keeping an office open to the public on every day except public holidays?—After all, the office is to be kept open for only three hours each day. Some place must be the registered office of a company. In practice, I cannot visualise many cases where that office would not be normally open for business—not necessarily for the business of the particular company. An accountant's office or a solicitor's office is normally the registered office of a number of companies. Now that point has been raised, one that has struck me. Speaking personally, my office is the registered office of a number of companies and it has been our custom to close the office from Christmas Eve to the New Year, not merely during the public holidays. Therefore we would be infringing this provision.

499. Other companies do the same; for instance, Brisbane and Wunderlich, Ltd., close over the Christmas holidays?—Yes. If any prosecution was taken, I think there would be every chance of a conviction being had if this provision would be awarded to the prosecution. In practice, you would see the Registrar of Companies and explain the position, and he would say that it would be quite right. Information has been received from South Australia that in practice a certain amount of difficulty is found as regards compliance with the requirements of the Act in filing documents of change, etc., within the prescribed time limit set out in the South Australian Act and/or regulations. It is understood that the Registrar of Companies in South Australia feels bound by the Act to enforce strictly the provisions of the Act as regards the time within which these documents are to be filed. Particularly in present conditions it is felt that there should be some scope given whereby, in particular cases, he could exercise a discretion to permit further time. It is therefore suggested that a new clause should be included in Part 15 of the Bill permitting the Registrar, and any company, either local or foreign, to extend the time fixed by the Act or regulations for the doing of any matter or thing for a period not exceeding three months. When I asked for comments on this provision from the representatives in South Australia both the Chamber of Mines and the Fire Underwriters' Association, they independently brought this point to my notice. I have heard later from solicitors in South Australia one must be absolutely on the Companies Act of that State with every document, otherwise the company is automatically dissolved. It seems reasonable that a discretion should be given to the Registrar of Companies to grant an extension of time for filing documents, should circumstances warrant an extension. For instance, we must file on behalf of a foreign company a copy of its last general balance sheet. If a company incorporated in England is registered in Western Australia, it must file a copy of its last general balance sheet within a certain time. There is difficulty in complying with this provision; it may not be possible, for reasons connected with the war, to obtain the balance sheet from England within the specified time. For that reason and from the public's point of view, a provision such as that suggested would be admirable.

500. By the CHAIRMAN: That is merely a matter of administration?—Yes. The Registrar of Companies is completely unbiased and is obviously the right person to make the decision. He would say, "Very well, on the facts which you have put before me, I would grant you another 14 or 21 days, or three months." A company incorporated in England is registered in Western Australia, it file a copy of its last general balance sheet within a certain time. There is no difficulty in complying with that provision; it may not be possible, for reasons connected with the war, to obtain the balance sheet from England within the specified time. For that reason and from the public's point of view, a provision such as that suggested would be admirable.

501. By Hon. L. CRAIG: That would be subject to the application being made to the Registrar within the prescribed time?—Certainly. We would follow the same procedure that we follow with regard to the returns of deceased persons' estates. Clause 444 appears to apply merely to local companies. It is suggested that for the protection of the public it might be advisable to extend the operation of this provision to any companies, either local or foreign companies. In this State. At present, the clause applies merely to local companies, because of the fact that the word "company" is used; and the word "company" does not include a foreign company, as you merely a caution to the public as you see if you are worried about the company incorporated in England is registered in Western Australia.
508. By Hon. L. CRAIG: The clause should apply to foreign companies—Yes. We must not alter the definitions, however.

509. It is an offence if the company does not state its paid-up capital—Yes, but that refers to circulating. Many companies, if they want to do business, talk about capital in a loose way, without stating whether it is the authorised capital, the nominal capital or the paid-up capital.

510. By the CHAIRMAN: A foreign company should not be exempt from this responsibility?—It should not.

511. By Hon. G. FRASER: Foreign companies have a distinct advantage, as the law now stands—Yes. With regard to the provisions contained in Division 2 of Part 3, relating to the registration of charges excepted by a company, it is noted that as regards charges bankrupts are required under the Bills of Sale Act, this registration will no longer be necessary. It is submitted for consideration that it might be advisable to make provision by way of security in somewhat similar manner to the present provision for notice under the Bills of Sale Act. It is understood that a provision for such notice of charge by way of security has to be registered under the Bills of Sale Act, this registration will no longer be necessary. It is submitted for consideration that it might be advisable to make provision by way of security in somewhat similar manner to the present provision for notice under the Bills of Sale Act.

512. A provision for such a notice of charge by way of security has to be registered under the Bills of Sale Act. Notice of charge by way of security has to be given, 14 days in normal cases I think or seven days; I am not sure.

513. Would it not be desirable to have the same conditions applying to companies—that the suggestion I have put forward.

514. On those grounds?—Yes. I think it would be desirable although it is a very difficult point. Under the old Companies Act of New South Wales, all charges had to be registered at the Companies Office, and there was no provision for any notice of registration of charge by way of security. The new Act in New South Wales came into force after I left there so I do not know much about that, but I believe there is no provision for notice there. I have been informed that the Victorian Act includes a provision for notice in a similar manner to that contained in our Bills of Sale Act. The object of the notice given under the Bills of Sale Act is to enable any creditor of the mortgagee company to step in and have the registration of a bill of sale cancelled by the chargee. The question is a very debatable one and not one that I feel confident to debate at length because I do not hold myself up as a conveyancer and this is really a conveyancing matter. I believe you have had evidence from Mr. Forbes, one of our leading conveyancers. I do not know if he touched on that point but it would be interesting to hear his views. I put forward the matter as a suggestion that I think should receive consideration. Other people giving evidence may be more qualified to speak on it.

515. By the CHAIRMAN: We can also discuss any of the points with our draftsman—Yes. That covers the points upon which I wished to comment.

516. Would you be in favour of a local director for a company in Western Australia?—Do you mean, am I in favour of a provision in the Act making the appointment of a local director compulsory?—Yes.

517. There is no provision for that. I do not hold myself up as a solicitor and not as representing the Chamber of Conveyancers. I am not sure whether I would not have said that it did not matter.

518. By Hon. T. THOMAS: If a local director were appointed and the local shareholders were permitted to hold a meeting here, some suggestions could be made, whereas at present meetings are held in Sydney and shareholders are in the happy position of having put their money in and having to take what they get. But suppose they did put forward suggestions at a meeting here? There is nothing to stop them doing that at the moment. Any body of men can meet together at any time.

519. Not as a regularly constituted meeting?—No, but if provision were made for a properly constituted meeting of a minority of shareholders that would get you no further forward. They could not have a resolution as against the majority of shareholders in the other State. They can meet informally and pass informal resolutions making suggestions, but all they could do is to properly constituted meeting.

520. You do not think anything can be put in the Act to enable minority shareholders to have some say?—No, I do not think so.

521. By the CHAIRMAN: Does any Act contain such a provision?—There may be one but I have not come across it.

522. By Hon. L. CRAIG: In practice shareholders do not take the slightest interest; it is difficult to get a quorum?—In the vast majority of cases.

523. By Hon. G. FRASER: Have you any set ideas regarding private and proprietary companies?—The answering that question I shall be speaking purely as a solicitor and not as representing the Chamber of Mines or the Underwriters' Association, which bodies are not concerned. There are virtually no private insurance companies, but there might be a few private mining companies.

524. It has been suggested that there is no need to make a distinction between private and proprietary companies—I confess that I was rather interested. Mr. Craig has mentioned one instance where there are local directors of a foreign company, but there are many companies in respect of which there is no necessity for a local director. The vast majority of insurance companies have no local directors.
find that a proprietary company had to do one or two things that a private company had not to do, but most certainly only the proprietary companies.

590. By the CHAIRMAN: South Australia provides for both?—That is the only State where private companies are mentioned. I cannot see the efficacy of drawing a distinction. Certainly I agree that provision should be made for that type of company. Exactly why it is proposed to go further and provide for private companies as well I am not sure, I cannot reason it out with myself in practice as to the basis that has been adopted.

591. It would not matter if we had both?—Undoubtedly the difference is small. I should like to know what the benefit will be. I think a proprietary is limited to 50 members and that a private company is not.

592. But in addition, employees could be included?—Yes, but with private companies there is no limitation. Without having more facts than I have at present, I cannot see any reason for drawing the distinction.

GREGORY JAMES BOYLSON, Acting Registrar of Companies, Examined:

593. The WITNESS: I have examined the Bill and the various Acts on which it is based. In general I am in agreement with the provisions of the Bill which, if accepted in principle by Parliament, will have the effect of bringing company law in this State into line with the law in the United Kingdom and the other States of Australia, and will go a long way towards protecting the investing public and removing abuses and questionable practices due to the deficiencies of the law as it stands at present. The Bill contains many intricate provisions, and it is difficult to predict how some of those provisions will operate in practice. However, the Bill has been introduced after similar legislation has been in force for some years in other States, and the research work performed there and the experience gained from the working of the new law in those States can be taken advantage of here.

The provisions of the Bill place many additional duties and obligations on those having the management or control of companies and increase very considerably the duties and functions of the Registrar of Companies and the control of the Court over companies. It is evident that if the Bill in its present form becomes law the accommodation of the Companies Office (at present the business is conducted in a small office by a clerk under the guidance of the Registrar) will have to be immediately enlarged and the staff will have to be considerably increased.

Suggestions for the improvement of the Bill are advanced and are made principally from the viewpoint of the Companies Office and from the administrative angle. In Clause 3 I suggest that the definition of "Court" be amended by adding words as follows:—

"And includes the Master of the Court when exercising the jurisdiction of the Court under the Rules of Court." The definition, as altered, will make it clear that jurisdiction can be conferred on the Master in general terms.

594. By Hon. L. CRAIG: That is, when the authority has been conferred on him?—Yes, under the provisions relating to the making of rules contained in Clause 498 (1) (d). An amendment of this sort was found necessary in South Australia to make workable the delegation of authority by the Judges to the Master of the Supreme Court. I think it likely that a number of the less important duties of the Court will be delegated to the Master and so remove from the shoulders of the Judges the extra work. Then I consider that the definition of "Registrar" should be widened to include a Deputy Registrar of Companies. Under Clause 413 there is power to appoint a Deputy Registrar, and it is probable that a deputy will be appointed in the absence of the Registrar or to perform routine work.

595. Does that mean that a Deputy Registrar would have to be appointed? I had in mind that "Registrar" meant the Registrar of Companies or any officer authorized to do the work of the Registrar. Your alteration would make it necessary for a Deputy Registrar to be appointed?—That is so—only a Deputy Registrar could act as substitute for the Registrar.

596. And that no other officer should do the work?—I do not think any officer other than a Deputy Registrar should perform any of the functions of the Registrar. Under my suggestion, when the term "Registrar" is referred to anywhere in the Bill it would also include "Deputy Registrar."

597. Would that mean the payment of another officer?—It would mean that another officer would have to perform the Registrar's duties when the occasion warranted.

598. Without any increase in salary?—What extra expense would be involved?—A fairly good man in the Companies Office would be able to perform the duties of a Deputy Registrar, and it should be part of his general classification. Again Mr. Nairn as Deputy Master of the Court could be appointed Deputy Registrar and there would be no further expense occasioned because the work involved would be part of his ordinary duties.

599. Do you think a minor should be allowed to subscribe to a memorandum?—I do not think that should be allowed.

600. Would you agree that it would be desirable to make it an offence for a minor to subscribe to a memorandum?—Yes, but perhaps a promoter or director allowing the offence should be made liable. My next reference is to Clause 47, to which I offer the following comment—

It should be made clear whether or not a subscriber may sign by his attorney, as sometimes happens under the present Act. If this it to be permitted under the new Act, provision should be made to enable the Registrar to require production of the power of attorney and evidence that it is unrevoked. It appears that even an agent orally authorized may sign on behalf of a subscriber. The clause should be altered to prevent this,
540. By Hon. G. FRASER: Have you a definite reason for advocating this?—I know of no abuses of the present position, but looking to the future I think it would be desirable to tighten up the law as regards signature by an agent.

541. By Hon. L. CRAIG: Is it not an offence for a man to subscribe on a document the name of another man without his authority?—That may be so, but it is often difficult to establish that no such authority was given.

542. By Hon. G. FRASER: A man may have authority to transact ordinary business for another, and may use that authority in other directions?—He may have been given a power of attorney for one purpose only, and used that power for other purposes. In such cases it would be difficult for anyone to secure a conviction in a Criminal Court.

543. By Mr. RODOREDA: Would you elaborate what you said about the agent signing when authorised orally?—I have referred to Halbury (3rd Edition) on this question. It is stated there that the agent though only authorised orally can sign for a subscriber.

544. In the event of fraud being committed that would be difficult to disprove?—Yes, it would be word against word.

545. By Hon. L. CRAIG: If we leave the Bill as it is, one case would be on a subscriber to prove that his name was used illegally?—A man usually subscribes for only one share, with a nominal value of, say 5s.

546. Would not the man be liable unless he proved that his name had been put on the document by fraud?—Would he be over concerned whether his name appeared as a memorandum or not? His liability would not in the case I quote exceed 5s.

547. The name indicates that the man himself is concerned, and he would have to prove that it was put there without his consent?—If he was interested enough to bother about it.

548. Nothing much could happen if we left things as they are?—You might have a subscriber who was not even a dummy.

549. That is unlikely?—Such a thing has not arisen in my experience, but it might arise.

550. By the CHAIRMAN: What do you suggest?—That the subscriber shall not sign the memorandum by his agent.

551. By Hon. L. CRAIG: Except on the production of a power of attorney?—I would go so far as allowing that. No subscriber should be allowed to sign by his agent unless the latter was authorised by power of attorney.

552. If a subscriber is shown the having signed by his attorney we accept that now, but we do not know whether the authority really exists. There may be no external intent. A man in such a case his agent authorises him to make the signature, but that may not be so.

553. By Hon. L. CRAIG: Suppose a "crook" company is formed and the name of a well known man is put on the memorandum without his consent?—That would mislead the public—my view is that a subscriber should not sign a memorandum by his agent unless authorised by power of attorney.

554. With regard to Clause 30, the right of inspection should be subject to payment of the subscribed fee. This appears to have been left out through an oversight.

555. Is it essential that a man should pay a fee merely to inspect documents?—It is usual for a search fee to be charged for any inspection at the Companies Office. The work puts the staff to a good deal of trouble. Officers may have to visit the strong room, extract documents and afterwards file them away again.

556. By Mr. RODOREDA: What fee do you suggest?—That could be left to the proper authorities when regulations are being framed. The Treasury may have something to say about it.

557. I now come to Clause 31, Subclause (2), and make the following comment:—Consideration should be given to making this clause of retrospective effect as has been done in similar cases in the recent amendment of the Registration of Firms Act, 1897. A company is at present registered in this State under the name of "State Furnishing Company, Limited." Other companies are also registering under names which would be prohibited an application for registration at the commencement of the new Act. Provision should be made for the Governor to consent in a proper case to a company continuing to use the name by which it was already registered.

558. By Hon. G. FRASER: Your interpretation is that the clause as it stands is not retrospective?—That is so. Section 4A of the Registration of Firms Act has retrospective effect, but the only names which are prohibited outright or are not protected by the word "State" or the word "Commonwealth." In respect of any other word prohibited as part of the name of a firm registered after the commencement of the amending Act, the name used by the firm, if used before the commencement of the amending Act, is protected; but the two words "State" and "Commonwealth" are not protected. Therefore if a firm was using either the word "State" or the word "Commonwealth," as part of its name before the commencement of the Registration of Firms Amendment Act of 1940, it would have to change its name.

559. Even with the consent of the Governor?—I do not think the Governor would consent to the name being continued.

560. But the Governor has the option under the amending Act?—Yes.

561. Do you think it would be reasonable to make this retrospective?—Evidence has been submitted that companies have operated here for 50 and 30 years under such names as "Commonwealth" and "Royal" and so forth, and then been able to build up a goodwill on their names. Upon registration those names might be refused by the Registrar if it is shown he was not acting in good faith. The principle is applied as has been applied in the case of firms, terms such as "Royal," "Imperial," "Grown" and the like, and in most cases they have to change their names.

562. The Governor would have no discretion?—There is a provision in the Registration of Firms Amendment Act that in the case of any firm which has used a prohibited word other than "State" or "Commonwealth" before the commencement of the Act, such a name is absolutely protected.

563. Automatically protected?—Yes.

564. That cases the position a bit; but there is one firm, mentioned by a previous witness, the Commonwealth Insurance Company, which has been here for 20 years, a company registered in one of the other States; and the company would have had serious repercussions on the company's business in this State if it were precluded from carrying on business under its present name. How would you deal with a case of that sort?—I would provide that the Governor could consent to the use of that name. I am very strongly of opinion that the provision should be retrospective.

565. I can imagine the Governor saying, "All right, Commonwealth Insurance Office, you can carry on," but
saying to the State furnishing Company, Ltd., "You cannot carry on"—that might be so. However, the merits of the two cases in my opinion are very different.

569. It all depends on how long the State furnishing store has been going on and what goodwill it has built up. We have to be careful that our justice is even. The Governor would have to give excellent reasons for consenting to the Commonwealth insurance company and refusing the State furnishing store. You still would maintain that the matter should be subject to the consent of the Governor?—Yes; that is what I think the State furnishing store was registered in 1938. Prior to that date those people traded under the name of State furnishing stores. I do not know what was their reason for floating that company. It is a 5,000 company. It was registered, as I say, in 1938, and since then presumably the business of State furnishing store has been carried on by the company. If the State furnishing store were now carrying on business, they would be forced, under the amending legislation of last session, to alter their name. But as they have shown the foresight to convert themselves into a company, they are beyond our reach at present. Basically my suggestion is that the provision in this Bill as regards names of companies be brought in line with the provisions of the amended legislation so as to registration of firms.

570. By Mr. RODOREDA: As to the effect of the clause as it now stands, we have an opinion from another witness, who stated that the prohibition contained in the clause appeared to apply to future local companies and to future foreign companies, and to all present foreign companies carrying on business in this state. That seems to me to conflict with your view?—My impression at present is that it does not apply to present foreign companies, but I would like an opportunity to consider that point further.

The Committee adjourned.

THURSDAY, 13TH FEBRUARY, 1941.

Present:
Hon. G. Fraser, M.L.C.
Hon. L. Craig, M.L.C.

A. V. R. Abbott, Esq., M.L.A.
A. J. Rodoreda, Esq., M.L.A.
Hon. H. Seddon, M.L.C.
Hon. A. Thomson, M.L.C.

GREGORY JAMES BOYLSON, Acting Registrar of Companies, further examined:

571. The WITNESS: When the proceedings were adjourned yesterday, the point under consideration was whether the restriction on the names of companies under Clause 31 applied to foreign companies already registered in this State. I have further considered the clause, and my opinion is that the clear intention of the provision is that it will have only future effect—Subclause (1) starts off “No company shall be registered...” and therefore the clause would not apply to the names of foreign companies already registered in this State. However, the wording of Sub-clause (6) is not very fictitious, and I think could be improved to remove any doubt on that point.

572. By Mr. RODOREDA: Would you suggest deleting the word “registered” where first appearing in line two of Sub-clause (6)?—I cannot understand the reason for its inclusion there.

573. I understand there are no foreign companies registered in this State—there are a number registered under the part of the Act that refers to foreign companies, but not of course registered in the same sense that local companies are registered.

574. If the first word “registered” were deleted, a lot of argument would be avoided?—Yes. Perhaps the word “registered” has been inserted to cover instances where a company might have been inadvertently registered with a prohibited name after the passing of this legislation. There might however be some argument in favour of not making the clause apply to foreign companies at all. From a cursory examination of the appropriate sections in New South Wales and Victorian Acts, I gained the impression that foreign companies are practically excluded from the operation of those sections in those States.

575. By Hon. L. CRAIG: All existing companies?

—All foreign companies, including those registered in future, except when the name is identical with that of a friendly society operating in the State concerned.

Perhaps the argument is that if a company is entitled to carry on business under a name in the State of its incorporation, it should be entitled to carry on similarly in another State.

576. Would not the whole object of the clause be voided if any foreign company could carry on in this State if registered in another State?—I should say the argument would be that the company laws in the other States being more or less uniform, if a company were allowed to use a name in the State of its incorporation, it would be allowed to use that name as a foreign company in another State.

577. But there may be one State that has not the same company law that we have—I am not contending that a foreign company should be excluded from these provisions, but I think it right to put before the Committee a view in which there may be some substance and I have quoted the New South Wales and Victorian legislation.

578. If all the State company legislation were the same, I would agree with you, but if one State stood out, that would affect the intention of such legislation—There would be that distinction.

579. The company would be registered in one State but would operate in other States as a foreign company?—Yes.

580. By Mr. ABBOTT: Assuming that a foreign company, or any other company, may be registered subject to its name being approved by the Governor, and that the name is objected to by the Governor, despite which the company wishes to trade in Western Australia, would there be any value in having inserted in the Bill a provision under which the company could trade in this State under a different name?—I know that the company could register under the Firms Act and trade under a name that was not its own. I am wondering now if the name of such a company were objected to by the Governor, and if the company were to trade here, that would affect the intention of such legislation?—There would be that distinction.

581. The company would be registered in one State but would operate in other States as a foreign company?—Yes.
provisions requiring notice of intention by a company to register a charge similar to the provisions contained in the Bills of Sale Acts with regard to bills of sale. Any creditor of the company who thinks that the charge is prejudicial to, or likely to defeat or hinder his claims against the company should be entitled to lodge a caveat against the registration of the charge. Since the commencement of the Bills of Sale Amendment Act, 1906, practically without exception, debentures, charges and bills of sale given by companies have been registered on notice and have been subject to caveats in the same manner as bills of sale given by individuals. The object of this procedure is to afford creditors of any grantor giving a bill of sale an opportunity of discovering if their debts are mortgaging his assets and of preventing such a proceeding by lodging a caveat within the prescribed time. There appears to be no reason for discriminating between companies and individuals in this regard as the creditors are entitled to protection in either case. Section 79, Subsection (1), paragraph (b) of the Victorian Companies Act contains suitable provisions for registration on notice of intention and an adaptation of such provisions should be used in this Bill, but newspaper advertisement of the notice as required in Victoria will not be necessary in this State as all notices of intention are advertised and published in the "Trade Gazette" published at Perth.

Mr. Abbott: Mr. Telfer gave evidence that Clause 105 should be amended so that companies registering instruments under the Mining Act shall not require to register as provided under Section 104. Do you agree with that contention? Documents registered under the Transfer of Land Act are not required to be registered at the Transfer of Land Office. The reason, of course, is that the only property concerned is land and the Transfer of Land Office is the registry for land transactions. Yes, Mr. Telfer says the same should apply in connection with mining securities—"I do not agree with that submission, if any chattels are included in the security." Should it not be sufficient if mortgages over mining tenements are registered under the Mining Act—"So far as tenements only are concerned, yes, but such mortgages generally include chattels on the tenements, and so far as any mortgage includes chattels, it should be registered under the Companies Act, where a mortgage is given by a company." At the present moment we have in this State provision for registration in connection with registered land, provision for registration of deeds in connection with land under the old system, provision for registration of securities in connection with any land under the Land Act, and provision for registration of chattels by means of the Bills of Sale Act. It would not be possible to change that system in respect of companies and make special provisions? Would it not be preferable to continue the old system as to companies and let them register under the Bills of Sale Act, even if we amend that Act to include some provision that registration is not necessary now?—"I cannot see any strong reason why the present system of registration of debentures and charges should not continue. I think it has given satisfaction in the past as regards securities over chattels given by companies and it has this advantage that all mortgages of chattels are registered in one office and in the one register." Do you consider that if two sets of registers have to be kept, some increased expenditure will have to be incurred in connection with the keeping of them?—"I think that will be unavoidable. The idea of registering charges given by companies in the Companies Office originated in England but the system for the registration of bills of sale there is somewhat different from ours." That was the birth of this system of registration of companies in England?—"Yes. Of course the administration of companies in England is different from ours."
509. The Bills of Sale Act ought to be amended. I think that would meet the position. On the other hand it should be mentioned that registration under the Companies Act would carry the advantage of having all dealings affecting a company or its assets registered in the same office.

600. Except mortgages—Mortgages of land, of course, would not be registered there.

601. By Hon. L. CRAIG: Is it not better that all bills of sale should be registered in the one office?

602. Two or three practising solicitors and another authority consider that the bills of sale should be taken out of the Companies Act altogether. There might be a lot in that argument. The present system of registration under the Bills of Sale Act is reasonably satisfactory.

603. By Mr. ABBOTT: Would not there be considerable difficulty and perhaps about the change with reference to existing registered securities? For a while you would have to have re-registration immediately or people would have to search both registries for the company unless registration was made.

604. Mr. Forbes seemed to think that very careful drafting of the provisions in connection with the change-over would be necessary, and he thought there would be considerable difficulty in actually bringing it into practical effect. I suppose you have not seen his evidence?—No.

605. By Hon. A. THOMSON: Under Clause 105 it would not be necessary to put an advertisement in the newspaper. Would it not be wise to require newspaper advertising?—The "Trade Gazette" circulates in all the commercial houses and business channels. This is the only publicity that any notice of intention receives at present. It has proved a fairly satisfactory means of notification in the past and I think it would give the sufficient publicity to notices of intention in future. As to Clause 100, I consider that the penalty for default should be increased. In both New South Wales and Victoria an offence of this kind is regarded as a serious one, and the fine prescribed for any default is $50 for every day during which the default continues. The offence is failure to register under the provisions of the Act any mortgage over chattels given by a company.

606. By Mr. ABBOTT: Probably this provision would not be necessary at all if we continued to make the Bills of Sale Act applicable to companies as such securities would be of no value if they were not registered. That may be so, but I think such unregistered securities are also void under this measure. Under the Bill, the charge would be void as against the liquidator or any creditor who had been affected in accordance with the Act.

607. Do you think this clause is necessary?—Careless directors or managers might fail to register a charge.

608. It would then be of no value. Somebody would be let down, probably the man who had advanced the money on the security of the charge.

609. By Mr. RODOREDA: Might not others, who did not know of the existence of the security, also be affected?—The idea of registration is to give notice to other parties interested concerning the position or credit of a company.

610. By Mr. ABBOTT: If we adopt the bills of sale system, this procedure would probably be unnecessary. I do not think such provisions would be put into an amendment of the Bills of Sale Act to apply to charges by a company. The penalty is $50 per day in the two States to which I have referred, the reason being that the offence is regarded there as a serious one.

611. By Hon. A. THOMSON: Do you want to bring these provisions into line with those existing in the Eastern States?—I do not consider that the penalty should be $50 a day, but that there should be a heavier maximum penalty than $20.

612. By Mr. RODOREDA: You would rather have a daily penalty than a fixed penalty?—I think a daily penalty should be imposed. For a company, perhaps expenditure in bringing about the change with reference to existing registered securities?—or missed as to the credit of the company if the document is not registered in a place where it can be searched.

613. Would not the person who had advanced money on an unregistered security be placed at a disadvantage in the event of that security turning out to be valueless?—He would be placed at a disadvantage.

614. By the CHAIRMAN: You think the proposed penalty of $20 is too light?—Yes, for such a serious offence. I suggest a maximum penalty of $50, and a daily penalty of $5. Dealing with Clause 114, I have made this note:

It would appear that charges given by a company before the commencement of the Act and which would have been registered under the provisions of the Bills of Sale Act, would not be covered by by failing with Clause 119, under which only the changes of the charges to be lodged with the Registrar. I consider that the changes themselves would continue to be registered under the Bills of Sale Act, and, when still in operation, renewed every three years under that Act. To remove any doubt or uncertainty on this question, the word "division" should be substituted for "part" in line 3 of the clause.

The clause as drafted will tend to doubt as to whether a bill of sale already registered under the Bills of Sale Act at the commencement of the Act, and particulars of which are registered under the new Act, comes under the Companies Act completely or remains under the Bills of Sale Act. I think it would remain under the latter Act, in which case the word "division" should be substituted for the word "part."

615. By Hon. L. CRAIG: If the Bills of Sale Act applied to all charges given by companies that would be avoided?—Yes, and all those clauses could be deleted. Companies would go on as regards registration of charges just as they have done during the last forty years.

616. You think the system has been working satisfactorily?—Yes, except as to the provisions concerning notices of intention as applying to registration of debentures, which have not been entirely satisfactory, but could be made so.

Clause 119: The prescribed period of 90 days after the commencement of this Act appears to be too short for the large number of documents in respect of which particulars will be presented for registration following on the commencement of the new Act and consequent pressure at the Registrar of Companies Office. The period of six months prescribed in the Victorian Act, Section 90, would be more suitable. It should be noted that such charges will already have been registered under the Bills of Sale Act and can be searched in the Bills of Sale Office.

617. By Hon. L. CRAIG: By this we shall be adding permanently to the expenses of government. All these difficulties can be avoided. Do you want to register the Companies Act to apply, the time of 90 days should be extended?—That is my view there. As regards Sub-clause (2) of Clause 119, it is submitted that the penalty should be heavier to conform to the penalty in Clause 105.

618. In view of the word "knowingly" inserted there, I consider that the penalty should be higher?—I recomme the same penalty as in the case of Clause 106.

Clause 120, Sub-clause (6): The company should not be deemed to have complied with the provisions of the Act until the notice has been approved by the Registrar.
It will be seen that Subclause (1) stipulates that the registered office of the company shall be approved by the Registrar. Consequently, I think that the company should not be deemed to have complied with the provision until the office of the company has been approved by the Registrar.

619. The application may have been before the Registrar and he may have overlooked it. Then it is up to the company to give him up. However, just as the registered office is to be approved by the Registrar, so do I think the provision should be regarded as having been complied with until the matter has been dealt with by the Registrar.

620. By Mr. Abbott: Why not? If the application is submitted to the Registrar, is not that sufficient?

621. There should not be a penalty on you if you have done your part. A company should not be at fault so long as it takes all steps necessary on its part. This is a penal clause, and once the notice is lodged that surely should be sufficient!—The registered office of which notice is given by the company might be entirely useless—some fantastic registered office such as care of the General Post Office. I cite an extreme case. Although that would not be approved by the Registrar, you say the company would still be complied with and hence no default under Subclause (6).

622. By Hon. H. Seddon: Assuming that your recommendation is given effect to, would it not be necessary, in justice to the company, to make some amendment in Subclause (7)?—The offence under Subclause (7) would be failure to give notice of a registered office approved by the Registrar.

623. You are suggesting that the company shall not be deemed to have complied with the provision unless the Registrar has approved it—Yes.

624. Very well. In that case, would not the company be liable to the penalty provided in Subclause (7)?—I should say that until the company had received notice of the Registrar’s disapproval, there would be no offence. That seems to me to be common sense.

625. By Hon. L. Craig: Action should not be taken against anybody because of delay on the part of the Registrar's office—No.

626. By Hon. H. Seddon: Do you consider three days would be ample time?—Yes, because as a rule the notice would be given at the time the company was incorporated, at the time of lodging the articles and the memorandum of association for registration.

627. By Hon. L. Craig: Long before the company commenced business?—Some days, any way. Notice is given now, in practice, when the documents are lodged for registration, for incorporation of the company. The documents are all put in together.

628. By Mr. Rodoreda: Would it have any adverse effect if the period was made seven days after the date of incorporation?—As soon as the company is incorporated, it should have a registered office. That is the practice at present. When the documents are lodged for incorporation, the company also lodges notice of its registered office.

629. By Hon. G. Fraser: That would be about three weeks before starting business—Under the Bill, it would.

630. By Mr. Abbott: Do you consider that sooner or later there will be a Federal Companies Act?—It would be a great advantage to have a uniform law for the whole of Australia.

631. Therefore, it is advisable to keep this proposed Act in uniformity with the Acts of the other States. —Undoubtedly that is desirable. The next clause I refer to deal with is Clause 123, and my comment is that if the office or place is the registered office of the company, the words ‘registered office’ should also be prominently displayed. This is the practice only to affix a plate or paint the name of the company on the outside of the registered office. In most cases it will be found that the words ‘registered office’ are now posted up outside the registered office, but I think it should be made obligatory on companies.

632. By Hon. L. Craig: Some companies, which may have the name of the firm on the inside, may display their name on the outside of that office. Should not the name appear on the outside of the building?—It is usual to put the name on the outside of the door. There may be companies whose place of business may be at Leederville and the registered office may be on the fifth floor of the building. In any case, the locality of the registered office may be unnoticed unless there is a notice at the Companies Office. You can make a search there and find out where it is. With regard to Clause 123, my comment is—

It is submitted that the certificate and its consequence as now provided in Subclause (3) would be too far-reaching and that it would be more satisfactory if all the words after ‘certify’ in line 4 were deleted and the following substituted:—‘That the requirements of Subsection (1) or of Subsection (2), as the case may be, of this section have been complied with, and the certificate shall be conclusive evidence of that fact in favour of any person dealing with a company.’

As at present drafted, the clause would have the effect of making the certificate conclusive evidence that the company is entitled to commence business, whereas the statutory declaration, for instance, might be false, and actually the company may not be entitled to carry on business at all. The proposed amendment is taken from the New South Wales Act where they have dealt with the matter more cautiously. The draftsmen have followed the provisions of the South Australian Act. Dealing now with Clauses 123 and 124, I think that few liquidators or receivers realise the necessity for making the annual return when a company is in liquidation or in the hands of a receiver. Their liability to do this should be made obligatory on companies in order to clarify the position and remove a fruitful source of argument with the Companies Office.

633. By Hon. G. Fraser: That matter is mentioned later on in the Bill—if that is so, I have overlooked it. One of my officers brought this matter under my notice and that is why I mentioned it. In response to our notice concerning the annual return under Section 30 of the present Act we receive the reply that such and such a company is in liquidation, that it is not carrying on business and that those concerned with the liquidation thought it unnecessary to furnish a report. Under the provision in the Bill it will be necessary until the concern is dissolved at the conclusion of the liquidation, to furnish the prescribed annual return. My suggestion is that the matter be mentioned in the clause in order to put it beyond all doubt.

634. By Hon. L. Craig: The return must be put in whether the company is in liquidation or not and must continue until the liquidation ceases—The sub-clause should make it clear that any liquidator or receiver must furnish the annual return while the company is dissolved.

635. The Bill to furnish the report remains until the company actually ceases to exist?—Yes, but that point is not appreciated by many liquidators and receivers.

636. I must quite understand that, because the affairs of the company when in liquidation would be in different hands?—The feeling seems to be prevalent that because a company is not carrying on business, it has finished with the Companies Office, except for the provision of one or two certificates concerning the winding-up. Dealing now with Subclause (9) of Clause 161, which should receive some attention from the committee, difficulty will sometimes be experienced in obtaining the attendance of an officer or agent of a company under summons, if he is only liable to a maximum fine of £20 for default. That would be necessary for the information of the public, or anyone having to serve notices on the company or attend the registered office for any purpose at all. Under the Bill, it is necessary only to affix a plate or paint the name of the company on the outside of the registered office. In most cases it will be found that the words ‘registered office’ are now posted up outside the registered office, but I think it should be made obligatory on companies.
637. Do you mean your reference to apply to the person who fails to attend or to the individual who received the summons?—I am referring to paragraph (c) of Subclause 4, which sets out what any officer or agent of a company who, after receiving a summons, fails to attend at the time and place mentioned in the summons shall be liable to a fine not exceeding £20. That penalty would be a very light one for a director in some circumstances.

638. By Mr. ABBOTT: Should not the ordinary provisions apply to anyone who is subpoenaed and has tendered his expenses, apply in such an instance?—The clause has not been drafted in that manner, but it could have been made a little more clear. It is only from an inquiry and the mere fine of £20 would hold no terror for him. If on the other hand, he were to be subject to committing, as he should be, if he failed to attend in response to a summons as by until the time, the position would be different and the individual would be subject to a rigorous penalty because of his failure to attend.

639. By Mr. ABBOTT: Should not the ordinary provisions apply to anyone who is subpoenaed and has tendered his expenses, apply in such an instance?—The clause has not been drafted in that manner, but it could have been made a little more clear. It is only from an inquiry and the mere fine of £20 would hold no terror for him. If on the other hand, he were to be subject to committing, as he should be, if he failed to attend in response to a summons as by until the time, the position would be different and the individual would be subject to a rigorous penalty because of his failure to attend.

640. By the CHAIRMAN: What is that penalty?—Committal or attachment for disobedience or a warrant may be issued to bring the witness before the Court to give evidence.

641. By Mr. ABBOTT: As the Bill says, anyone who receives a notice to attend, irrespective of his financial position and where he happened to be, would be obliged to attend?—Only, at present, under a penalty of £20.

642. By Hon. L. CRAIG: But it would be necessary to tender expenses in every case?—The Court would have to deal with a conscientious witness and it is quite likely the Court would not commit the individual for contempt unless it was shown that the person had been tendered a reasonable amount of contact money. That provision is usually followed.

643. By Mr. ABBOTT: In such cases, it is provided that the money shall be tendered; in the Bill it is not?—It is also provided that the Court 'may' commit, and I do not think the Court would commit unless it was shown that the man was in a position to attend in response to the summons.

644. But it says, 'shall be liable?'.—I think the whole difficulty could be overcome if in line 3 of Sub-clause 8 after the word 'company' you were to insert the words 'fails to appear in obedience to a summons.'

645. Would you have to delete the whole of paragraph (e) of Sub-clause (4)?—Not necessarily. It could remain, with the insertion of those words in Sub-clause (6).

646. By Hon. G. FRASER: Would you leave the amount of £20 in the sub-clause?—I think paragraph (e) of Sub-clause (4) could be struck out if the proposed amendment were made to Sub-clause (5). A practical difficulty which will arise out of Sub-clause (7) is that many copies of the report, which might be a lengthy one, would have to be furnished where the applicants for the investigation are numerous. There is no indication as to who should print the extra copies, and this work might devolve on the Companies Office and have to be done gratuitously. It is submitted that the report should be filed in triplicate, and that it would be sufficient for one copy only to be made available to the applicants collectively. That is provided in the New South Wales and Victorian Acts. There might be a trend in that direction, because of which there would have to be supplied with a copy of the report, which might run into hundreds of folios. I pass to Clause 183. Sub-clause (1) would be amended to read as follows: 'Where the registered office is outside Perth, the notice should be published in the Gazette'.

647. By Mr. ABBOTT: Why should it be published in a Perth newspaper? A company might be located in Broome?—The Perth paper has State-wide circulation.

648. Then it is not sufficient to make the publicity in the local paper?—There might be parties in Perth who are interested.

649. By Hon. H. SEDDON: Do you consider the term of 14 days in Sub-clause (1) adequate?—I think that is the time which has been found to be reasonable in the other States. I do not feel competent to express an opinion on this point.

650. By Mr. RODODERA: Is this provision in the Bill new?—I think it is.

651. By Hon. L. CRAIG: I have a case in point. I am a shareholder in a foreign company registered in Melbourne and working in Malaia. I hardly ever get notices of calls until a day or two before they are due, and then I have to send them to Melbourne. If the Victorian Act contained this provision, my shares would be automatically forfeited without any meeting of directors of the company?—The clause really means that no shares shall be forfeited until 28 days have elapsed from the date of the call.

652. Is there, 14 days after the call is due?—The call is due on a day not less than 14 days after which the call shall have been made, and the shares shall be absolutely forfeited if the call remains unpaid for 14 days after the day on which the call is payable; that is, 28 days altogether. As I said, I am not in a position to venture an opinion one way or the other on this point. Turning to Clause 216, under the present Act the Court determines the security to be given by an official liquidator on his appointment. Under the Bill any person registered as a liquidator has to enter into a bond for an amount to be prescribed by regulations. Such amount might be fixed at £500, as I understand is the case in South Australia. Such security would obviously be too small in many cases of winding up, and a sub-clause should be added to Clause 216 empowering the court, in its discretion, either on or before the appointment or subsequently to require a liquidator to give additional security. The suggestion is taken from the 1899 amending Act in South Australia.

653. By Hon. A. THOMSON: Apparently no bond is provided for in this Act?—In regard to liquidators it is provided that they shall give security to the prescribed amount on their being registered.

654. In this Act?—Yes, in the part dealing with registration of Liquidators.

655. By Hon. H. SEDDON: Does that apply to voluntary liquidations or to all liquidations?—That would apply to liquidations under the supervision of the Court. The matter is in the hands of the shareholders or the creditors in any voluntary liquidation and they can deal with security only where the matter is being controlled by the Court.

656. There is not the same likelihood of trouble from a liquidator appointed by the Court as from a liquidator appointed in a case of voluntary liquidation?—Perhaps not, but in a voluntary liquidation the matter is in the hands of the shareholders or the creditors.

657. What is your experience of liquidators appointed under voluntary liquidation as compared with liquidators appointed by the Court?—I think there is more risk of a voluntary liquidator getting into trouble than is the case with an official Liquidator, because official Liquidators are drawn from a more reliable class of individuals.

658. The Court would not appoint a man if it had any doubt about him?—Certainly not.

659. By Hon. L. CRAIG: The Court appoints a qualified man, a man of reputation?—Yes.

660. In a voluntary liquidation a director or anybody may be appointed?—That is so. The person being registered as a liquidator either in respect of official or voluntary liquidations, an individual will have to give such security, under the Act as will be prescribed by regulations. That security might not be very high. I understand that in South Australia it is £500. Here it might be considered that £2,000 would be a proper figure, as in the case of a bankruptcy trustee. If that figure is fixed by regulation here, it would be only necessary to use the provision I now propose where a company being wound up is a very large one. As a rule it, could be assumed, a very large company would be wound up under the control of the court.
666. All companies that are wound up are not necessarily wound up because of financial difficulties. Sometimes the winding-up takes place with a view to the company branching into side-lines or changing its name. The purpose might be to reconstruct the company, but in the event I do not think there would be much chance of a liquidator defaulting.

667. By Mr. RODOREDA: Would not this provision be duplicating a fact that already exists?—That is one of the grounds of my objection to the provision. The liquidator will already have his remedy under the Legal Practitioners Act. He should know whether an antecedent default has been made and it would be his duty to have the bill taxed.

668. By Hon. A. THOMSON: He would not be doing his job if he permitted excessive fees to be charged?—That is so.

669. By the CHAIRMAN: In South Australia there is agreement with what the witness has said. A statement of the view there contains the following:-

Section 270 of the principal Act requires that all solicitors’ costs exceeding £50 incurred by a liquidator be taxed. It has been found that this provision is unnecessary. A liquidator, if he thinks his solicitors’ costs ought to be taxed, can have them taxed apart from this provision in the Act; but the requirement that these small bills must necessarily be taxed only makes unnecessary work for the Master of the Court and adds an unnecessary amount to the legal expenses of the company, because the taxation of costs itself costs money. It is therefore proposed to strike out the provision for compulsory taxation of these costs, and to leave the liquidator to his ordinary right of having the costs taxed if he thinks fit.

670. The WITNESS: That amendment was made in 1939 after the taxation of all bills has been tried for five years. I think the amendment was made in response to widespread complaints from liquidators and others concerned with the liquidation of companies.

671. By Hon. G. FRASER: I suggest that we obtain from the Solicitor General his reasons for the inclusion of that provision.

672. The WITNESS: The amendment was in the original Act in South Australia but has been deleted by a recent amendment.

673. By the CHAIRMAN: That will be done.

674. The WITNESS: The provision was contained in the original Act in South Australia but has been deleted by a recent amendment.

675. By the CHAIRMAN: The amendment made in 1939 is not incorporated in the print of the Act and might not have come under the notice of the Solicitor General.

676. By the WITNESS: Regarding Clause 290, I submit that preferential payments in a winding-up should be similar to the priorities given by the law of bankruptcy. I refer to Section 5 of the Commonwealth Bankruptcy Act, 1924-33. A clerk or workman should be entitled, without discrimination, to salary or wages due and any cost exceeding £50 in respect of them, within four months before the commencement of the winding-up. Preference should also be enjoyed in respect of workers’ compensation payments, taxes, rents and charges of an apprentice and claims under which the company is covered by third-party insurance. Section 297 of the New South Wales Act appears to be based on Section 8 of the Bankruptcy Act and is recommended to the consideration of the committee as a substitute for the present clause. Under Clause 289 the bankruptcy priorities in the case of an insolvent company appear to be applied in the liquidation of the company, but in my opinion these priorities should be set out in detail in Clause 289 as has been done in Section 297 of the New South Wales Act.

677. By Hon. L. CRAIG: Do you mean copied from the Bankruptcy Act?—Not, perhaps, item by item, but to such an extent as it is considered desirable such priorities should be applied in the liquidation of companies in this State.

678. By Mr. RODOREDA: What is your main objection to it?—The Master would have to tax a quite small bill, and there is little to be gained by taxing it. In fact, the costs will be increased in some cases by the taxation. Even the taxation of costs involves extra charges.

679. By Hon. L. CRAIG: Most of the bills would be less than £10 for a liquidator. Would it pass the work of the Master to increase that amount?—That would ease the amount of work the Master would have to do.
685. It would cover your point if it was made clear that the priorities referred to under the Bankruptcy Act for the paying-out of money by the person who has the money in his keeping shall apply.---Yes, but Clause 289, subject to some qualification, already says that—I think the priorities should appear on the face of the Bill and then everyone will know what is to happen.---That just lies in the 'Treasurer.'

685. By the CHAIRMAN: In the Bankruptcy Act is there any difference between salaries and wages?---There is no distinction. There is a four months protection in each case.

686. In this Bill there is discrimination, salaries being 250 and wages £50?---Yes. That discrimination is rather absolute in these bills.

Clause 295, Subclause (3): An execution against land should only be deemed to be completed by the sale of the land or the equitable interest, and not merely by the appointment of a receiver or by the seizure of the land, which only involves the formality of lodging a writ of fi. fa. at the Tithes Court.

687. By Mr. ABBOTT: You suggest that the same provisions should apply to a company as would apply to an individual—that is my proposal. Until the land has been sold it should still be available in the liquidation of a company.

688. By Hon. L. CRAIG: It may be in process of being sold?—Until it is sold it is still there in tangible form and should be available in the liquidation of the company. In that case the judgment creditor would participate in distribution in the liquidation.

689. Would this question not affect priority of wages?—It would do so if the land was the only asset. The judgment creditor by merely observing a formality might get in ahead of all the creditors of the company. You would amend that, and cause the legislation to correspond with the provisions of Section 209 of the Victorian Act.

690. By Hon. A. THOMSON: If a private individual obtained judgment, would he not be in control?—Not until he sold the land, if my amendment is accepted.

691. By Hon. L. CRAIG: He may seize land that is unsaleable, such as is agricultural land?—Until it is sold it should still be available in the liquidation.

692. By Hon. A. THOMSON: Suppose the land was unsaleable?—No one would be very much prejudiced if such land had not been sold. If a man went bankrupt and his property had not been sold before the sequestration order, it would still be available to his creditors. Under the Supreme Court Act actual seizure in the case of land is not necessary. A creditor now protects himself by lodging a writ of fi. fa. with the Tithes Office. That protects him for a certain period.

693. By the CHAIRMAN: That disarms the defendant's property?—Yes, to enable a sale to be effected.

694. By Mr. ABBOTT: You think the same provision as its bankruptcy should apply to companies?—I think so.

695. By Hon. A. THOMSON: If the land is not sold, is the judgment creditor placed in the same position as the other creditors?—Yes.

696. By Hon. L. CRAIG: After the priority of salaries and wages?—The fact that he is the judgment creditor does not warrant him if he has not sold the land. That is the principle applied in bankruptcy as regards individuals.

Clause 308: It would be more satisfactory if unclaimed assets of a company were paid to the Treasurer direct as under the present Act, and then kept by the Treasurer in a 'Companies Liquidation Account.' The provisions relating to the getting-in and investing of the moneys, and the paying-out of moneys to claimants on the order of the Register, could still be retained in the clause; but the Register should have the trouble of keeping a special account and making and looking after investments. The order referred to in Subclause (2) should be made 'upon the application of the Registrar.'

At present the subclause does not specify on whose application the order is to be made.

697. By Hon. L. CRAIG: You are contending that the money should be paid direct to the Treasurer?—I think that would make for simplicity.

698. Except that the company has been dealing with the Registrar in all its transactions?—This matter could be arranged with the party. I would have the Treasurer handle all these moneys. My objection is not so much against the money being received by the Registrar, but to his being compelled to keep separate accounts for it and make and look after investments.

699. He would just receive the moneys and then be finished with the matter?—Yes, if the proper provision were made in this clause.

700. Do you agree that all the transactions should be between the company and the Registrar?—That would of course make for convenience.

701. You agree that it would be a reasonable thing to do?—I think it would.

702. By Mr. ABBOTT: Don't you think that some provision should apply with regard to those moneys as with regard to undischarged moneys held by a bank?---There is no requirement of investment at all. The only answer I can give is that in all the other States it is stipulated that such moneys shall be invested.

703. In your position as registrar, it is not a matter you should give evidence out? Is not that really your answer?—Perhaps it is a matter on which I should not express an opinion. I am not sure. I think the money should be earning interest. In six years Consolidated Revenue would get the money if undischarged. Under the present Act the money just lies in the Treasury.

704. Not it is used by the Government?—It is placed in the hands of the Government without any obligation being imposed on the Government to invest it. It is used, no doubt, and when a valid claim is made the proper amount is paid out of some account in the Treasury on the Registrar's order. I think that under the clause any interest earned by investments goes to revenue.

Clause 316: This clause should be given retrospective effect so as to apply to cases where the company was dissolved before the commencement of the new Act. (See New South Wales Act, Section 324, Subsection 3.)

An amendment on these lines would allow the Registrar to represent a company which became defunct before the commencement of this measure, just as he may represent a company becoming defunct after the commencement of this measure.

Clause 317: The period of 20 years prescribed in Subclause 2 within which a claimant might present a petition for payment of any proceeds of realization of outstanding assets of a dissolving company appears to be unduly long, and few claims would remain dormant for so long, and it is suggested that six years, as in the Victorian Act, should be substituted.

705. By the CHAIRMAN: That would be subject to the Treasury, would it not, as is the case now? Many claims are paid after the expiry of the statutory limitation?—Payment could still be made as a matter of grace, ex gratia.

706. By Hon. L. CRAIG: What is the period in the New South Wales Act?—I think it is 20 years. In the Victorian Act it is six years. With regard to Clause 284 I make the following comment:

Subclause (3): The period of one month within which foreign companies must comply with Sub-clause (2) is too short a view of the number of companies which will be concerned. In most cases the necessity for obtaining documents, information and instructions from other States to comply with the Act, and the subsequent work which will be thrown on the Companies Office in receiving and dealing with, in a very brief period, the returns and documents in the case of a longer period. Six months should be substituted. This is the time allowed by the Victorian and New South Wales Acts.

Companies outside the State and inside the Commonwealth should be allowed a period of six months to comply with these provisions.

707. By Hon. A. THOMSON: Is it not provided for in paragraph (b) that refers to any company incorporated outside the State and outside the Com-
monwealth; but companies within the Commonwealth must apply within one month. I think that is too short a period both for the company and the Companies Officer.

708. By Mr. ABBOTT: I am referring to Sub-clause (1)—Is it not too short a period for any company at all? Before a company commences business here it makes certain preliminary arrangements and one is to effect registration. This subclause deals with companies commencing business here in the future.

Next we have Clause 395, my consent is—
In view of the uncertain legal status of Ireland in relation to the British Empire it is suggested that if it is intended to include Ireland in this clause that country should be specifically named. Ireland is specifically named in the corresponding section of the Victorian Act. Here the reference is to a British possession which means a part of the British Empire, and it is a moot point whether Ireland is a part of the British Empire.

709. By Hon. L. CRAIG: We should call it Eire or Irish Free State?—The question is whether a specific reference should be made to it. British law in many respects is much the same as British law. As an example of the difficulty referred to—We have grave doubts as to whether probate granted in Ireland is entitled to re-sealing here. Since 1923 there seems to have been a good deal of doubt, even in the minds of constitutional authorities as to the exact legal status of Southern Ireland.

710. I do not think we should call it Ireland?—
Quite so. It is called Ireland in the Victorian Act and that is why I have used that name. That act was passed here in 1906. With regard to Clause 397, I offer the following comment—
It is submitted that for the protection of creditors and others having dealings with a foreign company due publicity of its intention to cease business should be given. The provisions as to publication of notice of intention to cease carrying on business should remain as in the present Act, and the notice should be published in three consecutive issues of the "Government Gazette" and three times at intervals of one week in a daily newspaper published in Perth and circulating generally in Western Australia.

According to the clause in the Bill, one notice in the "Government Gazette" and one in a daily newspaper will be deemed sufficient.

711. By Mr. ABBOTT: How does that compare with appropriate provisions in other Acts?—I am unable to give evidence on that point.

712. By Hon. L. CRAIG: Different methods of treatment are provided for foreign and local companies respectively and you suggest the treatment should be similar?—No. I suggest that the provision should remain similar to that in the present Companies Act. With regard to the publicity that is required by the clause as drafted, a foreign company has ceased to carry on business, the "Government Gazette," you will probably agree, is not widely read. With regard to Clause 396, Subclause (5) provides that the Court shall refuse an application if it is proved that the applicant has been convicted of an offence against this Act, Where the offence is of a trivial nature only, it is suggested that some discretion in granting the application should be given to the Court. At present the provision is mandatory inasmuch as the Court is required to refuse the application if conviction of an offence against the Act is proved against the applicant.

713. By Hon. A. THOMSON: That is where the person has acted fraudulently or dishonestly—I am referring more particularly to paragraph (e), which reads—'If (c) has been convicted within a period of five years next preceding the date of the application of an offence against this Act,'

714. By Hon. L. CRAIG: In effect, this suggestion of yours merely provides the applicant with a right of appeal—it will leave the granting of the application to the discretion of the Court.

715. By Hon. H. SEDDON: If the provision were left along the lines of paragraph (b), there would be a better safeguard. Personally I think that if a man has been convicted of fraud or dishonesty, an application from him should be refused—if a man has acted fraudulently or dishonestly, he should not be registered but the paragraph that I suggest should be amended is paragraph (e), which I regard as too general in its application.

716. If amended along the lines of paragraph (b), the required objective would be obtained—No. There may be instances where there has been no fraud or dishonesty, but where there are reasonable grounds for believing that the person convicted will be specifically referred to be disqualified, and the Court should be in a position to consider whether that person has committed an offence involving gross negligence.

717. By Hon. L. CRAIG: Clause 395 deals with the registration of authorized share dealers and the duration of their registration and paragraph (c) refers to a share dealer who "is a member of the Stock Exchange in Perth, or any other recognised Stock Exchange, when he ceases to be a member." That means that such a person would be entitled to act as a share dealer?

—Under the present Act, a person may obtain registration in different capacities. If he ceases to be registered in one capacity, he is entitled to obtain registration under some other heading.

718. Is there some other heading under which a person who, for various reasons, having had to sell his seat on a Stock Exchange, may secure registration as a share dealer?—Clause 395 enables the names of persons who shall be authorised to act as share dealers upon registration and paragraph (d) of that clause refers to exempted share dealers during the period of their exemption. It would be competent for a person such as you have in mind to apply for exemption, which, if granted, would enable him to act as an authorised share dealer. Clause 395 is the next I shall deal with and I suggest there should be added to this clause a provision that the Governor shall notify the Registrar of any declaration that a share dealer, etc., shall be an exempted share dealer, and also of the exemption which is cancelled by the Governor. Such a provision will enable the Registrar to keep his records up to date. He will have on his file an official notification on his records as to any individual who would have to search for and rely on the notification appearing in the "Government Gazette." I have some suggestions to make with respect to new clauses for insertion in the Bill. First, after Clause 397 a clause should be inserted providing that where a company goes into liquidation in the country in which it is incorporated, its shareholders file with the Registrar a notice of liquidation, and the remaining provisions of Section 72 of the New South Wales Act should be included in the clause, together with the penal provisions of Section 73 of such Act. The Companies Act Amendment Act, 1939, of South Australia, has inserted in the principal South Australian Act provisions (Sections 361 (a) and 361 (b)), similar to those now proposed, and has also re-enacted a provision (Section 361 (c)) by striking off the register the name of any foreign company which is believed to have ceased to carry on business in the State. This power enables the Companies Office to keep its registers up to date and is of similar value to the power of removing defunct State companies from the register. A clause similar in effect to Section 361 (c) of the South Australian Act should be inserted in the Bill. It seems to be generally recognised in the other States that when a foreign company goes into liquidation, prompt notification of that fact should be given to the Registrar, so that anyone interested can ascertain what the position of the company is and who the liquidator is. It seems to be also advisable that there should be similar provision when a company is dissolved in another State, at the end of its liquidation. Any person in this State could then ascertain that the company is no longer in existence in the State of its incorporation.

719. By Mr. RODOREDA: How would you enforce that provision?—An agent of the foreign company is subject to penalties for not observing provisions to be observed by such companies.

720. By Hon. L. CRAIG: Are you referring to a foreign company carrying on business in Western Australia?—Yes.

721. By Mr. ABBOTT: That seems to be hard on the agent?—The agent is subject to a number of penalties under the Bill already.
728. By Mr. RODORI'A: He would be liable to all those penalties while the company is carrying on business—Until the company ceased to carry on business in Western Australia, after having given the proper notice.

729. That would not be very expensive—No.

730. By the CHAIRMAN: The South Australian Act fixes a limit of two years—Yes. After that, the company's right to be restored is gone. The third new provision I put forward is necessary because under the Bill an investigation by an inspector into the affairs of a company may only be conducted (a) by order of the Court on application by the prescribed number of shareholders and on good cause shown and subject to security being given for the costs of the inquiry; or (b) pursuant to a special resolution of the company and because the Registrar has no power to investigate the affairs of a company; he may inspect only the registers of members and mortgages, and the minutes of general meetings. To meet cases where the remedy given by the Bill is inadequate for some reason or is not availed of, and an immediate investigation is in the public interest, there should be inserted in the Bill similar to Section 138 (a) of the South Australian Act, whereby the Governor, on the recommendation of the Minister, setting after a report has been made to him by the Commissioner of Police or the Registrar, may appoint the Auditor General or another competent person to investigate the affairs of the company. Such a provision has been found necessary in South Australia. The case of Liethilds (Australasia), Limited, might be cited as an instance where such a provision would have been of use here.

731. The CHAIRMAN: The Solicitor General agrees with Mr. Boydon. He refers to a new Section 158 (a) inserted in the South Australian Act, which corresponds with Clause 163 of our Bill. He adds, 'This new provision provides for special resolution to be carried for the purpose and into companies' affairs at the instance of the Attorney General on a report from the Commissioner of Police. I think this new section is very desirable and therefore a new clause, to stand as Clause 164, should be inserted in our Bill after Clause 163.'

732. The WITNESS: I have one other reference to make and that is Subclause 1 of Clause 425. I was informed yesterday that some doubt had been expressed whether the provision in this subsection would mean that the present Registrar of Companies could continue to act without being specially appointed under the new Act. Under Section 8 of the existing Act, it is provided that the Governor may appoint a Registrar of Companies for the purposes of the Act and that until such appointment is made, the Registrar of the Supreme Court shall be such Registrar. Ever since the commencement of the present Act, the Registrar of the Supreme Court has been the Registrar of Companies, and no specific appointment of anyone as Registrar of Companies has ever been made by the Governor. I am of opinion that the provisions of this subsection would enable the Governor to authorise the continuance in office of the present Registrar of Companies,' he being the Registrar of the Supreme Court, but the word 'appoint' in the proposed new Act, and the word 'appointment' in the proposed new Act, there is room for some uncertainty. I suggest that it should be provided in the new Act that until an appointment is made by the Governor, the Registrar of the Supreme Court shall be the Registrar of Companies. It is very unlikely that between now and the commencement of the new Act, any alteration in the administration of the present Act will be made.

733. By Mr. RODORI'A: That word 'appointed' after 'Registrar' in our Bill seems to be the word over which some discussion might arise—That is the word that gives rise to doubt.

734. There was no Registrar appointed under the old Companies Act—No, but by the Act itself the Registrar of the Supreme Court might be held to have been the appointed officer.

735. Apparently this clause needs to be clarified—Yes, it is not free from doubt.

736. By the CHAIRMAN: Would you be in favour of a local director for foreign companies operating in this State? The provisions as they stand now I think there would be some difficulties to overcome in bringing it into operation. One objection might be that the local director would be the agent under another name, and that extent would be more or less a dummy director.

737. By Hon. G. FRASER: Do you think there would be any value in such an appointment?—There might be, but I cannot say that there would always be.
If the spirit of such a provision were observed by the foreign company, there should be value in such an appointment. The appointment would also involve annual meetings of the foreign company to be held locally, I should think.

73S. Suppose it was a foreign company with no shareholders in this State—I took it that the question applied more particularly to no liability companies.

739. By the CHAIRMAN: Yes—I was really thinking of no liability companies.

740. It applied to them firstly and probably to other companies as well, but to no liability companies particularly. Another difficulty would be that the articles of constitution of the foreign company might make no provision for the appointment of directors outside the place of incorporation.

741. By Hon. L. CRAIG: If it was compulsory, a company would appoint an agent as director merely to comply with the Act?—I think the local director in some instances would be a dummy director. I am doubtful how the provision would work in practice, and I think there would be fairly big difficulties to overcome. I have mentioned only one or two of the difficulties.

742. By the CHAIRMAN: It is a pity that local shareholders, and also creditors, have not some means of redress, and if such a provision could be introduced, I think it would be beneficial to the State.—If the difficulties could be overcome, there might be some benefit, but I do not know whether some of them could be overcome.

743. By Mr. ABBOTT: Under the existing system a foreign company has an authorized agent residing in Western Australia from whom all information can be sought.—That is so.

744. A local director would have no individual authority at all—I do not think he would be able to act on any important matter without first referring to his principals or to the other directors.

745. He would not be justified in disclosing information without the authority of the directors—do not think he would, but it would depend on the extent of his authority and the nature of the information.

746. Have you considered that portion of the schedule dealing with private and proprietary companies?—Not very closely. They seem to concern us at the Companies Office very little.

747. Is it necessary to have both private and proprietary companies on the lines provided for in the Bill?—I am guided on that point by the fact that provision is made for them in all the other States. We have very few proprietary or private companies registered in our Companies Office.

748. By the CHAIRMAN: It would be helpful rather than detrimental to make provision for both types—I think provision should be made for both private and proprietary companies.

749. By Hon. L. CRAIG: Can you tell us the difference between the two types?—I can only refer you to the Bill; I have not tried to memorise those provisions.

ARTHUR CAYLEY LENNOX LAMB, representing the Perth Stock Exchange, examined:

750. By the CHAIRMAN: Will you proceed with your statement?—Four questions arise in connection with the Companies Bill that concern the Perth Stock Exchange from the point of view of practice, as well as those relating to share dealers, share hawkers, forfeited shares and preference shares. The Stock Exchange cannot agree that sharebrokers are share dealers, as indicated in the Bill. The term "sharedealer," as I understand it, does not appear in any of the rule books. In Perth there are only two classes of sharebroker, official brokers and unoffi- cial brokers: the former are full members of the Perth Stock Exchange, who require to be wound up on the death of a member, or seconded by members of the association, and must be elected at a general meeting, one black ball in four excluding. Should the applicant be successful, he must purchase a seat at a price determined by the committee, but at not less than £100. The price of a seat is governed by the volume of business current. During the recent boom £2000 was paid for a seat by an incoming member. An unofficial broker is one who sets himself up as a stock and sharebroker in business, but is not governed by any rules of the exchanges, and is at liberty to do things and commit acts which may be detrimental to the public. Official brokers are prevented from dealing with such people, and it has been the object of the Australian Association of Exchanges (of which the Perth Stock Exchange is affiliated) to stamp out all forms of unofficial business, sharehawking and share-pushing.

The term "sharedealer" does not apply to the Share Exchange terminology. The term itself is rather an enigma. It may apply to any person who invests his savings, a large investor, or even a private person who concludes by his own practice of buying and selling shares for himself. If any of these investors were required to register as such, the stock exchange would be led into a very difficult position, and, rightly or wrongly, the public might expect that they were prohibited from buying or selling any shares, stocks, bonds, etc. Members of the exchange disagree that they are sharedealers. Although the Stock Exchange does not prohibit a member from buying shares if he so desires, he is prohibited by the rules from selling his own shares to his private client without first acquainting him of the fact, and clearly showing the transaction in his stamped contract note. Members of the Australian Association of Stock Exchanges authorised the practice of allowing sharedealers to be registered, will largely create and give official sanction to a class of business that the exchange is endeavouring to stamp out, as something detrimental to the public as well as to the Stock Exchanges. In the event of a mining boom, any individual might open a place of business for the purpose of buying or selling shares, and would certainly advertise the fact that he is a registered broker, but he would be operating on his own terms and would not be governed by any rules and regulations of the Perth Stock Exchange. The exchange rules are very tightly drawn up for the protection of members and clients, and any member or official broker can be dealt with either by a fine or expulsion. The Stock Exchange would prefer to see the clauses dealing with sharedealers deleted from the Bill, and recommend that legislation be introduced to prohibit unofficial brokers from operating with the public.

Share Hawking—The Stock Exchange is of the opinion that the law should be drawn up against all forms of sharehawking or share-pushing. The rules of the Stock Exchange, no member may circulate or telephone anyone other than his own clients, in any matter dealing with stocks or shares, and also prohibits any member from broadcasting over the air. In the event of new company flotations, where the Stock Exchange of Perth is to be official brokers, the prospectus must be submitted to the Exchange committee, and permission to act must be by the majority. A member or his firm may not act as a broker, but must notify the Stock Exchange in writing of the intention of the person to be a director. The Exchange does not consider the formation of a company, the grant of a licence, the sale of shares, or the appointment of directors, without the consent of the committee. The prospectus may then only be posted, or handed, to his regular clients. On several occasions, small company flotations have been referred to the Stock Exchange, but owing to the smallness of the float, members were opposed to handling the flotation. In such cases, it is the opinion that the Registrar of Companies for Western Australia, in the opinion of the Stock Exchange, to grant a certificate to the person concerned for that flotation only; as the clauses of the Bill make it necessary for flotations or new issues of capital to be approved by the Registrar of Companies.

Forfeited Shares—It is the opinion of the Perth Stock Exchange that the South Australian Act, Sections 77 and 176, should be adopted for Western Australia, but that forfeiture should take place twenty-one days after announcement, and that auction of forfeited shares must be held on a seven-days' notice. If no auction takes place shareholders would have the right to redeem by payment of the call for a term of six months after winding up of the company. Some mining companies make calls with still a fair sum of money in hand, and the majority of the shares were forfeited and reverted to the company, in the event of liquidation. The number of shareholders might obtain a considerable liquidation dividend. Also, some important mining development may be pending which might give a shareholder the time to participate in, should he be unable to meet his call at a short notice.
Preference Shares:—In the listing of any company on the Stock Exchange, the articles of association, balance sheets and other details concerning the company must be exhibited to the committee, and no preference share will be listed unless the rights of the preference shareholders are fully protected, and the three-quarters majority is not necessary to alter their status or repayment of capital. No alteration or addition to the articles of association which might in any way affect or affect the rights or privileges attaching to preference shareholders should be made without the consent of the holders of at least three-quarters of such shares. Clause 87 of the Bill states as follows:

This is most desirable, considering that some years ago a prominent company decided to repay its preference shareholders at par when the market was standing at a premium.

The Bill seeks to amend the Companies Act in relation to share pushers, covers the shares, stock, bonds, debentures, debenture stock and other securities and unless one of these is quoted on or in respect of which permission to deal has been granted by any recognised Stock Exchange in Australia or New Zealand and the offer so states and specifies the Stock Exchange, it will be listed unless there is first filed with the Registrar a statement verified by statutory declaration containing particulars similar to those required under Subsection (4) of this section in relation to offers in writing for sale of shares.

In the proviso to Subclause (2) of Clause 390, after the words "sale of shares," add the following words: "nor where the shares to which the offer relates are shares which are quoted on or in respect of which permission to deal has been granted by any recognised Stock Exchange in Australia or New Zealand unless it is not used."

Clause 380, line 4, after the word "purchase," add the words "or in exchange for other shares."

Clause 399: Add to the first paragraph the following words: "and the Registrar may, on his own motion or otherwise cancel any such certificate."

Lines 34, 35, and 36: Delete the words "made by or through an authorised share-dealer within the meaning of Division 2 of this part of this Act, and is accompanied."

Add to the second paragraph of Clause 399, after the words "grant it," the following words: "nor unless there is first filed with the Registrar a statement verified by statutory declaration containing particulars similar to those required under Subsection (4) of this section in relation to offers in writing for sale of shares."

In the proviso to Subclause (2) of Clause 390, after the words "sale of shares," add the following words: "nor where the shares to which the offer relates are shares which are quoted on or in respect of which permission to deal has been granted by any recognised Stock Exchange in Australia or New Zealand and the offer so states and specifies the Stock Exchange."

Delete Clause 392-401, vide remarks in attached memorandum.

751. By the CHAIRMAN: Why do you object to the term "share-dealers"?—It is never used in Stock Exchange dealings, nor is it used between a stock-broker and his client. It might have been used in South Australia many years ago, but I do not think it is used now. There were then outside brokers who dealt amongst themselves. The man given to those people was "gutter rat." He brooked does not regard his client as a dealer; he regards him as an investor, whether he invests in stock, bonds or debentures.

752. Does the term "share-dealers" appear in the Eastern States Acts?—No. In South Australia there are really three terms. There is the official Stock Exchange member and there is the vestigial broker of the Adelaide Stock Exchange, who pays a fee of £10 10s., but is not a full member though he is entitled to certain privileges of the Association, and is able to do business with the public. The third is the unofficial broker who, as I have said, is described as the "gutter rat." 

753. Does not the term "share-dealer" appear to be intended to cover the actual investor? I should think the term would apply more to bucket shops such as there are in London.

754. As it is purporting to refer to share brokers.—Yes, it does, and that is why we object to the term "share-dealers." We are agents or brokers.

755. I do not think the term "share-dealer" was heard of before it appeared in the Bill.—It has been used. Before the Stamp Act was altered the Commissioner of Taxation allowed a person to declare himself to be an investor or a dealer.

756. Not a broker.—That applied to an ordinary individual. Where the shares are quoted on the public exchange, the public generally it could, of course, do so as it does at present, but what is to happen if this subclause becomes law where the company follows up its appeal to the public generally by circulars to individual members of the public? It would seek as if the company would be seriously handicapped and have to send the written statement with its circulars or would have to employ a salesman to sell the shares. If the company employed a broker, that broker would be limited as above-mentioned and could not approach a member of the public with whom he had no previous dealings. The position would be clarified if, to the proviso to Subclause (2), were added the words "nor where the shares to which the offer relates are shares which are quoted on or in respect of which permission to deal has been granted by a recognised Stock Exchange in Australia or New Zealand and the offer so states and specifies the Stock Exchange.

Restrictions Relating to Share-Dealers:—Clauses 392-401: Objection is taken to this section as it is not con­cluded necessary to authorize these share-dealers.

Suggested Amendments:—Clause 390, amend as follows:

Clause 386, line 2, after the words "from place to place," insert the words, "whether by appointment or otherwise." (See Section 543 of New South Wales Act)
762. Such people are not responsible to any one.—To no one at all.

763. Therefore in trading such men really set themselves up as stock-brokers and are associated with a recognised Stock Exchange and the latter have certain responsibilities to fulfil.—That is true.

765. There is danger there, I take it. You probably have instances in mind where men have done that and the public have been defrauded.—Yes, that is quite so.

766. Your object is to prevent that sort of thing.—Yes.

767. By Hon. G. FRASER: The mere fact of altering the term share-dealer to share-broker will not prevent such people from doing what is suggested.—Those people would be entitled to call themselves stock-brokers who buy and sell shares from and to the public, but they would not be governed by any regulations.

768. But the mere alteration of the term from share-dealer to share-broker would not afford the public any added protection.—No. We regard the unofficial share-dealer as a man who buys and sells shares. If he had to pay a registration fee of £200 in order to secure registration there would not be many people buying or selling shares.

769. But the mere fact that such people would be called brokers or agents would not affect the position.—We do not agree that they should continue.

770. By Hon. L. CRAIG: At any rate, your suggestion is that the words "share broker," should be substituted for the words "share dealer."—We ask that all the clauses from 302 to 401 inclusive be deleted. All these clauses deal with restrictions relating to share dealers.

771. By Mr. RODODENDRA: Do you not desire any restrictions at all?—We do not want any of that class of dealer.

772. You do not desire their registration.—No. We consider the Stock Exchanges have undertaken their duties most well. The business is strictly supervised and the concerns are regarded throughout Australia as the official Stock Exchanges. Members of those bodies are the only people entitled to receive payment from the Commonwealth Government of Commonwealth brokerage in connection with the flotation of loans, etc.

773. By the CHAIRMAN: Your suggestion seems rather drastic. These clauses must have been inserted for a purpose, and the object of the Bill is to protect the investing public. I do not desire to reflect at all upon the Stock Exchanges.—Quite so. Provisions of this nature do not appear in any other Act throughout Australia. We would rather see the unofficial share-dealer prohibited altogether.

774. By Hon. L. CRAIG: But you will not accept some of those people in the Stock Exchange?—No.

775. Some men may be quite all right.—We regard the unofficial share-dealer as undesirable.

776. That may not necessarily be so. Many of them may be men of good type, but because you already have enough members in the Stock Exchange you will not accept any additional ones.—At the present time I do not think anyone would apply for membership because such applications depend upon the volume of business available. Should there be sufficient business offering and we considered the population warranted action.

777. In your opinion?—Yes, in the opinion of the Exchange, then we would consider such applications provided the individuals were satisfactory.

778. And paid their fees?—Yes.

779. And those fees vary from time to time?—Yes, if we think the occasion warrants any such alteration.

780. By Hon. H. SEDDON: Besides the payment of a fee, there are other considerations to be taken into account before a man can become a member of the Stock Exchange.—Yes. He must be nominated and seconded by members of the exchange.

781. Are there not conditions relating to his integrity and standing that must be observed?—Certainly. The members who nominate and second him must take responsibility for him.

782. In fact, it is not necessary in some exchanges for a man to provide security before he can become a member.—We do not know of that in Australia. It may be so in London, where the volume of business is tremendous. In Australia the purchase of a seat would be considered sufficient security for other members. Of course, against those who are associated with a recognised Stock Exchange and the latter have certain responsibilities to fulfil.—That is true.

783. Therefore in trading such men really set themselves up as stock-brokers and are associated with a recognised Stock Exchange and the latter have certain responsibilities to fulfil.—That is true.

784. In effect, your object is to make the Stock Exchange a close corporation.—It is. We consider that that is for the protection of the public as much as for any other reason. For instance, if we were not deterred from dealing with an unofficial sharebroker, we might secure quite a lot of business from him which otherwise we would not get; but the exchanges always treat the business of an unofficial sharebroker as not worth while. They look upon it as bad business. We know nothing about the standing of the man. The same thing applies to a man desiring to appoint a country agent. He is obliged to make very close inquiries into the standing of the agent before he can ask for official recognition of the agent.

785. There are in Perth to-day recognised share-brokers who are not members of the Perth Stock Exchange.—Not at the present time.

786. There were a little white ago?—Yes, during the boom period.

787. Are there not any at all now?—Not at the moment.

789. Are there any in the other States?—Probably there are very many of them there.

791. I mean carrying on business?—Unofficially.

792. Not as members of the Stock Exchange?—There may be. It depends. When business is dull they disappear, as a rule, and they may disappear with a lot of property belonging to other people.

793. They may or may not. I am not thinking so much of Western Australia, because there is very little share dealing done here; but in the Eastern States there may be several unofficial sharebrokers who are willing to pay a fee of £1,000 or £2,000 for a seat on the Stock Exchange; but they cannot obtain the seat because the ranks are closed.

794. Hon. L. CRAIG: If a man were a member of a recognised exchange he might be turned out?—Yes.

795. He could not be registered.—No.

796. By Hon. G. FRASER: In other words, you desire that the Stock Exchange should retain the right to say who shall or shall not be in the business?—That is correct. The Stock Exchange is governed by hard and fast rules which afford security to the public. If unofficial brokers are allowed to carry on business, you will have the canvassing and other business going on which you are trying to stamp out.

797. Not necessarily. The business would be split up among more people.—Those brokers would introduce new business, because the business of a sharebroker is largely a matter of personal contact. The brokers are a good deal of the personal element attaching to a broker's business. If a man is admitted, he brings with him a certain clientele which he has and which otherwise we might not obtain. He may have a number of friends and a few stocks about which he considers he has a great deal of information. He communicates with his friends and says, 'I think you ought to have so much; invest in so-and-so.' Those people might otherwise not invest at all. That business does not come through the Exchange.
798. You try to restrict such a man in boom times. Consider the case of the man who paid £500 for a seat on the North Stock Exchange. That shows that business was good. Now you are going to make it hard for him to get a seat; you are forcing his hand; when the slump you brought the price for a seat down to £100. In effect, you are restricting membership of the Stock Exchange—That is so. It applies to every Stock Exchange in the world. When there is a boom and his business is done, the price of seats rises to a high figure.

That is so. You now say to a man who desires to become a sharebroker, "You cannot operate unless you become a member of our Stock Exchange," and you make the fee so high that he cannot become a member. However, a man may become a member of an institute of accountants if he possesses certain qualifications; but in the case of the Stock Exchange he cannot become a member because the fee is prohibitive—That is so. Of course, if a broker cannot afford to pay £500 for a seat, there is little protection for his clientele.

800. A Stock Exchange seat was a bad investment in 1931 or 1932—No. The men who joined then had a very fair share of the business.

801. For the first week of two—That boom continued for a year or two. The business was pretty good.

802. The price of a seat jumped from £100 to £500—Yes.

803. By Hon. G. FRASER: What protection does your exchange actually give—? To the member?

804. To the public—Our rules and regulations are tightly drawn up.

805. You say that a member is not required to put up any money, otherwise than to pay for his seat—If a member is hamstrung, the Stock Exchange takes charge. If a broker cannot keep up with his commitments, he is hamstrung immediately. All his stocks, bonds and securities are taken charge of and his business is sold up.

806. By Mr. ABBOTT: But you do not guarantee him—The Exchange does not.

807. By Hon. G. FRASER: There is no actual guarantee to the investing public that they will receive the full amount of their investments, notwithstanding that the Exchange takes over the business—No. If a broker fails in his commitments he is immediately posted and his affairs are investigated by a committee of the Exchange.

808. By Hon. L. CRAIG: Cannot you see this position may arise—The Stock Exchange may consist of 10 members, of whom seven are becoming old. The two younger members may be owners of one or more of our Exchange can operate as sharebrokers in Perth; we have only to make our fee high enough to exclude all other people. These seven members will die; the Exchange is in the hands of the two younger members, 11 and 12; and we shall have the entire share business of Western Australia. That is a possibility. You can make the fee as high as you like; there is always the chance that that might happen; but as a rule, the business of sharebrokers who have been operating for a long time is carried on by the staff.

809. By Hon. H. SEDDON: The object of a Stock Exchange is to have a recognised place where the marketing of securities can be carried on—That is so.

810. Stock Exchanges are formed with a certain membership, as a rule; they may increase the membership later on, but they start with a minimum membership—Yes.

811. The idea of the restriction is that the privilege of being a dealer in securities shall be restricted to persons who are not only fitted to carry out the business, but are also strong enough financially to meet their obligations—That is true.

812. Unless the Stock Exchange were satisfied as to a man's ability to carry on a business, a man may not become a tradesman, he would not be allowed to become a member—That is true.

813. The idea is that the public shall be, as far as possible, protected by the rules of the Stock Exchange; and the establishment of an apparent monopoly is really an endeavour to secure the best and soundest service for the public—That is so.

814. Will you look at Clause 203 of the Bill? That refers to certain persons who shall be authorised to carry on a business, or be exempted from being exempted as share brokers under certain conditions without being members of the Stock Exchange?—I understood that the only persons were members of the registered share brokers or share dealers, as the clause states, were members of the Stock Exchange.

815. Clause 208 states "the following persons . . . shall be authorised share dealers. That is to say that the clauses refer to exempted share dealers, that is to persons who are declared by the Governor to be exempted share dealers. They would have the right to trade in shares under this clause—We wish the whole of the clauses from 202 to 401 to be deleted.

816. What I am trying to point out is that under the clause, as it stands, it will be impossible for people to deal in shares without being members of the Stock Exchange—Yes.

817. You desire to prevent that state of affairs—Yes.

818. If the whole of the clauses were taken out, would not the position be as it stands to-day, that unauthorised persons would be able to deal in shares and the public would not be protected?—That is why in our memorandum we suggested we would prefer you to delete all unauthorised brokers.

819. By Hon. A. THOMSON: Provision is made that a deposit of £500 shall be made with the Registrar—Yes; but if a person set up an office as an official broker during a boom period—which is the only time he would do so—and paid £500 to the Registrar, he could then carry on business and do all the acts he should not do and suddenly cease business, close his office, get his £500 back and go. There is no much security to anybody. The payment of the deposit merely puts him in the position that he can advertise on his door that he is a registered sharebroker, which is entirely in opposition to the Stock Exchange.

820. By the CHAIRMAN: It seems to me that these clauses were deleted we would create a monopoly and would have no jurisdiction, no guarantee. I think the drafting of the Bill has had something in mind; and has taken these clauses from the British Colonial Act of 1901—That may be so. Also they may have been based on English experience. There are many forms of sharebroking carried on in London and with which we have nothing to do here. Firms of brokers in London have their own reminders and send their people around seeking business. London business is much simpler by jobbers. We do not have a hall and do not carry out bidding as they do there. A broker in England will go to a public and say, "We have to sell a large portion of our stock; he wants to deal in, and say, "Make me an offer; I want £10,000 of this stock." His reply will probably be, "The market is 99 to 98; I will do it for you at 97½". The other will then probably say, "That will do," and so buys for his client. That is a different scheme from ours.

821. By Mr. RODOREDA: The present position is that the Stock Exchange sharebrokers are more or less guaranteed between themselves but there is no protection whatsoever to the public in the event of one of them taking the knock—No.

822. Also the Stock Exchange has no authority over unauthorised brokers—We cannot prevent them acting as sharebrokers, but we can refuse to deal with them.

823. But the public can deal with them and has no protection—That is so.

824. Your viewpoint is that you want a monopoly of business for members of the Stock Exchange with no guarantee of protection to the public either from your own members or from those over whom you have no control—That is so.

825. If we delete these clauses, that will still be the position—It will be exactly as it was.

826. I suggest to you that the public can be protected if those clauses have been inserted in order to protect the public. Under them both members of the Stock Exchange and dealers or brokers outside the Stock Exchange will have to be registered and given authority by the Governor—I do not think so.

827. I suggest to you that exempted share dealers means people, not members of the Stock Exchange,
but who have been given authority by the Governor to act as sharebrokers under certain conditions. I suggest that these clauses have been inserted so that the Government may have a certain amount of control over all sharebrokers whether they are members of the Stock Exchange or not?—Are not members of the recognised Stock Exchange exempt from registering?

282. Clause 333 states, "The following persons, upon being registered and whilst such registration continues shall be authorised share dealers..." that is to say, (a) members of the Stock Exchange in Perth whilst their membership continues, etc., etc." They all have to be registered with the Government as Stock Exchange objects to any broker seeking to act as sharebrokers who are not members of the Stock Exchange—I thought it stated somewhere in the Bill that members of the Stock Exchange were not required to register.

289. Clause 339 is quite definite?—That is apparently the case.

30. By Mr. ABBOTT: Assuming that the Committee thought it advisable to suggest to the House that, as in the case of some other profession, the control of share broking should be put in the hands of a body like the Stock Exchange, would you then agree that the same control should be exercised over that body and that the Government should have a say in what should be charged? If a monopoly is granted should some control not be exercised over such a body and its rules?—I should not think so unless the Government was of the opinion that the rules were not good enough and that people were not being protected.

281. But should not provision for control, if need be, be made without the necessity for the passing of a special Act of Parliament?—Personally I think that would be rather an interference with business.

282. By Hon. L. CRAIG: Do you not think any Government would give a monopoly without exercising some control?—We have always had a monopoly, and the only time we have had opposition is when there has been a boom. Then the unscrupulous man comes in and does the things which you know have taken place.

283. By Mr. ABBOTT: How can an ordinary individual in any way police his share dealings? As a rule, the Stock Exchange objects to any broker selling his own shares without disclosing the fact. How can a private individual know whether a broker has sold his own shares?—The only way to ascertain would be to write to the Stock Exchange and ask for an inquiry as to the seller of the shares.

284. But I understand it is a strict rule of the Stock Exchange that no information of the kind shall be given?—That is not so.

285. I have asked my broker and he has refused to give the information?—He may not disclose any information of deals at the Exchange, but if there was an inquiry or a dispute, and the buyer thought he had been badly done by, he would write to the Exchange requesting that that transaction be investigated. The committee would investigate it and reply to him.

286. Don't you think that when you have a virtual monopoly, the buyer of shares should be entitled to know from whom he has bought?—No, that would be contrary to every rule of every Stock Exchange. You might have a certain interest in companies and be known to have a lot of information, but would you let your transactions be broadcast all over Perth?

287. Certainly they should be?—I cannot agree with you. On all Stock Exchanges throughout the world, business is silent. If there is something wrong, the person concerned has a right to ask for an investigation of the transaction. Otherwise, all deals are secret.

288. Then you approve of a director dealing in the shares of a company of which he has full knowledge without the public knowing that he is dealing in those shares?—That is the trouble attaching to most companies.

289. Do you approve of it?—I cannot see how you could stop it.

40. I am suggesting one way, namely by giving anyone the right to know who has sold the shares. The public is entitled to know?—I cannot see why anyone should be entitled to know another person's business. That is members of the Stock Exchange or not?—Are not members of the recognised Stock Exchange exempt from registering?

31. How is the buyer to know?—He simply asks a broker to buy certain shares. In his judgment or on information in his possession, he thinks that certain shares are worth buying and instructs his broker to buy.

32. By Hon. L. CRAIG: Irrespective of who sells them?—That does not matter. On many occasions if people were told the names of the sellers, they would think the end of the world was nigh. It is very difficult to get instructions from all sorts of people to sell and buy shares, and if their names were known there would be a panic. But many of those people sold because they wanted the money for some other purpose.

33. By Mr. ABBOTT: You know from your own experience that many people in influential positions deal in shares to their own advantage?—I dare say that is done repeatedly, but how are you going to stop it?

34. I am suggesting one way. You are asking for a monopoly. I am trying to judge whether it would be an advantage or disadvantage. Do you think it would be a good thing to stop this habit of directors, who have special knowledge, dealing in their shares to the disadvantage of the public and doing it in secret because their Exchange objects to any broker seeking to act as sharebrokers?—Very difficult to answer. That has never been done anywhere. Your suggestion is something that is entirely new.

35. By the CHAIRMAN: When shares are transferred, the signature of the transferee is generally shown?—The transferee knows from whom he has purchased the shares as soon as the transferee is presented; that is, unless the name of the person is not in a nominee's name.

36. By Mr. ABBOTT: Is it not a practice of mining companies not to register share transfers?—Frequently in companies that are not paying dividends there is no need to transfer the shares. They might be in one person's name for ten or fifteen years without being transferred out.

37. By Hon. G. FRASER: They might have been in the hands of 15 or 20 people?—Yes, they might have changed hands many times.

38. By Hon. H. REDDON: The share certificates are made out in the name of a certain person. Although they might have been transferred between various parties, there is a recognised owner as regards the company?—Yes, the company recognises the person who originally took up the shares.

39. By Hon. L. CRAIG: The transferee's name would appear on the back of the scrip?—Yes, the name of the first seller, but the scrip might have changed hands a hundred times.

40. By Mr. ABBOTT: Is it not customary for a director to hold comparatively few shares in his own name and a very large number of shares that he has acquired or purchased in the names of other people?—Yes, he need have only the number requisite for his qualification in his own name.

41. Great reliance is placed upon sharebrokers. Suppose I instruct a broker to sell, I have no means of checking at what time the sale was made and hours might make a big difference. When shares are selling from Exchange to Exchange, I have no means of checking the time of sale without ascertaining the broker of being fraudulent?—If you were not satisfied, you could make inquiries. If the broker had deputed a selling order to an Eastern States man, you could use the time at which the order was despatched.

42. But I would not be entitled to see it?—You would be.

43. Only if I made a complaint?—You might say to the broker, "I gave you this order to sell two days ago. Why was not the business done?" It must always be borne in mind that a broker is ever endeavouring to keep his clientele, and is not going to do anything that will lead to a loss of business. He will satisfy the client, as far as he is able to do so, that
he has obeyed instructions. If he had not obeyed instruc-
tions the client would be able to carry the matter further.

884. If you buy any other article you are entitled to
know from whom it came. Share-brokers have a monop-
y of the business and if it is not right that the disclosures
should be made indicating by whom shares were bought
and from whom they were purchased—that would prob-
ably limit operations on the market. It would be
difficult to induce a man to become a director of a com-
pany. He would say, ‘Of what use is such a position to
me? I must have certain share qualifications, and if I am
satisfied that ordinary business conditions will con-
firm, I do not want to hold the shares for ever.’

If a director has to disclose that he is a seller many
important shares may occur to him and he is instructed to
the end that he is selling. A director does not go round asking
the public to buy his shares. If he possesses special
knowledge I do not see why he should not sell his
shares. It is a question of the survival of the fittest in
every class of business. If the people of Perth knew that
certain stock was about to fall a shilling or sixpence
they would probably sell out as fast as they could

885. By Hon. O. FRASER: Especially if they knew
one of the directors was selling?—A director might be
selling for any purpose other than for a purpose affect-
ing the company. People sell shares in Kalgoorlie for
prominent people. If the public had known the shares
were being sold they would have assumed that the bot-
ttom was falling out of the market, whereas in the cases
I have referred the opposite occurred.

886. By Mr. ABBOTT: Is it not a great advantage to
the directors that they should be able to do this secret
business?—Assuredly.

887. Is that not unfair to the general public?—The
public is not asked to buy the shares. People must use
their own judgment. It is not a question of a pistol be-
held at their heads to induce them to buy. If a
person does not think the stock is good enough he will
not buy it.

888. You do not think this additional protection
should be given to the public?—I do not see that it is
warranted. Such a procedure has never been adopted,
and Stock Exchanges have been established for many
centuries. These have been hammerings and losses to
the public, but such things cannot be helped.

889. By Hon. H. SEDDON: The majority of the
shareholders in a limited liability company would be
registered on the company’s register?—There are
limited liability companies that are mining companies.
London does not know the term ‘no liability.’ Only
Australian companies are known in that way. In the
case of a limited liability company in Australia a broker
who is not passed over the shares until the buyer has
signed the transfer, otherwise the seller would be respon-
sible for the cancelled capital. Upon the shares being
transferred they would be registered in the name of the
new holder.

890. In the case of the Broken Hill Pty. Company the
share register would be a reflection of the actual
ownership?—Yes.

891. Any transactions that took place whether in the
name of a director or an ordinary shareholder would be
recorded in the transactions on the transfer being
effectuated?—Yes, within a week or two.

892. Mr. ABBOTT: To which Mr. Abbott referred would
be more likely to be associated with mining companies
than with commercial companies?—Yes, with no liability
mining companies.

893. The more reputable mining companies make
regular statements as to their development, values and
the progress of the mine. Any ordinary information
would thus be available to the general public as well as
to the directors?—Yes.

894. Such reports are made at regular intervals?—
Usually fortnightly, but in some instances three-monthly,
in the case of companies that are on the dividend list.
Such reports would contain information as to develop-
ments, tonnages, values and anything important
associated with the mines?—Yes. We also have provision
in the Stock Exchanges that any company listed on the
Exchanges must make its reports available within 24
hours. Otherwise the stock is taken off the list.

895. By Mr. ABBOTT: Within 24 hours of what?—
Within 24 hours of the secretary receiving the informa-
tion from the mining manager.

896. By Hon. H. SEDDON: Say there is a develop-
ment on the Lake Visx mine, immediately and im-
diately advised of that by the manager, and is supposed
to make the information available to the Stock Ex-
changes and to the general public?—Yes.

897. If the information thereby was withheld could any
one be held responsible?—Yes.

898. The remedy would rest with the shareholders to
have an investigation made?—Yes, there would be an
inquiry.

899. Was there not a case in connection with the
Boulder Deep Levels as to such a state of affairs having
arisen?—I think there was an instance.

900. Was it not found that certain persons were
culpable and were they not dealt with?—Yes.

901. The remedy is to make share-dealing honest and
responsible as is any other commercial
transaction?—Yes.

902. By Hon. O. FRASER: What means are adopted
by the Stock Exchanges to enable the public to get the
information quickly after it has been passed on to the
Stock Exchanges?—In Eastern States Exchanges, where
most of the companies are registered, the Press attend
meetings of the Exchanges. As reports are received they
are put on the notice board. The Press then takes them
down, and the information appears either that evening
or the following day.

903. Then it is all left to the discretion of the Press?
—Companies frequently telegraph to the Press as well.
As a rule the Press publishes the information straight
away if it is of any importance.

904. Other than posting the information on the notice
board in the Stock Exchange do you do nothing else to
make it public?—The information is passed on to the
Press in case the Press may not have read it before.

905. By Mr. ABBOTT: Did you receive within 24
hours the information that caused the Yellowline Arp
Company’s shares to jump lately on the ground that
there had been a good development in one of the bore
The shares jumped before the information appeared in
the Press?—In that instance the district obtained the
information before it reached the company’s office. The
shares had risen two or three points before the report
came in. Immediately the company received the report
telegrams were despatched to Eastern States Exchanges,
and we also had a report in Perth. The company re-
frained from advising the Press because it did not know
the values. The directors decided it was hardly worth
while giving a report of the development in the bore
unless they could publish through the Press as to what the
values were. The values may have been low.

906. That information made the shares rise consi-
derably?—Yes.

907. By the CHAIRMAN: We have not had an
opportunity of studying the several bore reports, and do not know what the South Australian legisla-
tion is?—A paragraph of my statement reads—

Clause 183. Calls and forfeitures for non-pay-
ment. W.A. s. 241. 242. 243. S.A. s. 178. For-
feitures of shares to be extended from fourteen (14)
days to twenty-one (21) days, owing to distance
Western Australia is from other States where a
great many shareholders reside.

908. Really you are asking for an extension from 14
days to 21?—Yes, because sometimes it takes several
days to get the money over.

909. By Mr. RODRED: This Bill makes shares
liable to forfeiture within 28 days after a call has been
made?—We suggest 14 days after a call, and 21 days
thereafter, before shares are forfeited.

910. By Hon. G. FRASER: Do you think there
would be any great objection to making it 30 days?
—I do not think so. The forfeiture is really nothing.
Once an auction has been held and there has been no
bid, the shares revert to the company.

911. By Hon. H. SEDDON: Would you say that six
months from the date of forfeiture for offering the
shares for sale by public auction would be an ade-
quate period?—What we mean is that an auction is to
be held at any time within six months. If an auction is
not held within six months, the shares revert to the
company. If there is no auction before six months the
object is to give a shareholder six months to recover
his shares, but not later.

912. By Hon. L. CRAIG: The auction is not held?
—No.
884. An auction might never be held?—Under this, and it must be held within six months. We have mostly adopted the regulations of South Australia. Now as to preference shares. Clause 57 deals with the modification of preference shareholders' rights, but under Section 97 of the clause companies can contract itself out of the requirements of the Bill by making provision in its memorandum and articles for preference rights to be modified by any majority it deems fit to provide. We think that Clause 57 should be amended so that nothing may be done to modify the rights and privileges of preference shareholders except by a special resolution of preference shareholders themselves.

885. Was that not amended during the depression?—In New South Wales there is a statutory exemption of 22½ per cent. on all preference shares, that is to say, they are reduced by 22½ per cent.

886. Some companies also had the nominal rate of dividend reduced. I have in mind Hoyt's P. Preference shares which stood at 8 per cent. and are now 6 per cent. That was done by resolution.—That is true. Many preference shareholders were asked whether they would agree to their interest rate being 5 per cent. and they took ordinary shares for the arrears involved. There is only one other matter to which I would like to refer, and that is the definition of a public company. A proprietary company or a private company would naturally not be a public company. A no-liability company is essentially a public company and the probability is that there are more individual shareholders in such a company than in any other. We cannot understand why that should not be regarded as not being a public company.

887. By Mr. ABBOTT: Have you given consideration to the clause dealing with proprietary and private companies?—No, because they are companies that do not concern the Stock Exchange; they are not eligible for listing.

888. By Hon. H. SEIDON: Have you studied the question of dealing with investment companies?—Do you mean trust companies?

889. I was wondering whether you would like to express an opinion about the provisions in the Bill concerning investment companies. We have no such company listed on our exchange.

890. By Hon. A. THOMSON: There are such companies in the Eastern States.—Yes, I will place before you the Victorian recommendation regarding investment companies. It is noted that the Government proposes to adopt the provisions of the Victorian Act concerning investment companies. Clause 412, similarly to Sections 23 and 24 of the Victorian Act, provides for a period of three years from the passing of the Bill within which an investment company is required to comply with the clauses relating to investments and borrowing. The Stock Exchange is inserted in the Victorian Act to afford ample time to certain Melbourne companies, which had borrowed excessively in relation to capital, to reduce their portfolios without undue disturbance to the market. Possibly there are no such companies now in existence in Western Australia requiring such consideration.

891. By Hon. L. CRAIG: To your knowledge, are there companies operating along those lines which are not listed by your Exchange?—I believe there are one or two. I do not know that officially. I cannot say whether they are in existence. Paragraph (3) of Section 598 of the Victorian Act does not permit a Victorian investment company during such time as its borrowings exceed the statutory limit, to reduce the proceeds obtained from the sale of any of its securities, but such money must be used in reduction of its outside indebtedness. This provision was specially made so that such companies would gradually reduce their borrowings to the proper limit and would not be permitted during the three-year period to use excess borrowings for speculative purposes. Subparagraph (2) of Subsection (2) of Section 598 of the Victorian Act does not provide for the Stock Exchange to deal with this. It is suggested that the following be inserted:

Without increasing its total borrowings or indebtedness as at the passing of this Act or as at any subsequent date.

892. But that does not apply in Western Australia?—There were one or two private investment companies here. Litchfields was one.

893. That company has gone now?—Then there was, I think, an auction held within six months. We have mostly adopted the regulations of South Australia. Now as to preference shares. Clause 57 deals with the modification of preference shareholders' rights, but under Section 97 of the clause companies can contract itself out of the requirements of the Bill by making provision in its memorandum and articles for preference rights to be modified by any majority it deems fit to provide. We think that Clause 57 should be amended so that nothing may be done to modify the rights and privileges of preference shareholders except by a special resolution of preference shareholders themselves.

894. By Hon. G. FRASER: That was Alcock's company, regarding which a select committee conducted an investigation?—That is so. So far as I know, there were no notes.

895. By Hon. L. CRAIG: Neither of those companies borrowed on its assets?—I think so. The object of those companies was largely, as I understand it, to engage in pyramidings of investments. The company would invest $10,000 at 5 per cent., and buy securities. They would then mortgage those securities and buy additional securities. That course would be pursued until the field was exhausted.

896. Did any company operate here on those lines?—If I remember aright, I had a visit from Barker, and that was his idea. He had many pamphlets showing what pyramidings of securities would amount to. It was a wonderful scheme.

897. By Hon. A. THOMSON: Have you any suggestion to advance regarding how the public may be protected from such operations.—That question takes us back to our original argument that if you remove the unofficial shareholders, you will put an end to a lot of these evils, such as bad company promotion, share dealings and share banking. The Stock Exchange has served the public for many years, and served them well. If you left such matters to the Stock Exchanges, I do not think there would be any of this trouble.

898. But some have operated quite legally despite the Stock Exchange?—You will appreciate that these people are usually gifted in putting over what they want to obtain. It is surprising what can be done by such people if they go into the country districts with a large motor car and a well stocked van with a loud-speaker.

899. By Hon. G. FRASER: Was there not a big cross by a firm in Victoria although that firm was listed?—Not an investment company; a firm of sharebrokers.

EYAN STAPLES SAW, Secretary of the Stock Exchange of Perth, and Secretary of the Perth Chamber of Commerce, examined:

899. The WITNESS: My evidence will follow upon that tendered by the previous witness regarding Stock Exchange matters. These details were discussed by a committee of the Stock Exchange, and Mr. Lamb and I were authorized to give evidence. I shall deal with some clauses which we did not refer to by Mr. Lamb, and later on will give evidence on behalf of the Chamber of Commerce.

901. By the CHAIRMAN: At the outset, your evidence will be on the clause dealing with the Stock Act?—Yes. Dealing first with Clause 50, which refers to the power to issue abridged advertisements, we desire to alter the wording of the clause by inserting after the words 'the Act,' the words 'secretary and solicitors or proposed secretary and proposed solicitors,' so that the provision will conform to the additional subclause suggested after Subclause (4) of Clause 55.

902. By Hon. G. FRASER: Is that provision contained in the South Australian Act?—Yes. That will provide additional protection to the public.

903. What is the reason for that?—We feel it will provide additional protection to the public by the names of the proposed secretary and the proposed solicitors are included. With regard to Clause 38, Liability for Statement in Prospectus, we suggest the new clause as it is important whether the provisions of the Bill will apply to a prospectus circulated in Western Australia by a company registered outside Western Australia, and a copy should be drafted to deal with this position. A company in South Australia or in any of the other States might send over to Western Australia a number of copies of its prospectus and Circulate it here. That prospectus would not be lodged with the court in accordance with the provisions of the Bill.

904. By Hon. L. CRAIG: You say it should be?—We consider it should be. I receive at the Exchange many prospectuses of companies from the other States. I presume they are being circulated in Western Aus-
taria. There is nothing to prevent a share salesman coming across from the Eastern States and distrib-
uting prospectuses there.

905. It has been done!—Yes. The Bill does not provide that such a prospectus shall be lodged with the Registrar of Companies.

906. But if this Bill is in accord with the South Australian or Victorian Companies Act, the prospectus would be lodged with the Registrar of Companies in South Australia or Victoria?—Yes. Of course, in the case of any person subscribing for shares could get the information from the Eastern States. We feel that additional protection would be afforded to the public if provision were made for the prospectus to be filed at the West Australian Registrar of Companies.

907. By the CHAIRMAN: You consider that the Registrar should see it?—Yes.

908. By Mr. RODDERDA: In making that comment, you are presuming that the word "company" in the second line of that clause refers only to a local company?—Yes.

909. Why do you think it would not apply to all companies?—I presume the clause deals with companies in other States, except in the case of companies registered outside Western Australia and dealt with as foreign companies here.

910. By Hon. L. CRAIG: What is there to prevent any citizen from obtaining a number of prospectuses in the Eastern States and posting them to a friend in Western Australia for distribution?—We simply make the suggestion with the idea of affording greater protection to the public. The next clause I desire to deal with is Clause 65, Statement in Balance Sheet as to Commissions and Discounts. This is similar to Section 61 of the South Australian Act. It is suggested that the words "and/or brokerage" be inserted after the word "commission" in the second line. The clause would then read, "Where a company has paid any sums by way of commission and/or brokerage in respect of any shares or debentures . . . ." I now desire to deal with Clause 149, Part IV, Form of Balance Sheet. This is similar to Section 148 of the South Australian Act. With regard to accounts, audits, etc., the requirements of the Bill do not appear to offer nearly as much protection to investors and the public generally as those of the Victorian Act, and it is strongly recommended that consideration be given to Sections 123 to 138 of the Victorian Act. These particular sections received very extensive thought and discussion by interested bodies in Melbourne, and it is felt that in some respects they are an improvement on legislation in England and in the other States of the Commonwealth. Sections 123 and 125 of the Victorian Act provide that compulsory balance sheets shall be made up, and the profit and loss accounts of subsidiary companies must be published; whereas the Western Australian Bill appears only to require (1) and (2) and (and account, or the to which the subsidiary profits have been brought into the accounts of the parent company, and (2) disclose as a separate item in the balance sheet of the parent company of the aggregate amount of shares in, and the amounts owing by subsidiary companies. (See Clause 160 and 161 of the W.A. Companies Bill). It is also noted that a standard form of balance sheet is set out in the 4th Schedule of the Western Australian Bill. The feeling of the commercial community is that it is somewhat difficult to prescribe a balance sheet for all companies, and that it is much preferable to accept certain essential balance sheet headings as provided by Clause 124 of the Victorian Act. Another innovation considered to be of much value is the requirement contained under Sections 123 and 125 of the Victorian Act, whereby directors must furnish information as to whether or not the results of the year's operations, as disclosed in the accounts, have in any way been materially affected by items of an abnormal character. Subsection (3) of Section 123 of the Victorian Companies Act reads—

"The directors shall be cause to be made out in every case after each year (other than the year of incorporation) and to be laid before the company in general meeting, a duly audited balance sheet as at the date to which the balance sheet and loss account, or the income and expenditure account as the case may be, is made up, and there shall be attached to every such balance sheet a report of the directors with respect to the state of the company's affairs, including information as to whether or not the results of the year's operations (as disclosed in the profit and loss account or the income and expenditure account) have in the opinion of the directors been materially affected by items of an abnormal character, the amounts, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve or the general reserve or reserve account shown specifically on the balance sheet, or to the reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet."

We refer to the Victorian Act, dealing with contents of balance sheet. Schedule 2 of the Bill provides the form of the annual return of a company having a share capital. It also provides a standard form of balance sheet headings as to be included in the annual return. It is considered that it is a somewhat difficult matter to prescribe a balance sheet for all companies, and that it is much preferable to set out certain essential balance sheet headings as provided by Section 124 of the Victorian Companies Act.

911. By Hon. H. SEDDON: Could you submit what the headings are in the Victorian Act as compared with those set out in the Sixth Schedule?—I would like to go through them and submit further evidence at a later date. I can let you know where they differ.

912. By the CHAIRMAN: With any consideration to the appointment of the local director of a foreign company operating in this State?—No, we have not considered that.

913. Perhaps you would do so and let us hear your views?—Very well.

914. Hon. L. CRAIG: I think the Chairman meant the appointment of a local director in addition to an attorney. There is a difference. An attorney is a servant of a company and subject to its instructions; a director is a little freer; he helps to direct the policy of a company.

915. By the CHAIRMAN: What I meant was, a director of a foreign company operating in this State independent of whether the company has an attorney or agent?—I will inquire into the matter.

916. By Hon. A. THOMSON: There are companies here which are subsidiary bodies of a parent company in the Eastern States. The company has a certain number of holdings in the Eastern States. The company has a certain percentage of holdings in Melbourne and it is felt that in some respects they are an improvement on legislation in England and in the other States of the Commonwealth. Sections 123 and 125 of the Victorian Act provide that compulsory balance sheets shall be made up, and the profit and loss accounts of subsidiary companies must be published; whereas the Western Australian Bill appears only to require (1) and (2) as to which the subsidiary profits have been brought into the accounts of the parent company, and (2) disclose as a separate item in the balance sheet of the parent company of the aggregate amount of shares in, and the amounts owing by subsidiary companies. (See Clause 160 and 161 of the W.A. Companies Bill). It is also noted that a standard form of balance sheet is set out in the 4th Schedule of the Western Australian Bill. The feeling of the commercial community is that it is somewhat difficult to prescribe a balance sheet for all companies, and that it is much preferable to accept certain essential balance sheet headings as provided by Clause 124 of the Victorian Act. Another innovation considered to be of much value is the requirement contained under Sections 123 and 125 of the Victorian Act, whereby directors must furnish information as to whether or not the results of the year's operations, as disclosed in the accounts, have in any way been materially affected by items of an abnormal character. Subsection (3) of Section 123 of the Victorian Companies Act reads—

"The directors shall be cause to be made out in every case after each year (other than the year of incorporation) and to be laid before the company in general meeting, a duly audited balance sheet as at the date to which the balance sheet and loss account, or the income and expenditure account as the case may

917. Which is not worth anything?—No. They are simply out-voted.

918. By Hon. L. CRAIG: I think what Mr. Thomson was referring to was not a subsidiary company but a Western Australian company the majority of shares in which are held in the Eastern States—Such as the Swan Brewery Co.

919. Yes. The meetings of such companies are held in Sydney or Melbourne and Mr. Thomson feels that if the Western Australian shareholders are neglected, he wants to know if that could be avoided in any way?—I do not know of any provision in any of the State Acts.

920. By Hon. G. FRASER: Could you suggest any provision?—I will take the matter up with my committee.

921. By Mr. ABBOTT: I would like to mention that when you next appear before the committee, I will probably ask you whether you think there is any advantage in having provisions for both private and proprietary companies?—I will make a note of that.

922. The CHAIRMAN: I want to thank and compliment Mr. Saw on his commentary on the Bill. It has been very helpful indeed and is a great credit to him.
TUESDAY, 25th FEBRUARY, 1941.

Present:
A. V. R. Abbott, Esq., M.L.A.
Hon. G. Fraser, M.L.C.
A. J. Rodoroth, Esq., M.L.A.

Hon. H. Seddon, M.L.C.
Hon. A. Thomson, M.L.C.
A. F. Watts, Esq., M.L.A.

LAWRENCE WALTER JACKSON, representing the Fire and Accident Underwriters' Association of Western Australia, further examined:

923. The WITNESS: I wish to submit a brief statement on behalf of the association. The first point is that the prohibition contained in Clause 31 of the Bill should not apply retrospectively as regards either foreign or local companies. When I was last before the committee, I discussed that matter at some length. Clause 31 is the provision under which, without the consent of the Governor, no company may be registered with the words "Royal," "King," "Queen," etc., in the name. Under Subclause 2 it is provided that Clause 31 is to apply to all foreign companies registered or applying to be registered under Part XI. I proceeded to point out that those words would include a foreign company already carrying on business in this State and a foreign company which has to comply with the present Companies Act. I indicated that I thought the intention of the Bill was to apply only to future foreign companies as well as to future local companies. Then certain discussion ensued in which the Chairman indicated his intention that only certain portions of the clause should apply retrospectively. I submitted that, as regards local companies, the present wording only applied in future because of the fact that it is said that no company shall be registered under certain names. If it is desired to apply the provision retrospectively as regards all companies, that can easily be done. I am not concerned with the particular companies that you, Mr. Chairman, had in mind.

924. By the CHAIRMAN: You would not take any exception to the companies now trading under the name of "State" or "Commonwealth"?—Not as regards the companies which I know you have in mind, but regarding the use of the word "Commonwealth," I must point out that there is a Commonwealth Insurance Company which has been for many years and still is carrying on business here. Naturally, on behalf of the association, I would not like to see anything included in the Bill which would place that company in jeopardy of having to cease business in Western Australia.

925. I think you need have no fear on that score?—True, the consent of the company to cease trading was refused, but in the light of the ruling of the company in the matter, I would not like to see anything in the Bill which would create a similar position.

926. The WITNESS: I think the Committee would find the point much easier to consider in the case of a company wishing to cease business which has been in existence in this State for many years. In my opinion, it would be most unfair to require that such a company should cease business which has been in existence here for such a number of years.

927. By the CHAIRMAN: I think it was stated that the Commonwealth Insurance Company started business here about 20 years ago. I do not desire members of the committee to think for a moment that the insurance companies believe that an attack is being made upon them. No such thing, of course. What I wish to emphasise is that they; feel they should not have to go cap in hand to the Governor and say, "Please allow us to carry on." That would be all very well if permission was granted, but if by any chance permission was refused, it would be an extremely serious matter.

928. You make that suggestion in order to carry out the wishes of the insurance companies and allow them to trade under their names as there might be quite a number of companies that will wish to do so?—That is possible, but virtually all the insurance companies are foreign companies. My suggestion is that insurance companies already carrying on business in Western Australia should be permitted to do so as before, though you might prevent them in future if you so desire. I do not think any foreign companies are carrying on the business you have in mind. I think they are all local companies.

929. With regard to a company changing its name, you have no objection to applying that provision to local companies?—There would be no objection from my association. The only local company I know about is the Western Australian Insurance Company, Ltd., but there is no prohibition against the use of the words "Western Australian." In dealing with this point generally I would like to point out that the wording of Clause 31 (a) is such as to presuppose, in my opinion, that it does not apply retrospectively. It says:—

(1) No company shall be registered by a name which is identical with that by which (a) a company in existence is already registered under the law relating to companies.

Those words presuppose, not a company already registered, but another company coming along and asking for registration and pre-supposing that being refused because the name is identical with that of an existing company. It seems to me to be obvious that the wording applies only to future companies—to companies that apply for registration after the measure comes into force. I think you are fully seized with the point that the association wishes me to raise and that there is no need for me to dilate further upon it.

930. By Mr. WATTS: Does not Subclause 6 tend to create confusion from that point of view?—I do not think so. I merely say:

In this section the word "company" includes a company registered or applying to be registered under Part XI. of this Act.

Subclause 6 is not an exclusive definition of "company"; it merely includes foreign companies.

931. I should not like to leave it at that because it might create argument in future?—My idea is that if Subclause 6 was not included, the clause would apply purely to local companies, because it says that no company shall be registered, etc., and the definition says that a company does not include a foreign company unless it is specifically mentioned. By Subclause 6 the draftsman has included a foreign company by saying that the proviso is to apply to a company registered or applying to be registered under Part XI.

932. By the CHAIRMAN: I think the committee understands your point of view and to an extent agrees with you?—My second point is that the provisions in Clause 348 (1) (c) should be limited to directors in this State or, at least, in Australia.

You will recall the discussion we had on this question, namely the provision under which a foreign company
had to lodge with the Registrar of Companies a list of the directors in this State or in the country in which it was incorporated, such list to contain a variety of particulars, amongst others the list of the directorships held by those people. I pointed out that, particularly in the case of companies incorporated in England, it would be almost an impossibility to supply all the information, more especially the particulars as to other directorships held by the directors of the companies with which we are concerned. There would inevitably be a time-lag in supplying the information, and the company would not necessarily know from time to time what other directorships its own directors were holding. Let me take the case of the Royal Exchange Assurance Company. It might have ten directors in England, where the company was incorporated. It would then be its duty to file with the registrar full particulars concerning these ten directors, and to specify each directorship that each of the ten directors held. Say that Lord Cambridge, one of the directors, held directorship with the Midland Railway Co., the London North-Eastern Railway Co., several banks and a number of insurance companies. The Royal Exchange here would have to give all those particulars to the Registrar of Companies, and advise the registrar whenever any alteration occurred in respect of the directorships held by Lord Cambridge. These alterations might well be outside the scope of the Royal Exchange Assurance, and outside the knowledge of both the head office and the local office. The director in question would not be bound to advise the company of any other directorships he held. Any suggestion was that it would be sufficient for your purpose if the company gave a list of its directors in this State, and when the company was incorporated in Australia that it could give the particulars required concerning the directors in the State in which it was incorporated.

935. By Hon. G. FRASER: Would not the argument you have advanced with respect to English directorships apply equally to the Australian illustrations?—To a great extent it would, but the directorship held by English companies, many directorships in England. 936. The companies we are concerned with would not have any knowledge of the other directorships that were held?—The information would have to be obtained from the director himself, and he might refuse to say what other directorships he held. The company would then automatically commit a breach of the Act. I submit it would not be possible to force a company to give the names of every company of which one or more of its directors might be a director.

937. By the CHAIRMAN: Do you not think the public is entitled to all that information?—I am strongly in favour of as much information as is reasonably practicable being filed at the office of the Registrar of Companies, so that people who desire to find out about a company may do so, but there must be some limit to the information sought. We should weigh in the balance the relative importance and value of the information with the relative difficulty of obtaining it. It will be difficult for foreign companies to supply the registrar with all these particulars as regards their directors outside Western Australia, and to keep him fully acquainted with what may occur from day to day or week to week. The same provision applies to local companies, which will have to file all the directorships held in this State. No hardship will be entailed in that. They must also give a list of other directorships held here by their directors. That would be a comparatively simple matter. Very few men in this State who are directors of one company would be directors also of more than half-a dozen other companies.

938. Even if a person was a director of twelve companies, it might be very difficult to get the information asked for?—No. Assume that the Royal Exchange Assurance had ten directors in England. Each of those directors might have a directorship in ten companies, and it would then be necessary for the company to give a list of 100 companies in which its directors were interested. Each of those ten directors might manage several directorships, or in some other capacity, during the year. Thus a great deal of additional information would have to be given. The Royal Exchange Assurance could not compel its directors to give that information, and it would be outside the jurisdiction of Western Australian courts. It would be different in the case of the local directors, who would be personally liable for failure to supply the necessary particulars, and they would therefore see that this was done. The English directors might refuse to give all the information required to be held by them on any changes that might occur with respect to such positions. In the circumstances, I foresee that all kinds of practical difficulties might arise.

939. Those difficulties would not affect the Bill. The point is a comparatively minor one. There would not be a difficulty in practice that will have to be encountered. If the Bill remains as it is, those difficulties in practice will be met. I submit it would be sufficient for your purpose if foreign companies gave the names and addresses of their directors, but not particulars of other directorships held by those men. If the particulars are given, let them be given with respect to local directors. We are not suggesting a refusal to give the information. We want to give all the information we can reasonably expect. Clause 120 would not be a terribly bogger: for these companies to have to furnish a list of other directorships, and many foreign companies would be held liable for penalties if they failed to supply the information.

940. By Hon. G. FRASER: If this was the law in those other countries, the difficulties you mention would be overcome. If the information was being supplied in those other countries, it could be supplied in Western Australia, but I do not yet know whether those particulars are satisfactorily being given. The practical difficulties are so great that I would be surprised to learn that the provision was even approximately with the Bill. If the information is not being given, it seems useless for us to put in a provision which in practice no one will obey. I would very much dislike the insertion in Bills of clauses which we know are not going to be honoured.

941. By Mr. WATTS: Is not the chief difficulty that Clause 170 makes a company give particulars of changes that take place in its foreign directors or its directors in other countries?—That is our chief difficulty.

942. If we regard foreign companies an amendment was made to the section to overcome that difficulty. All that was required was that a list of the directors at the time of commencement of business, or any other time, would be given. We have to see the same difficulties then?—No. We think we could go further than that, and could undertake the list of changes in our personnel of directors.

943. But not of changes in their other directorships?—That is the difficulty. My third point is that the provisions of Clause 349 (2) should not apply when one or more public holidays occur during any week. I mentioned that before, as a terrible bogger: for these companies to have to keep the office open for four or five days a week. I think you, Mr. Chairman, agreed that perhaps a small amendment could be made in this provision to cover the case of public holidays. During a list of directorships in this State, we know that the office does not keep open for more than three days. My fourth point is that power should be given, by inserting a new clause in Part 16, for the registrar to allow additional time for the filing of documents or the doing of any other act or thing, where the registrar in his discretion deems it advisable. The maximum additional time the register should have power to allow is three months. That also is a point I mentioned previously.

944. By Mr. ABBOTT: If we retain the English provision in regard to English directors, you would require more than ten companies, not at all?—At the present time we probably would, but in normal time three months would be ample, because the head office of our companies in England would be notified as soon as the Bill was passed that any of these duties were, and they would automatically forward the information out to us. Nowadays, of course, the information might be delayed more than three months.
through irregularity of mails. As I mentioned previously, several independent sources in South Australian handbooks not to understand that the South Australian Registrar of Companies deems it his duty, under the new South Australian Act, to take proceedings immediately there is a breach of any minor regulation, such as seven days to file a certain thing and the thing being filed on the eighth day.

945. Do you think it should be the duty of the Crown Law Department to institute proceedings if necessary, rather than the registrar?—Someone has to draw the Crown Law Department's attention to the matter, and that I think is the duty of the office of the Registrar of Companies. The Crown Law Department would not necessarily keep a clerk searching to see if particulars had been filed in time. My submission is that the registrar should be given a special discretion to permit further time for the filing of documents where the circumstances warrant it.

946. The CHAIRMAN: I think that is only reasonable.

947. By Hon. H. SEDDON: If the registrar here took the same view of his duties as the South Australian registrar takes, there would probably be the same steps taken if there were minor lapses?—That is so.

948. Take the case you have just quoted, of companies incorporated overseas. They and all foreign companies would be in trouble while the war was on?—That might very easily happen. Many of them would may be in trouble during which their office, if the present discretion, just would not take action.

949. Under the clause as it stands there would be no option.—That is the way the South Australian Registrar of Companies interprets the provision.

950. And there would be no option for the court but to impose a penalty?—At least to record a conviction and impose a nominal penalty or give a caution. Whether our registrar would regard the clause in the same way, of course I do not know; but the discretion would be of advantage to him. My next point, No. 5, is that it should be made clear that Clause 336 (2) applies not to agencies or sub-agencies. The association which I represent has a doubt in its mind as to whether the intention is that this provision should apply to all its agencies and sub-agencies throughout the State. I myself consider it reasonable that the intention is that the clause should apply only as regards the actual place of business of the company. Taking again the Royal Exchange Insurance Company, the office at the corner of the Exchange Street, Perth, should bear the company's name and the name of the country in which the company is incorporated; but when Bill 26 was introduced an agent for the Royal Exchange and an agent for multi-national other companies and probably a garage proprietor and manufacturer as well, he should not have to place a tablet to that effect outside his office.

951. By the CHAIRMAN: I do not think that is intended.—No. I think it might be worthwhile to make the matter quite clear. It would be a very simple amendment, which the Solicitor-General could draft without trouble; but I think the point should be made quite clear. My point No. 6 is that the prescribed time referred to in Clause 335 should be made sufficiently long; in many cases forty or five months might be essential. There is no time fixed by the Bill. The time is to be prescribed by regulation; I take it. I only wish at this stage to make a note to the effect that when regulations are made, ample time should be allowed.

952. By the CHAIRMAN: What time would you suggest?—I mentioned in my evidence that four or five months might be necessary, particularly if company's business. In my evidence these months were included and discretion given to the Registrar of Companies to allow a further period of two or three months, that provision should be satisfactory.

953. By Hon. G. PRASER: Unless that latter provision were made, the tendency might be to take advantage of the longer period?—Yes, possibly so. Perhaps it would be better to fix a shorter time and allow the registrar discretion to permit an extension of time when necessary. My final point is that it is not clear whether Subclause (4) of Clause 349 applies to foreign companies already carrying on business in this State. This matter should be clarified. Clause 349, which I shall read in full so that you may better appreciate the point I make, is as follows:

(1) Every company to which this part applies shall, before commencing to carry on business in this State, have a registered office in this State which has been approved by the registrar.

(2) The office shall be accessible to the public for not less than three hours.

(3) The office shall be open during the hours of 8 o'clock in the morning and 10 o'clock in the evening each day for at least five days each week.

(4) Notice of the situtation of the registered office and the days and hours during which it is accessible to the public and of any change therein shall be filed with the registrar before commencement of business, or within 10 days after the change, as the case may be, who shall record the same, and shall be advertised in the "Gazette" and one daily newspaper published in Perth.

You will see that under the provisions of Subclause (4) notice of the registered office and the days and hours in which the office is accessible to the public has to be filed before the commencement of business. That presupposes that it is a new company commencing business. Therefore, a company which has already commenced business obviously cannot comply with that provision. Under the present Companies Act, foreign companies do not have to file a notice of the days and hours during which the office is open, although I think, speaking from memory, local companies are required to give that information. There is no reason why present and future foreign companies should not give notice of the days and hours during which their offices are open to the public. I merely wish to draw attention to this point with the object of clearing up what seems to be a small anomaly, and that Subclause (4) could be made to apply to present companies as well as to future foreign companies. Perhaps provision could also be made that the notice of the days and hours during which the office will be accessible to the public shall be given within one month of the commencement of the Act, or some such period. At the moment it would appear that this particular subclause applies only to foreign companies. The matters I have dealt with are the only ones I have been asked to place before you on behalf of the Underwriters' Association.

954. By Mr. ABBOTT: Have you considered the provisions relative to proprietary and private companies?—Yes, I have, although not with very close interest because they do not affect the underwriters. Question 948. Possibly some organisation would prefer the proprietary to the private form of company, and if so would they not affect the underwriters?—Yes, although quite honestly I do not see any practical reasons for doing so. As I understand it, the members in a proprietary company are limited to 50, whereas in a private company there is no such limitation. I think that is the position.

955. By Mr. ABBOTT: There are further restrictions on proprietary companies?—Yes, but I think both forms are restricted generally to a number of members as well as a number of shareholders. The number of the name would not have more than 50 members, otherwise it would be like a public company.
968. By the CHAIRMAN: What would you suggest—
I do not think the provision regarding the proprietary company would bring our legislation into line with that of other States. Speaking from memory, South Australia is the only State where provision is made both for proprietary and private companies.

961. By Mr. ADDIS: What about following the English provision regarding private companies?—They have private companies there, don't they?

962. Yes. Should we follow the English law?—In consideration, whether their private companies, are there any indications in their names that they are private companies?

963. I cannot say—I do not think there are. On the other hand, when there is a reference in the name of a company to its being a proprietary concern, there you have a clear indication of its nature. From my rather limited experience in the other States with regard to proprietary companies, those that I know have been fairly small private concerns. I do not think, in the case of a private company, that any word is added to its name to indicate it is other than a public company.

964. As you are aware that the Bill gives the Minister the right to refuse the registration of a foreign company where its name conflicts with that of another company already registered in this State, I take it you are always anxious that a company can, at the present moment, trade under a firm name?

955. Where a foreign company applied for registration and was refused on that ground, do you think it would be wise to have a provision in the Bill that it could register and trade in this State under a firm name?—I suppose in some circumstances that might be of advantage, but if a foreign company were refused registration because its name was similar to that of a company already registered here, I should think that any firm name it would desire to carry on would also be very similar and, consequently, it would equally often be prevented from carrying on by the provisions of the Registration of Firms Act. If it could not carry on under a firm name which was virtually the same as its limited name, I do not see that much would be gained by including any such provision in this legislation. It seems to me that in those circumstances any foreign company concerned would be far wiser if it were to register a subsidiary company in another State under a totally different name and then register that subsidiary company in Western Australia under that different name. I think that in practice, so far as my limited experience has gone to demonstrate, companies are fairly loth to carry on business under a firm name.

966. By Mr. ADDIS: I am also asking you, as a practising solicitor, whether you would prefer to have company securities registered in the Companies Office, as recommended in the Bill, or that you would prefer to continue with the present practice and register company bills of sale or debentures in the Bills of Sales Office?—Speaking personally, I am whole heartedly in favour of the Bill in that regard. I was pleased to see the provision revoking the old Bills of Sale legislation with regard to companies.

967. By the CHAIRMAN: Do you consider that all securities appertaining to companies should be registered in the Companies Office?—Yes. I may be a little biased, because that is the law in New South Wales, where I served my articles. When I first came to Western Australia it seemed to me a little strange that company debentures should be registered in the Bills of Sales Office. I speak subject to one minor point, namely, that it might be advisable to amend the Bill in order to provide that mortgages and charges should be registered upon the giving of a written notice, perhaps similar to the provision in the present Bills of Sale Act. That would afford creditors of the company the opportunity to lodge caveat. Speaking generally, however, I think it is far preferable that company securities, such as mortgages and charges, should be registered at the Companies Office; they would then be subject to the inspection and until bills of sale are subject under our present Bills of Sale Act.

968. By Mr. ADDIS: I was thinking that the Bills of Sale Act would be amended, if necessary?—Yes.
include in the measure a prohibition against companies issuing debentures unless they are charged on their assets.

983. By Hon. G. FRASER: Have you any knowledge of debentures not being charged on the assets of the company?
—No.

984. By Hon. H. SEDDON: Would it not be possible for a company, having issued debentures not secured on its assets, afterwards to give a bank a debenture over its assets to secure an overdraft?—Yes. That would be possible.

985. By Mr. WATTS: You were discussing a moment ago the question of private and proprietary companies. There has been no reference to either in the company law of this State for the past 45 years. Do you think there is necessity for provision for either in this legislation?—I think it advisable to insert a provision dealing at least with one type, either proprietary or private, particularly if you bring in an Act like this, under which there will be fairly heavy burdens thrown on public companies. If you desire to form a small company, you should be able to do so and carry it on as a private concern without having to file numerous documents that a public company has to file.

986. Do you regard that aspect of the matter as being satisfactorily dealt with under this Bill? The obligations of the proprietary company are limited sufficiently to comply with it?—So far as I have gone into the question, yes; but I confess I have not spent over much time on that part of it. I have seen nothing particularly objectionable in the provisions; they are more or less on all fours with the provisions in the other States.

987. So that because the other States, and Great Britain also, have considered it necessary to some extent to so provide for private and/or proprietary companies, you think the provision should be incorporated in this Bill?—Not merely because of that.

988. Particularity because of that?—I think it is desirable that there should be these private or proprietary clauses in the Bill, so that these companies shall not have to comply so fully with the burdens the measure will impose on public companies; also in view of the fact that the sections in the Acts of the other States and England have worked reasonably satisfactorily. That is a further reason why I think they should be included in our legislation.

989. In your experience, has the existence of those sections in the present legislation proved detrimental to companies?—No. If you will permit me, I will qualify that by saying that the proposed legislation is not going to be so onerous with regard to public companies as the existing legislation.

990. Do you know of anything detrimental having resulted by reason of the absence of such provisions in the 1838 Companies Act?—No.

991. Turn now to Clauses 429 to 435, which deal with the registration of persons qualified to act as auditors or liquidators, and which provide a penalty for appointing any person other than a registered auditor? Do you consider it necessary for every small company, particularly those that are in the nature of local companies carrying on business in country districts, to be obliged to appoint persons who are authorised by the Supreme Court to act as auditors?—You are asking whether these clauses should not be limited to companies other than private or proprietary concerns?

992. Not quite. I do not know whether you are as well acquainted as I am with country districts. There are quite a number of small concerns in the country registered as limited companies, and they employ local people to audit their books and attend to their affairs. Those people have given every satisfaction. As the Bill stands, each and every one of those persons will have to apply to the Supreme Court for registration. I want your opinion—and if you are not able to answer the question, do not do so—whether it would be any detriment, in a case of that kind, if the company were exempted from these provisions. I have in mind the provisions of the Federal Bankruptcy Act, whereby no one may be a trustee unless he is registered. Under the Federal Bankruptcy Act, a person could act as a trustee provided he satisfied the creditors. At many country meetings of creditors, persons have been appointed and have carried on successfully and have given satisfaction. Under the Federal Act, with all its ramifications, a trustee is employed, and the estate might be 500 miles away. Will not this proposed legislation have the same effect on small companies? Can you see any really sound reason why every auditor should be obliged to apply to the Supreme Court?—I am inclined to agree with you that in respect of small companies there would be instances where it would be a hardship if it became necessary to employ a registered auditor, say, where the company happened to be the director, the mother a shareholder, the son the secretary, and the auditor a brother-in-law. There would be a concern such as that, the public is not interested whatever. What Clause 425 aims at is the safeguarding of the public, but if the public does not happen to be concerned in the company, there does not seem to be any reason for the employment of a registered auditor.

993. By Hon. G. FRASER: Would the same thing apply to a proprietary company?—I have been referring to such companies as family companies; at the moment they are public companies, and they would have to register as private or proprietary companies. The clause as it stands apparently applies to all companies.

EVAN STAPLES SAW, further examined:

994. The WITNESS: At the previous sitting of the committee I was asked several questions. I have here the answers to those questions and would like to read them first. I also desire to hand in a statement on the functions of a Stock Exchange. I have had copies typed for the information of members of the committee. The first question I was asked was, Should there be a separate register kept by companies for the registration of bills of sale? The answer is: A provision should be included in the Act making it compulsory for companies to set out this information in the register of mortgages. At present there is no provision.

995. By Mr. ABBOTT: When I asked that question I had in view not only the register of mortgages but also whether the present system of registering a mortgage of chattels belonging to a company under the Bills of Sale Act should be continued, or whether the company should be taken outside the provisions of Bills of Sale Act and have a separate register kept at the Companies Office. I consider the companies should still be brought within the ambit of the Bills of Sale Act as they are at present, but that the information should be set out in the register of members so that any person paying a search fee would be full advised whether there was any bill of sale over any of the company's assets.

996. The register you refer to is kept at the Companies Office—Yes. The second question I was asked was: Is it considered necessary for a foreign company to have a local director instead of an attorney but this condition should not be made compulsory. The Companies Acts of the Eastern States do not make it compulsory for foreign companies to have local directors, and I feel that company law in Western Australia should be kept as uniform as possible with the legislation in the Eastern States.

997. By the CHAIRMAN: Do not you think it would be helpful if that were brought into the Bill? It seems to me to be necessary. A director would have more status than an attorney?—A director would have more status, but a number of small companies that are now simple companies would have difficulty in creating positions for local directors. I realise that the public would be able to see more information from a local director than an attorney but I do not consider that such a provision should be made in our Act.

998. It is not compulsory in any other Act?—Not that I know of. The third question I was asked related to the difference between the provisions of the Victorian Bankruptcy Act and the Federal Bankruptcy Act. The latter has no guaranty balance sheet headings. I have here statements showing the headings set out in the Victorian Act and
also the stereotyped balance sheet as set out in the Western Australian Bill. The statements are as follows:

THE VICTORIAN COMPANIES ACT, 1888.

SECTION 124.

Contents of Balance Sheet:
1. Every balance sheet of a company shall contain a summary of the authorized share capital and of the issued share capital of the company; its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the various classes of the assets and shall state the basis of valuation of each class of assets, and in any case where an option exists over unissued shares of the company the balance sheet shall state the number of shares under option, the price of issue, and the date of the expiration of the option.

Items in Banking Companies' Balance Sheets:
2. There shall be stated under separate headings in the balance sheet of every company (being a banking company), so far as they are not written off—
(a) the preliminary expenses of the company; and
(b) any expenses incurred in connection with any issue of share capital or debentures; and
(c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any document in the possession of the company relating to the stamp duty payable in respect of any such contract or any transfer or conveyance of any such property—the amount of the goodwill and any trade marks and of any patents as so shown or ascertainable.

Items in other Companies' Balance Sheets:
3. There shall be stated under separate headings in the balance sheet of every company (not being a banking company), so far as they are not written off—
(a) (i) the preliminary expenses of the company;
(ii) any expenses incurred in connection with any issue of share capital or debentures;
(iii) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any document in the possession of the company relating to the stamp duty payable in respect of any such contract or any transfer or conveyance of any such property—the amount of the goodwill and any trade marks and of any patents as so shown or ascertainable;
(b) freeholds and leaseholds;
(c) machinery, plant and equipment;
(d) stock in trade;
(e) (i) investments in Government, municipal and other public debentures, stock or bonds;
(ii) investments in subsidiary companies;
(iii) investments in companies (not being companies included in sub-paragraph (ii) of this paragraph) the shares in or debentures of which are dealt in on any prescribed stock exchange in the Commonwealth of Australia or elsewhere;
(iv) Investments in any other companies;
(f) amounts owing by subsidiary companies;
(g) trade debts and bills receivable (other than amounts owing by subsidiary companies);
(h) loans to directors (other than loans made in the ordinary course of the business of a company);
(i) other debts;
(j) cash at bank and in hand;
(k) balance of profit and loss account;
(l) debentures;
(m) liabilities (other than debentures) secured by any charge on the assets;
(n) amounts owing to subsidiary companies;
(o) amounts owing to trade creditors (other than amounts owing to subsidiary companies);
(p) reserves.

Where liability secured on Assets:
4. Where any liability of a company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.

Reserve Fund:
5. (a) A balance sheet, summary, advertisement, statement of assets and liabilities or other document whatsoever published issued or circulated by or on behalf of a company shall not contain any direct or indirect representation that the company has any reserve fund unless—
(i) such reserve fund is actually existing; and
(ii) the representation is accompanied by a statement showing the manner in which and the securities upon which the same is invested.

Statement of Contingent Liabilities and of Arrears of Dividends on Preference Shares:
(b) Every balance sheet published, issued or circulated by or on behalf of a company shall include a statement setting out—
(i) where the company has contingent liabilities—the total amount thereof; and
(ii) where at the date of such balance sheet there are any arrears of dividends on preference shares—the amount of such arrears and the period or periods to which they relate.

Penalty:
(c) Every director or manager, who alone or in conjunction with any other person wilfully signs publishes issues or circulates or causes to be signed published issued or circulated in relation to any period beginning on or after the commencement of this Act any balance sheet, summary, advertisement, statement of assets and liabilities or other document, in contravention of this subsection, shall be guilty of a misdemeanour and in addition to any civil responsibility shall be liable to imprisonment for a term of not more than two years; and every director or manager who through culpable negligence alone or in conjunction with any other person signs publishes issues or circulates or causes to be signed published issued or circulated in relation to any such period any balance sheet, summary, advertisement, statement of assets and liabilities, or other document, in contravention of this subsection, shall in addition to any civil responsibility be liable to a penalty of not more than two hundred and fifty pounds.

Form of Balance Sheet of Banking Company:
6. The balance sheet in the ease of a banking company may be in the form in the Seventh Schedule or to the like effect and shall comply with the directions at the foot of the form.

Seventh Schedule:
7. The provisions of this section are in addition to other provisions of this Act requiring certain matters to be stated in balance sheets.
THE W.A. COMPANIES BILL, 1940.
Form C.
The Companies Act, 1940.
(Sections 145 to 155.)
Company or society limited (not being a banking company)
Balance sheet at
Liabilities. £ $ d.
*Capital
Reserves (for particulars of specific investments, if any, see contra)
Profit and loss
Debentures
Mortgages
Deposits with accrued interest
Sundry creditors—
Amounts owing on open accounts
Amounts owing on judgment
Bills and notes payable
Liabilities not otherwise enumerated
Contingent liabilities

Annota.

Government, municipal and other public debentures or stock
Freehold property
Leasehold property, showing the provision made for depreciation and ultimate extinction of the assets
Plant and machinery
Fixtures, fittings, and furniture
Stock in trade
Sundry debtors (after making provision for all debts considered bad or doubtful)
Bills and notes receivable (after making provision for all debts considered bad or doubtful)
Shares in other companies
Amount at credit with bankers
Cash in hand
Other items (specifying them)
Contingent assets

Declaration of the Principal Officer, etc. Declaration of Directors.

*Distinction between the various classes of shares issued, show the amount or amounts called up thereon, and the arrears of calls unpaid, and specify what amount of capital has been paid up in money, and what amount otherwise than in money.
†The particulars of specific investments (if any) of reserves must be set out clearly.
‡Basis of value, whether at cost price, market price, or otherwise to be stated.

It is considered that the form of balance sheet suggested is not entirely suitable for adoption here, and Clause 149 should be amended so as to leave the form of balance sheet optional as in Victoria. In the Victorian Act Sections 125 and 126 make it compulsory that balance sheets and profit and loss accounts of subsidiary companies must be published, whereas the Western Australian Bill appears only to require (1) a statement of the extent to which subsidiary profits have been brought into the accounts of the parent company, and (2) the disclosure as a separate item in the balance sheet of the parent company of the aggregate amount of shares in and the amounts owing by subsidiary companies ( Vide Clauses 160 and 161 of the W.A. Companies Bill.).

999. Do you think we should increase the scope of the Bill— I think the Victorian provisions would increase the scope. There is also an innovation in the Victorian Act of much value (Section 125, Sub clause 3), under which directors must furnish information as to whether or not the results of the year's operations as disclosed in the accounts have, in their opinion, been materially affected by items of an abnormal character. That is a provision appearing in the Victorian Act but not in our Bill, and we suggest it should be included. The fourth question I was asked was, Should provision be made in the Bill compelling foreign companies carrying on business in Western Australia, with head offices in other Australian States or England to hold local meetings of the Western Australian shareholders? The answer is: As the minority shareholders have very little say in the management of a company, no good purpose would be served by compelling foreign companies to hold local meetings of shareholders. There is no provision of which I am aware in the existing States Acts compelling foreign companies to hold local meetings of shareholders.

1000. By Hon. A. THOMSON: What about a company registered under the Western Australian Companies Act and having its head office in Perth and carrying on business in Perth—If it were registered in Perth it would be compelled under the local Companies Act to hold its annual meetings here.

1001. That is a subsidiary company—You are referring to a company registered in New South Wales, and registered as a foreign company in Western Australia with a local attorney?

1002. A local director—You ask whether it should be compelled to have annual meetings here? The head office of the company would be in another State and it would be registered here as a foreign company. I cannot see that there should be any provision to compel the foreign company to have local meetings. A company affected would be the Swan Brewery Company, that is registered in Victoria, and its annual meetings are held in that State and not here. I think the same applies to Selfridges (W.A.) and Woolworths (W.A.). They are both registered in New South Wales and have meetings in that State.

1003. By the CHAIRMAN: Do you think it would be in the interests of the shareholders in Western Australia if all foreign companies were compelled to have a local director and hold a meeting here in the event of there being any grievances?—There is no such provision in the Acts of the other States and we should like to see all this legislation made as uniform as possible.

1004. By Hon. A. THOMSON: Do not that give foreign companies a decided advantage? If a local subsidiary company is formed and registered in the Eastern States, the East has absolute control of the finances and may make calls in accordance with the articles, whereas the local shareholders would have no say at all—Except by proxy.

1005. That is so, and if the meetings were held in Sydney, how many Western Australian shareholders could attend? It should be possible to make any arrangement to protect local investors and shareholders?

—I realise that Western Australia is at a disadvantage as compared with South Australia and Victoria, where the distances to be travelled to attend meetings of shareholders is not so great.

1006. By Mr. WATTS: We would know the shareholders from year to year. Would the difficulty mentioned by Mr. Thomas be overcome by providing that where the register showed that, say, one-third of the capital or some substantial proportion was held in Western Australia, the Western Australian shareholders should then be able to require a meeting to be held locally?—I think that would be a great extent overcome the difficulty, provided there was a substantial number of shareholders in Western Australia, but to compel every company in which there might be only one or two shareholders here to hold meetings in Western Australia would be bad.

1007. I think the basis should be a substantial holding of shares in Western Australia—I think provision could be included in the Bill to cover that point. I should say that at least one-third should be necessary.

1008. Mr. WATTS: It should be one-third of the subscribed share capital.

1009. By Hon. H. SEDDON: Suppose a number of investors in Western Australia took shares in a company operating in New Guinea and registered in New South Wales, would it be practicable to insist that, because a large number of shares were held here, the
company should be compelled to hold a meeting in Western Australia?—No; I understood that the question is applied to a company operating in Western Aus-

1010. Mr. WATTS: Only where the company is operating in Western Australia and the head registered office is elsewhere.

1011. By Hon. H. SIDDON: Take the Broken Hill Proprietary Co.: Suppose people in Western Aus-

1012. By Mr. WATTS: Surely if one-third of the shares held by residents of Western Australia, are entitled to know what the company is doing! Half-a-dozen shareholders holding one per cent, of the capital could go to New South Wales or take their share, but if one-third the share capital, say £3,000 out of £100,000, was held here, surely it would be reasonable to call a meeting here!—I do not see that there would be any objection provided the company was registered here and one-third of the capital was held here.

1013. By Hon. H. SIDDON: Do you know of any State that has included such a provision in its company law?—No.

1014. By Mr. RODODENDA: What is your experience of the general attitude of ordinary shareholders to annual meetings?—Ordinary shareholders are apathetic and lax.

1015. And do not care a company damn about matters?—When a company is paying dividends, it is very difficult indeed to obtain a quorum. If a company gets into difficulties and is not paying dividends regularly, the experience is that the meetings are well attended.

1016. By Mr. WATTS: I do not suggest that we should compel every company situated in the circumstances we have been discussing to hold a meeting in Western Australia every year. My idea is that shareholders in Western Australia holding that proportion of the total capital, provided they get a requisition signed, should be entitled to call for a meeting,—Yes.

1017. Hon. A. THOMSON: I have in mind a definite instance. A meeting was called, a considerable number of shareholders attended, and those present unanimously decided that a meeting should be held here, and that a local director should be appointed. The chairman of directors said he would not submit the proposal to his directors. Mr. Watts has offered an excellent suggestion for the protection of such shareholders.

1018. The WITNESS: The fifth question dealt with private and proprietary companies, as follows:—What advantage is it having any provision in the Bill for the registration of both private and proprietary companies? The answer is: (a) Under the Taxation Act, a "private company" is defined as a company which is under the control of not more than seven persons and which is not a company in which the public is substantially interested or a subsidiary of a public company. (b) Under the Bill a "proprietary company" is a company limited by shares, not being a no-liability company, which by its memorandum or articles restricts the right to transfer its shares and limits the number of its members to 50 and prohibits any invitation of the public to subscribe to any shares or capital and prohibits the company from receiving deposits, except from its members, for fixed periods or payable at call, whether bearing interest or not bearing interest, or a certificate of incorporation from the Registrar certifying the company as a proprietary company. It is obvious from the above definitions that there is no connection between the two companies, and it is therefore necessary to have provision in the Bill for both classes of company.

1019. By Mr. ABBOTT: Are there any provisions in the Bill which apply to private and proprietary companies, together with public companies, that you think should not apply to private and proprietary companies?—None as a matter of law, except the conditions in which the directors, shareholders and auditors are all more or less mixed up together. The companies are well-conducted and carrying on successfully, but they are for the most part family concerns. I believe there is a provision in the Bill requiring that the auditor shall not be in any way connected with a director of the company. In the case of many private companies they have less a friend of the family or a relation of one of those connected with the company. I do not know that it would put any great hardship upon such companies if they had to comply an outside auditor.

1020. Would an auditor be required at all in the case of a station or farm that was owned by a private syndicate or company?—It is all right if everything is going smoothly, but should there be a difference of opinion it may be necessary to have an impartial auditor.

1021. By Mr. WATTS: Why have you made use of the definition in the Taxation Acts with regard to pri-

1022. The Companies Act since 1893 has dealt with neither proprietary nor private companies. It is possible under the Act, by the wording of the memorandum and articles of association to prohibit the sale of shares or the invitation to the public to subscribe for shares and debentures as contemplated by the definition of "private company" in Clause 43?—Yes.

1023. Do you think any detriment has been suffered through the absence of reference to private and proprietary companies in the Western Australian Act?—No.

1024. What do we gain by cumbering up the Bill with provisions relating to private and proprietary companies?—I do not know that you will gain an exception except that you will make the legislation uniform with that of the other States.

1025. By Hon. G. FRASER: Irrespective of whether the clauses that go into the Bill are necessary or not?—This is a small State and the Bill contains many provisions that will not be needed here.

1026. You think we ought to put them in?—The Chambers of Commerce have for many years urged us at conferences to ask the Government to bring in a Bill that will make the company laws uniform in Australia as far as possible. I am bound by the resolutions that have been carried at the meetings of associated Chambers of Commerce. Many companies with head offices in Victoria and New South Wales have activities in this State, and desire to see that our company legislation is brought into line with that of the other States.

1027. Do you know of any instance where this provision has been availed of in the Eastern States?—I have had no experience of such a thing.

1028. By the CHAIRMAN: Would it not be helpful to the public that private and proprietary com-

1029. By Mr. WATTS: We have an argument to the effect that these provisions as to auditors should be imposed upon us for the protection whether of the few or the many persons interested in them. On the other hand we argue that we ought to alter the existing system under which you have companies without restrictions as to the sale of shares,
et al., which makes them in fact private companies, and gives them relief from the provisions of the Act that apply to public companies. Whilst I agree there ought to be uniformity as far as possible, it seems to me that every change is not for the better. Some members of this committee will agree with me that substantial amendments to a law that has been in operation and working well for many years are sometimes more of a detriment than a help. I question whether we will gain anything by making special provisions for private and proprietary companies, especially private companies, when we have been able to arrange that by the memorandum and articles of association in the great majority of cases to which you have referred. That is how I view the matter—whether it is worth while indulging in these new provisions. It will not affect foreign companies. If a company is registered in New South Wales, it will have to register here as a foreign company, whatever its constitution. So these provisions can only apply, as I see the matter, to Western Australian companies; and then the point arises whether there is any real benefit to be derived from inserting these provisions for Western Australian companies only.

1030. By the CHAIRMAN: You really do not think that the proprietary and private companies will be affected detrimentally or helpfully?—I cannot see that the legislation will be detrimental, and I think it should be uniform.

1031. By Hon. A. THOMSON: Do you think it will be helpful, or that it will be detrimental—I fail to see that it will be either. In any case, I cannot see that it will prove detrimental.

1032. By Mr. ABBOTT: If all the provisions relating to the proprietary company could, if an individual wished it, be incorporated in a private company, why do not the provisions relating to proprietary companies?—I presume they are two distinct types of companies.

1033. But if one could insert in the articles and memorandum of a private company the whole of the provisions that under this Bill might be inserted in the articles and memorandum of association of a proprietary company, what is the advantage of having a proprietary company?—As I say, I presume they are two different types of companies entirely.

1034. Are they?—It says so in the Bill. The definitions in Clauses 42 and 43 differ.

1035. By Hon. G. FRASER: Do you think the differences are so great as to make it necessary to have the distinction?—I do not see that it would be detrimental to have the two different types of companies in the Bill.

1036. There is little difference—that is an. However, I would not like to go into legal phrasing, which is a matter for the Parliamentary Draftsman and for legal practitioners. I now hand in a statement relating to the objects invested of the Stock Exchange, the requirements for official listing, stocks, investments, and generally how a stock exchange operates. I put in that statement because the last time I attended here it seemed to me that some members of the committee wanted to know that exact constitution and how a stock exchange operates. The statement may be helpful to members in their deliberations.

1037. By the CHAIRMAN: Thank you very much?

1038. By the CHAIRMAN: I now submit the evidence which was submitted by the Perth Chamber of Commerce on the Western Australian Companies Bill of 1940. A copy of the statement has been circulated. I have also circulated to members a statement of several amendments to the commentary, showing where it needs amendment. The statement reads as follows:

The Perth Chamber of Commerce, to whom the Western Australian Companies Bill of 1940 was referred, agrees in the main with the general provisions of the Bill which will consolidate and amend the laws relating to companies as now contained in the Companies Act, 1893-1938. The Bill will bring the law of this State relating to companies, as nearly as possible, into conformity with corresponding legislation in Great Britain and other Australian States, having due regard to certain matters that are peculiar to this State. The Chamber has examined in detail the whole of the Bill with a view to passing a workable measure which will not unduly hamper or embarrass existing companies and sound commerce, but which will, as far as is practicable, protect investors and members of companies.

It is recommended by the Chamber that the fees to be imposed by the present Bill shall comprise with fees charged in other Australian States. The fees imposed should be so arranged that the other Australian States and companies in this State should not be placed at a disadvantage compared with the fees charged elsewhere.

I should like to elaborate on that phase. One matter affects the Tenth Schedule, and I refer to that portion appearing on page 337 of the Bill. That shows that the filing fee for putting in certain returns is 5s.; if within one month after the period prescribed by law, the fee is 55s., and if after more than one month after the period prescribed by law, the fee is 65s. We submit that the latter fees are excessive and if an extension of time is necessary, the fee charged should not be increased from the original fee provided in the schedule.

1038. By Mr. ABBOTT: I think you stated the fees in connection with the registration of companies should correspond as nearly as may be with those charged in the Eastern States—Yes.

1037. Does the Chamber of Commerce think that the fees and stamp duty charges with the transfer of shares should also correspond?—The Chamber regards the stamp duty chargeable in Western Australia as extremely high in connection with the transfer of shares as compared with the duty charged in the Eastern States, and feels that this not only causes restriction in transactions and possibly evasion of the payment of duty, but also acts detrimentally to the investment of capital in Western Australian projects and actually defeats its own object from the standpoint of the collection of revenue. A comparison of the stamp duty imposed in Western Australia with that chargeable in the other States shows that the latter fees are excessive and if an extension of time is necessary, the fee charged should not be increased from the original fee provided in the schedule.

1038. By Hon. A. THOMSON: Do you think the fees and stamp duty charged with the transfer of shares should also correspond?—The Chamber regards the stamp duty chargeable in Western Australia as extremely high in connection with the transfer of shares as compared with the duty charged in the Eastern States, and feels that this not only causes restriction in transactions and possibly evasion of the payment of duty, but also acts detrimentally to the investment of capital in Western Australian projects and actually defeats its own object from the standpoint of the collection of revenue. A comparison of the stamp duty imposed in Western Australia with that chargeable in the other States shows that the latter fees are excessive and if an extension of time is necessary, the fee charged should not be increased from the original fee provided in the schedule.

1038. By Mr. ABBOTT: I think you stated the fees in connection with the registration of companies should correspond as nearly as may be with those charged in the Eastern States—Yes.

1038. By Mr. ABBOTT: I think you stated the fees in connection with the registration of companies should correspond as nearly as may be with those charged in the Eastern States—Yes.
55
correspond as nearly as possible with the duty chargeable in the Eastern States. We would like that provision to be made. The Chamber of Commerce has repeatedly asked the Government to lighten the stamp duty payable under the State Stamp Act for the benefit of influencing the investment of outside capital in Western Australian companies and industries. My members consider that everything possible should be done to influence the introduction of capital into Western Australia which must of necessity be of benefit to the State. Besides, there is an obvious evil by reducing the stamp duty to the minimum and so inducing would-be investors to place their capital in Western Australian companies instead of sending their money out of the State.  

1041. By Hon. J. SEDDON: There is a provision in the Bill that foreign companies shall be required to establish a register in Western Australia. Do you think that Western Australian shareholders would transfer their shares to the local register in view of the existing stamp duty?—They may do that, although they do so under a very heavy penalty.  

1042. Under existing provisions they will suffer a penalty by doing so.—Yes. In effect, they have to sacrifice so much of their dividend for the first year to make up for the difference in the stamp duty payable, which is much greater than in the other States.  

1043. So that under existing conditions the great majority of people who own shares in companies, even if those companies have a register to Western Australia, will not allow their shares to remain on registers in the Eastern States, simply because of the stamp duty?—In many instances, particularly affecting investment companies, people leave their shares on registers in the Eastern States in preference to transferring those shares to the local register in Western Australia.  

1044. The only advantage of transferring shares to the local register would be in cases where probate had to be taken. —I do not know whether that could be regarded as an advantage.  

1045. Perhaps not to the investor but to the State?—That is so. When a would-be purchaser in New South Wales of shares in a Western Australian company is informed of the stamp duty payable here, by very naturally declines to purchase and thus business is very much restricted and the Western Australian revenue suffers, as well as the brokers and the public. We consider that the present stamp duty should be amended as we regard the present minimum charge on transfers of a shilling for every £5 and 5s, for every £25 worth of scrip in companies, to be too excessive and detrimental to the interests of Western Australia. I may mention that evidence along these lines with respect to the stamp duty imposed by this State has been placed before the State Government and was also tendered by the Chamber of Commerce in evidence before the Commonwealth Disablity Commission when it sat in Western Australia. The position is well known to the Premier and to the Government generally, but no amendment has so far been passed in connection with the Stamp Act. I think the Government felt that it might lose revenue if the stamp duty were reduced. On the other hand, the members of the Perth Chamber of Commerce and the Stock Exchange contend that more money would be invested and more transactions in shares would be effected, and this would more than make up any loss from that standpoint. The Government has not accepted that view.  

1046. By the CHAIRMAN: I think your request was for a reduction from one per cent. to one-quarter per cent. —Yes. Dealing now with share-brokering the statement continues—The Chamber has gone carefully into this matter and has found that it is extremely difficult to reconcile the facilities which fairly ought to be given to the flotation of genuine companies with restrictions necessary to protect the public against unscrupulous share-sellers. It appears that this could only be regulated in three ways: (1) Prohibition of house-to-house canvass (as set out in the Bill with further amendments); (2) Licensing of share-dealers together with deposits, to which the Chamber is opposed; (3) Power to dispense with the prohibitions against house-to-house canvass in particular instances, where the flotation of the company is a genuine one. Amendments are recommended to deal with this position.  

1047. By Hon. J. SEDDON: With regard to the licensing of share-dealers, what is your opinion as to the deposit of £300 which is suggested in the Bill?—The Chamber considers that no deposit could possibly cover the position of any State, because in any case, the Chamber considers that the amount of £300 is inadequate.  

1048. By Hon. A. THOMSON: Do you think that if a dealer took out a bond with an insurance company that would provide protection?—There is no provision that we know of in any other State to provide for licensed share-dealers. If share-dealers are to be licensed, a person could set up an office and put up a sign, "Registered Share-dealer authorised by the Government of Western Australia." That person would be subject to no restriction or control, such as is provided now by the Australian stock exchanges.  

1049. Except that he would have to put up a deposit of £300.—Yes.  

1050. If he were permitted to carry on business and in addition took out a fidelity bond in an amount to be fixed by the Registrar, would that provide adequate protection for the public?—Share-dealers would only act in boom times. They would not be likely to set up in business when things were quiet. In boom times, thousands of pounds would pass through the hands of a registered share-dealer. The bond, of course, would afford some protection, but would not adequately protect the public. In addition, the dealers would hold thousands of pounds worth of scrip for clients.  

1051. By Hon. G. FRASER: But the stockbroker does the same thing to-day and there is no protection for the public?—Except that the stockbroker has to comply with the rules and regulations of the Australian stock exchanges.  

1052. But if he does not comply with them, there is no protection for the public?—Yes, his membership of the Exchange would be suspended.  

1053. By Mr. WATTS: The deposit of £300 might lend a dealer a cloak of respectability when he was not respectable.—That is what we feel. In Great Britain an Act has been passed entitled "The Prevention of Frauds by Investments Act, 1859." Share-dealers are registered in Great Britain, where thousands of people are dealing in shares. In Western Australia we have about half-a-dozen unauthorised brokers for a number of years, but they have now all gone out of business. The only persons in Western Australia now dealing in shares are the members of the Stock Exchange. We think if the provision is inserted in the Bill people will be able to trust those share-dealers, to the detriment of the public generally.  

1054. By Hon. G. FRASER: There are no such persons operating at the present time and you think we ought to keep them out?—The exchanges have for many years made inquiries with regard to unauthorised brokers; it has taken six or seven years to get the unauthorised brokers out of business here.  

1055. By Hon. H. SEDDON: Is it not a fact that every time a boom occurs we get a crop of these men opening up business?—During the last boom an open public exchange was opened where people bought and sold shares. Several smart gentlemen arrived here from the Eastern States and dealt in securities, share-arranged or otherwise, and around the country selling shares in Eastern States companies that were not quoted in Western Australia. These shares were sold to unsuspecting members of the public both in the country and the metropolitan areas. That class of person has disappeared; not one is now operating in Western Australia.  

1056. By Mr. RODRIGUES: Would they not come again if you did not stop them?—Exchange rules have been tightened up considerably since then. No broker in any other Australian State is allowed to deal with a unauthorised broker operating in a capital city. That is the existing position.  

1057. By Hon. H. SEDDON: You agree that it is more than desirable that such people should be kept out of the business?—Yes. The Committee adjourned.
EVAN STAPLES SAW, further examined:

1058. *The WITNESS:* Continuing the evidence given yesterday, I wish now to deal with the insolvency powers of the Registrar of Companies. The Chamber recommends that the registrar’s powers of inspection should be limited to the register of members, register of mortgages and minute book of general meetings of the company. This should protect companies against undue disclosure of their private records.

1059. *By Hon. H. SEDDON:* Do you not think that to restrict the powers of the registrar is rather undesirable? There are many matters in connection with company activities that might be made known to the department, which of course is bound to secrecy, but the disclosure of which to the public would be undesirable?

1060. *You refer here to the fact that inspectors should be limited in the office should be made available to the public.* Clause 414 of the Bill deals with that matter.

1061. You refer in your statement to powers of inspection?—Yes. Regarding the licensing of auditors and liquidators, the provisions in the Bill are generally approved subject to the following comments:

(a) Membership of a body of accountants is not the necessary qualification to act as liquidator or auditor, but the passing of the examinations of those bodies is the criterion. It appears that membership depends upon the passing of examinations and payment of annual fees. Some accountants who have passed the examinations of bodies of accountants are no longer members because they have not paid the annual fees, but this latter fact should not detract from their acting as auditors and liquidators.

(b) In the case of persons who hold the diplomas of well-recognised bodies, further examinations are unnecessary. The Chamber, therefore, recommends that the question of competency, good character, and repute should be left to the Registrar of Companies.

(c) Registered liquidators should have to provide a bond only when required by the creditors or the court. Auditors should not have to provide any bond.

(d) A nominal fee should be provided for on registration. There should not be an annual fee. No annual fee is charged for registration of a trustee under the Bankruptcy Act.

(e) In the case of country companies, it may be that a practising accountant is not available to effect the audit without inconvenience and undue expense to the company. It is recommended that the Registrar of Companies should be able to authorise a person who, in his opinion, is competent to act in such special cases.

(f) The provision relating to the appointment and qualification of an auditor of a private company should be extended to that of a proprietary company.

1062. *By Mr. WATTS:* Do I understand you to wish the Registrar of Companies to be able to license or otherwise authorise auditors rather than the court, as at present?—Under the provisions of the Bill it is a matter of application to the court. We consider that power should be given to the registrar to deal with the matter.

1063. You refer here to the fact that the passing of examinations of various accountancy associations is the criterion. Do you think that the character and competency of the applicant for registration should be taken into consideration as much as his accountancy qualifications?—We consider that the Registrar of Companies should have the power to register auditors and liquidators provided he is satisfied of the good character and competency of the persons who will be licensed under the Act.

1064. That competency being irrespective of whether the applicant is a member of one of these associations or not?—Accountants who are members of recognised bodies are usually very competent people. If the Registrar of Companies found that a licensed auditor or liquidator was not competent, he should have power under the Act to cancel the man’s license.

1065. Let me put this in another way: I am not a member of any accountancy organisation, but I have the diplomas of any kind. Suppose the registrar, notwithstanding that fact, came to the opinion that I was competent to audit the books of a company. Suppose the registrar, notwithstanding that fact, came to the opinion that I was competent to audit the books of a company. What power should be given to the registrar to deal with the matter?

1066. *Hon. H. SEDDON:* Do you think that the registrar, notwithstanding that fact, came to the opinion that I was competent to audit the books of a company?

1067. *You refer here to the possibility of a company’s being floated.* The Chamber recommend that a company’s being floated. The Chamber recommends that inspectors should be limited in the office should be made available to the public.

1068. *That competency being irrespective of whether the applicant is a member of one of these associations or not?—Accountants who are members of recognised bodies are usually very competent people. If the Registrar of Companies found that a licensed auditor or liquidator was not competent, he should have power under the Act to cancel the man’s license.*

1069. *By Hon. A. THOMSON:* You suggest that only those who are members of the Stock Exchange should be entitled to deal in shares?—We prefer that the position should remain as at the present time, that is, the interests of the client should be the first consideration and the rule of obtaining independent advice and refraining from acting in the case of conflicting interest—should apply to brokers. The rules of the Stock Exchange have been sufficiently tightened up so that a sharebroker selling his own shares to his private client must declare on his stamped contract note that the shares sold are his own, at the same time advising his client to that effect.

1070. *By Hon. A. THOMSON:* You suggest that only those who are members of the Stock Exchange should be entitled to deal in shares?—We prefer that the position should remain as at the present time, that is, the interests of the client should be the first consideration and the rule of obtaining independent advice and refraining from acting in the case of conflicting interest—should apply to brokers. The rules of the Stock Exchange have been sufficiently tightened up so that a sharebroker selling his own shares to his private client must declare on his stamped contract note that the shares sold are his own, at the same time advising his client to that effect.

1071. *You refer here to the possibility of a company’s being floated.* The Chamber recommends that inspectors should be limited in the office should be made available to the public.

1072. *That competency being irrespective of whether the applicant is a member of one of these associations or not?—Accountants who are members of recognised bodies are usually very competent people. If the Registrar of Companies found that a licensed auditor or liquidator was not competent, he should have power under the Act to cancel the man’s license.*

1073. *By Hon. A. THOMSON:* You suggest that only those who are members of the Stock Exchange should be entitled to deal in shares?—We prefer that the position should remain as at the present time, that is, the interests of the client should be the first consideration and the rule of obtaining independent advice and refraining from acting in the case of conflicting interest—should apply to brokers. The rules of the Stock Exchange have been sufficiently tightened up so that a sharebroker selling his own shares to his private client must declare on his stamped contract note that the shares sold are his own, at the same time advising his client to that effect.

1074. *You refer here to the possibility of a company’s being floated.* The Chamber recommends that inspectors should be limited in the office should be made available to the public.
committees takes exception or if the committee considers that the company should not be floated, the prospectus and the company do not see the light of day. The provisions to which I have referred have been tightened up in the last three or four years.

1060. Suppose a man said, "I am not going to bother about the Stock Exchange, but will issue the prospectus and carry on," what protection would the public have?—The man would have very little chance of making a success out of it. If you accept the provisions we have suggested, he could not float a company or proceed with the flotation unless a certificate was given by the Registrar to permit of the flotation. Furthermore the man would have little chance of making good the flotation of a company to the general public unless the matter was handled by the Exchange.

1067. You think that the provision of a certificate by the Registrar would provide protection for the public?—We feel that it would. We consider that the Registrar should have power to cancel a certificate if improper use is made of it. It is not possible for the Exchange to keep every small company that desires to be registered in this State, especially if it is in this country. Sometimes a co-operative company desires to start at a country estate. We feel that provision should be made for the Registrar to give a certificate in a case like that.

1067. By the CHAIRMAN: In effect, you would be creating a monopoly for the Stock Exchange?—I prefer to call the Exchange a monopoly; it is a monopoly, in so far as there are no authorised sharebrokers in existence in Western Australia and it is an offence under the Australian Stock Exchange regulations for any member to deal with any unauthorised broker in any city.

1072. But that is not subject to any legislation?—That is so.

1073. By Hon. G. FRASER: It is a domestic rule of the Stock Exchange?—Yes.

1074. By Mr. WATT: You told us yesterday that there were six or seven free-lance brokers who had disappeared in late years?—Yes.

1075. That was in Western Australia?—Yes.

1076. Have you ever heard of C. O. Barker Investments?—Yes.

1077. Does it still exist?—It might, but I do not know that it is carrying on any transactions. A member of one of the Exchanges in the Eastern States who was dealing with Barker and selling shares on one of the Exchanges there, was recently fined for giving the commissions. He was dealing with an unauthorised broker in Western Australia.

1078. By Hon. A. THOMSON: Was he fined by the Exchange?—Yes, by the Adelaide Exchange.

1079. By the CHAIRMAN: Do you know of any legislation governing the Stock Exchange anywhere in Australia that would apply in that direction?—No. The only legislation I know of is the Prevention of Fraudulent Investments Act, a British Act of 1920. I am not certain whether it received Royal Assent, but I have a copy of the Act as passed by Parliament. This relates to the registration of share-dealers. In Great Britain, owing to the immense population, there are thousands of brokers and bucket shops that carry on business, and apparently the British authorities have found it necessary to bring down legislation to control the activities of these share-dealers and brokers. I am not prepared to make a copy of the Act available to members of the committee.

1080. By Hon. G. FRASER: Is there any organisation in Australia to which those share dealers who are not members of the Stock Exchange belong?—Not that I know of.

1081. By the CHAIRMAN: I feel that we should have some jurisdiction. Have you any suggestion to offer on this direction?—Before 1920 there was no legislation that we knew of in any other part of Australia. The Exchanges are controlled by a central body from Sydney, namely the Associated Stock Exchanges of Australia. Their rules are uniform throughout the whole of the States; the rules and regulations for transactions conducted on the Exchange are the same throughout the States.

1082. There is no direct legislation in the other States?—Not that I know of.

1083. By Hon. G. FRASER: Do you realise that you are asking us to give the Stock Exchange very extensive powers?—All we ask is that the position be allowed to remain as it is at present. If you delete all those provisions—Clauses 292 to 298, the reference to the registration of share-dealers will be removed from the Bill. We feel that if this measure is passed in its present form, the Government will be authorising registered share-dealers in Western Australia and, in the event of a boom, it will be possible for those persons, on depositing an amount of £500, to claim that they have been registered by the Government of Western Australia as share-dealers.

1084. By the CHAIRMAN: Is that your principal objection to this legislation?—We object to it because we feel the position is adequately covered at present by the Stock Exchanges in Australia.

1085. By Hon. A. THOMSON: Apparently the position was not strong enough to protect the public against Litchfield's?—That company had a good time for a period, because there was no legislation in Western Australia compelling it to publish its balance sheets or make reports to the shareholders. All the powers connected with the company were held by Mr. Barker.

1086. Do you think the protection is adequate now?—We feel that if legislation is passed providing companies to lodge balance sheets with the Registrar and make reports, and also to lodge auditors' reports with the Registrar, the information will be available to the public and can be published. By the Provisions I approached Mr. Barker for the balance sheets and reports of his companies, but without success. Finally, they were published, and are published in Western Australia and in the other States. That led to the inquiries that took place later into Mr. Barker's affairs.

1087. By Hon. H. REDDON: The Stock Exchange issues circulars warning the public against dealing in the shares of unauthorised companies. This company has issued many pamphlets over the last few years. These have been circulated amongst business houses, banks and businesses in the country, warning them of the activities of unauthorised companies. They are not sold, but the names of the sellers and purchasers are not disclosed. The prices are published daily.

1088. Assume that a share-dealer was not associated with the Stock Exchange and was buying and selling shares, would there be any obligation on him to publish his prices?—No.

1089. He could fix what prices he liked?—That was done within the last three or four years. Certain unauthorised brokers came here from the Eastern States and sold to the public shares that were not quoted on the Australian exchanges. They more or less fixed the prices at which the shares were sold.

1090. It would be possible for these unauthorised persons to deal in companies that the Stock Exchange would not recognise because they do not conform to the Exchange rules, and a market would thereby be created in unauthorised securities?—They would probably last for a while, but when there was no market they would disappear and the people concerned would lose their money.

1092. Assume that these unauthorised persons obtained a certain amount of money in the public and disappeared. That would involve the setting in motion by the Government of machinery designed to get control of the deposits with a view to meeting the losses incurred by the public?—That could be done.

1093. It has been suggested that a fidelity bond might be taken out. Are the conditions governing fidelity bonds conditional on a conviction being obtained?—If I am not aware of the position. Before a person could obtain a fidelity bond, he would have to show that he was of good repute; otherwise the insurance company would not give the bond.

1094. By Mr. RODOREDA: And he would have to be of good repute before the Government would authorise him?—Yes.

1095. By Hon. G. FRASER: If any of these persons went into business and applied to the Stock Exchange for admission as members, what would be the position?
—Any person who applies to the Stock Exchange for membership has to be balloted for by the members before he can be elected.

1095. And if the vote goes against him?—He does not become a member.

1097. Would he have the right to appeal to any other body?—No.

1098. By Mr. WATTS: Have you ever had to collect under a fidelity bond?—No.

1099. You do not know whether payment by the insurance company is limited to the amount for which a conviction has been obtained?—No.

1100. By Mr. RODERICK: Suppose some shareholder defaulted, whether he was a member of the Stock Exchange of otherwise?—Prior to a person being elected as a member of the Exchange, inquiries are made into his reputation, his financial standing, and his experience.

1101. That does not guarantee the public?—No, but the Exchange guards jealously its own good name.

1102. Do you not think the Government would also guard its good name in respect to the registration of these people?—This is novel legislation in Australia, and I do not feel it would apply.

1103. It cannot be condemned because of its novelty?—It has not been found necessary to bring in this legislation in Victoria or New South Wales, where the populations are immense, and the share transactions vary much greater than they are likely to be in this State for many years.

1104. By Hon. G. FRASER: What about Adelaide?—There is no legislation in South Australia governing the position.

1105. You said that investigations were made before a man was admitted to membership of the Exchange. Are there no further investigations made in later years?—The committee has power to inspect the books of a member. The secretary of the Exchange can do that at any time.

1106. Do you refer to the man's business books?—To the whole of his business dealings.

1107. That would not necessarily indicate his financial standing?—The committee also has power to appoint a firm of chartered accountants to investigate and go through the books if it feels that any funny business is going on or that the member's financial position is doubtful.

1108. Has that power been exercised in this State?—No.

1109. By Mr. WATTS: Is it not next door to impossible completely to protect people against themselves?—Many foolish people will invest their money in any kind of company that may be established. I understand that in England millions of pounds are lost every year in this way.

1110. Don't you think we would be well advised to content ourselves with as far as is possible, that the persons who are authorized to deal in shares are reputable, and that the Registrar's power to strike them off the register should be limited to the case when, in his opinion, they cease to be of good repute?—Yes. If this Committee would adopt the provisions that were passed by the Legislative Council in the Bill introduced by Mr. Sampson in 1938, but which did not go through the Assembly, we feel that the position would be adequately covered.

1111. And what are these provisions?—That the restrictions on offering of shares for subscription or sale should prevent people from going from place to place or from house to house. There was also a provision giving the Registrar power to issue a certificate for the flotation of a company where he is satisfied of the bona fides of the company, and a provision for the cancellation of that certificate if he feels that the person is making exaggerated statements or undue use of the certificate for the purpose of floating the company.

1112. In other words, you suggest this when the Registrar is satisfied that the company is of such a nature that its shares ought to be hawked?—Yes.

1113. Then let the Registrar he satisfied that the person proposing to hawk the shares is of repute, and if the Registrar ultimately concludes that the person is not acting reputably the certificates should be cancelled?—Yes.

1114. By the CHAIRMAN: Are you aware that a recent Victorian Act provides for compulsory audit of stock brokers' accounts?—I am not aware of it. It must be very recent legislation.

1115. The CHAIRMAN: It is recent legislation.

1116. By Mr. RODERICK: You stated a little while ago that you thought there was sufficient protection to the public against members of the Stock Exchange defaulting, under this proposed legislation; in fact, I think you stated straight out that you thought there was adequate protection under the Bill as it stands?—We state that adequate protection is given by the Stock Exchange itself, and that we do not consider it necessary to introduce legislation to authorize share-dealing.

1117. And yet in your statement you suggest further restrictions; you say, "The Chamber is of opinion that the interests of the clients should be the first consideration, and that that should apply to brokers." So is that a further restriction proposed by you?—That is a practice or procedure that has been adopted by the Exchanges, and applies now.

1118. It does apply.—Yes.

1119. From reading your statement, I thought there was a suggestion that it should apply?—No. It does apply. Perhaps the wording is ambiguous.

1120. You also stated that there were sufficient safeguards in the Bill against unfair dealings, and that promoters should register their balance sheets and submit various returns. Would not the harm have already been done before the publication of the first balance sheet or the lodging of returns?—We consider it should be necessary for promoters to lodge with the Registrar of Companies the prospectuses of any companies they are going to float, and that only if the Registrar is satisfied will he grant a certificate for the flotation of a particular company.

1121. That procedure is not necessary under the present Act?—No. At the present time, of course, owing to the National Security Regulations of the Commonwealth of Australia it is not possible to float any company without the authorization of the Treasurer. Further, it is impossible to increase the capital of any company without such authorization. At present there are no flotations going on in Western Australia, and so far as we know there is no further capital being called up by any company. In certain cases in the Eastern States, where the Federal Treasurer has authorized increases of capital, there is a further provision that the shares of such companies shall be listed by the Federal Treasurer in escrow for a period of 12 months.

1122. That, of course, is all abnormal legislation?—Yes. Perth share-brokers, at any rate, are more or less just paying their way and holding on to the shares they have got. No flotations and no activities in any way are being conducted. We feel that before any legislation of this kind is passed by the Western Australian Parliament, due consideration should be given to these matters. There is no hurry to put any legislation through at the present time, because the position is adequately safeguarded by the National Security Regulations.

1123. By Mr. WATTS: Would you suggest, then, that if this Committee recommends the Bill, and it is passed by the State Parliament, its coming into operation should be on a date to be fixed by proclamation?—We commend the Government for bringing down a comprehensive Companies Bill to consolidate and amend the law relating to companies in Western Australia and bring it into line with legislation in the other Australian States. We would like to see the same thing done here, but with certain amendments which we have recommended, and also with the deletion of the provisions relating to registration of share-dealers.

1124. By Mr. WATTS: Would you suggest, then, that if this Committee recommends the Bill, and it is passed by the State Parliament, its coming into operation should be on a date to be fixed by proclamation?—We commend the Government for bringing down a comprehensive Companies Bill to consolidate and amend the law relating to companies in Western Australia and bring it into line with legislation in the other Australian States. We would like to see the same thing done here, but with certain amendments which we have recommended, and also with the deletion of the provisions relating to registration of share-dealers.

1125. Then you do not think that the operation of the Bill should be postponed until the National Security Regulations have lost their validity, which would have the effect of bringing this measure into operation only when proclaimed?—We do not think that if the Government goes fit to pass this legislation it should be in recess, as soon as it is passed the legislation should be brought into operation.
1126. I understood you to say a few moments ago that while the National Security Regulations were in operation there would be no need for this legislation.—The position is covered at the present time by the National Security Regulations.

1127. By the CHAIRMAN: And those regulations, of course, would override this Bill?—Yes.

1128. By Hon. G. FRASER: I take it you are referring mostly to company promotion?—Yes.

1129. And not to the other clauses of the Bill relating to the general conduct of companies, and so on?—I would like to see those problems of the legislation brought into effect immediately.

1130. By Mr. RODERICK: When a new applicant submits his nomination for membership of the Stock Exchange, do all members have the power to vote on the question of his admission?—Yes.

1131. How many black balls will exclude the applicant from membership?—I think that point was dealt with by Mr. Loml in his evidence. I think the number is one black ball in every four.

1132. So that the position could arise that, no matter how well a man might be fitted to conduct a sharebroking business, and how much money he had, if one member in four were opposed to his application, he would not be admitted to membership?—That is so. Even where a man buys the seat of a present member, he must still be balloted for under the rules of the Exchange.

1133. So that irrespective of his qualifications he cannot become a member of the Stock Exchange unless he follows that procedure?—That is a rule of the Exchange.

1134. By Hon. G. FRASER: So that the Exchange could easily become a close corporation?—In the time of the last big boom three or four members were admitted. The volume of business warranted the admission of further members. The upkeep and expense in connection with the Exchange are fairly heavy. All the general work of the Exchange, the forwarding of lists backwards and forwards to other Exchanges and keeping business posted generally mean that the expense involved would become increasingly heavy upon the individual members if the membership were cut down more and more, because each would have to bear increased expense.

1135. But they would have the benefit of the extra business?—No, not necessarily. Generally, fresh members bring in fresh clients and new people. When Messrs. James, Eyres, Newton, Diamond and Lamb were admitted in recent years, they brought in new business and helped in the promotion of further business, besides giving the business of the Exchange generally a better standing.

1136. By Hon. H. SIDDON: With regard to the establishment of the Perth Stock Exchange, we do not yesterday with the fact that investors in Western Australia are handicapped because of the high stamp duty?—Yes.

1137. Is it not a fact that the Perth Stock Exchange is at a disadvantage when competing with the Adelaide, Melbourne and Sydney Stock Exchanges on account of the magnitude of the business available?—Operations in this State are very small compared with the business transacted in the Stock Exchanges in the Eastern States, and it often becomes necessary, in so far as sales and purchases are concerned, for members to telegraph and deal with the Eastern States and deal with shares there. Most people who sell shares are not prepared to wait for local brokers to find local buyers. It therefore becomes necessary for the brokers to telegraph to the Eastern States or the exchanges in the Eastern States in the afternoon if the business is not completed locally in the morning. The object of that is that the business will not be available at the Great Bourse in the Eastern States when the first call is held after the telegraphic information has been received. Business in this State is rather limited and there are not many companies. I have heard the Chairman list a number of Western Australian companies listed with the Perth Exchange. I refer to general companies. I will make a copy of that list available to all members of the joint committee. I do not think there are more than 25 or 30 local companies.

1138. By Hon. A. THOMSON: Those companies are actually registered in Western Australia and listed on the Exchange, and include foreign companies?—Yes. Foreign companies are additional. The valuation at which share transactions take place is governed by the transactions on the Melbourne and Sydney Stock Exchanges and by the values and quotations on the Adelaide Stock Exchange with regard to investing investments.

1139. By Hon. H. SIDDON: Is it not a fact that the Perth Stock Exchange has been endeavouring to develop the local market in preference to doing business in the Eastern States?—As far as possible, we endeavoured to encourage registration here of local companies and we have also provided for the associations of exchanges that companies making application for listing in the Eastern States may also apply for listing here, which would tend to help business locally. Nevertheless, business in Western Australian is much restricted owing to our small population and on account of the high stamp duty on the transfer of shares in local companies.

1140. With regard to the policy of the Exchange right through, has it been in the direction of establishing a monopoly, or has the Exchange opened its doors freely to suitable persons desiring to become members?—There is no monopoly. The Perth Stock Exchange membership is limited. I believe, to 60 or 70, and that applies also to the Melbourne and Sydney Exchanges. The Perth Exchange has no limit on its membership. In both instances the Perth Exchange has an immense number of members, but I do not think there have been more than 18 members.

1141. By Mr. WATTS: For how long have you been secretary of the Perth Stock Exchange?—For seven years.

1142. In the course of that time, how many applications for membership have been turned down?—Two hundred and fifty applications were fairly heavy. In two of those instances, the applications were turned down. On the other hand, during the time I have been secretary we have admitted, to my knowledge, four new members who are now operating in this city. With regard to foreign companies, the Chamber has reviewed the circumstances concerning the bringing down of an amendment to the New South Wales Companies Act, 1940, relating to the present state of emergency brought into effect immediately.

1143. But they have no preference to the incorporation of a company which has been formed in some part of the Commonwealth and to the State owing to the effect of this British legislation.

1144. By the CHAIRMAN: Are you referring to the Great Boulder company?—If it were possible for each English company to be transferred to Western Australia, the Commonwealth Government and the State Government would benefit. There are several mining companies now carrying on operations at Boulder and Kalgoorlie in the Eastern States when the first call is held after the telegraphic information has been received. Business in this State is rather limited and there are not many companies. I have heard the Chairman list a number of Western Australian companies listed with the Perth Exchange. I refer to general companies. I will make a copy of that list available to all members of the joint committee. I do not think there are more than 25 or 30 local companies.

1145. Under the British Protesting Act the British Government take all the profits that are made by any company in excess of the profits made during the previous year. At present, several large companies registered in England are merely carrying on sufficient production in this State to pay their way. Thus revenue is being lost to the Commonwealth and to the State owing to the effect of this British legislation.
By Hon. A. THOMPSON: In effect, the companies are marking time so that they will not have to pay the excess profits tax—The companies are simply leaving the ore in the ground at present so that they will not have to pay the excess profits tax.

1143. Such procedure is detrimental to the Old Country, to the Commonwealth and to the State?—Yes.

1146. By Mr. RODOREDA: You are suggesting that provision should be made in the Bill to provide for British companies to transfer to the Commonwealth, but cannot affect that position?—Provision should be made in the Bill to deal with the position.

1147. By Hon. A. THOMPSON: In the event of that provision being inserted in the Bill, do you consider the stamp duties payable in Western Australia would re- turn?—As you desire it, you might do that,

It is recommended that similar amendments be made to the Bill. With these amendments incorporated, the Chamber recommends that the Bill be passed. I have prepared particulars of a number of adjustments which the Perth Chamber of Commerce consider should be made to the Bill. The commentary refers to amendments which were made to the Companies Act of South Australia. In one or two instances a number of clerical matters were overlooked and these require adjustment.

The memorandum and articles cannot make provision regarding the rights of preference shareholders, because when these documents are drawn there may be no intention of issuing preference shares. In this case, the conditions on which the preference shares may be issued in, say, ten or twenty years' time, cannot be foreseen.

1149. By Hon. H. SEDDON: Would it not be desirable when a company is issuing preference shares for, the exact type of preference to be set out plainly on the share certificate, whether cumulative or non-cumulative; there are so many different types of preference shares—All scrip relating to preference shares must be registered on the share register in Victoria, where the stamp duty is less? Is there a possibility of that?—Many companies carrying on operations successfully in this State and which are comprised of, in the main, Western Australian shareholders. Stamp duties are not applicable to transactions of mining companies; it is to the investment companies that the stamp duty is harmful. In conclusion, I have put a table containing the amendments which the Chamber recommends should be made to the Bill, also a list of the amendments which were made to the South Australian Act, No. 46 of 1912. It is recommended that similar amendments be made to the Bill. With these amendments incorporated, the Chamber recommends that the Bill be passed. I have prepared particulars of a number of adjustments which the Perth Chamber of Commerce consider should be made to the Bill. The commentary refers to amendments which were made to the Companies Act of South Australia. In one or two instances a number of clerical matters were overlooked and these require adjustment.

1148. By Mr. WATTS: That clause deals with prospectuses?—Yes; see page 45 of the Bill. The clause reads that reports may be made by "public accountants." Any person can set up a plate and call himself a public accountant. A person registered under the Act, however, is a person who is considered by the registrar to be competent to act. "Public accountant" means nothing. We suggest the substitution of "auditors registered under this Act." Next, with regard to Clause 87, we submit the following comment:

The memorandum and articles cannot make provision regarding the rights of preference shareholders, because when these documents are drawn there may be no intention of issuing preference shares. In this case, the conditions on which the preference shares may be issued in, say, ten or twenty years' time, cannot be foreseen.

1155. By the CHAIRMAN: Do you suggest that should be paid by the company or the person?—I would like to leave that unanswered; that is another question. I believe that in South Australia liquidators are under a bond of £500. They would have to pay an annual premium of £30. Not many companies go into liquidation in this State, but the liquidators would have to pay an annual amount in the hope that one day they might be called to take a liquidation. Under the Bankruptcy Act, a liquidator does not have to pay a bond; he will have to pay a premium on bond in the hope that one day he will be able to take on a liquidation. We feel that when he is appointed a liquidator the court or creditors should be required to be taken out in that case if they consider it necessary.
After all, Western Australia is only a set out the rights of 2:1) making liability (3), company (, with this position. 1. Provision passed given premium proposed do should "V.A, usually duiw np the memorandum and (Section prospectus at the South CHAIRMAN: the promoters or proposed sec­ of preferential sufficient well of memo. should not of their capital. by have Us at a discount: anything assoclatlon a Hon. II. provision the committee's attention is power solicitor should respect Will you proceed the directors, fortified by that of the shareholders, Om' of the main recommendations a ques­ that t-c-It should provisions throughout Australia. advertise­ that will be a 'matter appear on the prospectus. it WITNESS: Continuing that purpose."

1165. By the CHAIRMAN: Will you proceed?— With regard to—
Clause 69, power to issue shares at a discount: S.A. s. 64. Our opinion is that the issue of shares at a discount is of sufficient importance to warrant a special resolution is made therefor. It is recom­ mended that the word "special" be inserted before the word "resolution" in ss. (1) b, and ss. (2).

1166. By Hon. H. SEDDON: Is that necessary, seeing that the sanction of the court has to be obtained?— We feel that the resolution should be carried by a three-quarters majority of the shareholders present at a meeting.

1167. By Mr. WATT: You do not think the opinion of the directors, fortified by that of the shareholders, and the sanction of the court, would be sufficient?— Objection might be raised by a minority of the share­ holders.

1168. With regard to Clause 78, special resolutions of company making liability of directors unlimited, this is accepted in toto, and is similar to W.A. Section 70, South Australian Section 73. I have here the fol­ lowing note:—
The Victorian Companies Act, Section 48, states: "The directors of a company shall not make a first or, until the company has been established at least twelve months, any issue of shares in such company at a premium." "Where shares are issued at a premium such premium when actually received by the company in money shall be carried to a capital reserve account and not used for the purpose of dividend, unless it is a condition of the issue of the shares that the premium may be used for that purpose."

No restrictions should be placed in the way of the issue of shares at a premium, but the matter is referred to here as it is considered the provisions of the Victorian Companies Act, Section 48, should be inserted in the Bill.

Clause 87, provision for modification, altera­ tion or abatement of preferential or cumulative rights in relation to certain classes of shares: W.A. s. 82. One of the main recommendations made by the business community on the Victorian Companies Bill, prior to its being passed as an Act, was aimed at providing full security for preference shareholders by requiring the consent of the holders of three-quarters of preference shares in a com­ pany to any modification of their rights, or to re­ payment of their capital. It is recommended that companies be required to set out the rights of preference share holders in the memorandum of articles.

The Victorian Parliament did not agree to these suggestions as regards shares already in existence, but full protection has been given in respect to shares issued after the commencement of the Act.

In this regard the committee's attention is drawn to the Victorian Companies Act, Sections 5 (7), 10 (3), 8 (3), 55 (1), 61 (3) and (7).

Clause 87 of the Western Australian Bill deals with modification of preference shareholders' rights, but under Subclause 7 a company can contract itself out of the requirements of the Bill by mak­ ing provision in its memorandum and articles for preference rights to be modified by any majority it sees fit to prescribe. Clause 87 should be amended so that nothing can be done to modify the rights and privileges of preference shareholders except by a special resolution of the preference shareholders themselves.

1169-70. By Mr. ABBOTT: You say that irrespective of anything provided for in the memorandum and articles of association a company should not be per­ mitted to alter the provisions applying to preference shares—Not unless a three-quarters majority of the shareholders agrees.

1171. Why should not a company stipulate that any particular provisions may apply to altering the rights of preference shareholders?— So long as the shareholders know what these rights are when they take up their
shares, that should be sufficient. There should be no power to alter those rights unless the shareholders agree.

1172. If they know that the company has power to alter those rights, and certainly the company makes such alterations—Many people, when taking up preference shares, do not read the memorandum and articles. I should well believe that their rights could not be altered.

1173. That is your reason for the suggestion?—Yes. There may be provision in the memorandum and articles of association by which a company can alter the rights that preference shareholders think belong to them. Many people, however, do not read those documents.

1174. By the CHAIRMAN: They should do so?—Yes, but I am afraid they do not read them.

1175. By Mr. WAITTS: Memorandum and articles are the bases upon which a person applies for shares?—Yes.

1176. Let us assume an extraordinary case to illustrate what I have in mind. The memorandum and articles of association say that the company shall issue cumulative preference shares, the terms and conditions of which may be altered by a unanimous resolution of the directors. The people who apply for shares should acquaint themselves with the provisions of the memorandum and articles before applying. Having done so, they have no quarrel with the directors for afterwards altering the terms of those preference shares. Unfortunately, as I say, many people who take preference shares do not acquaint themselves with those provisions.

1177. Are you suggesting that we should undertake to remedy the mentality of every individual who thinks he ought to buy shares in this country?—No. We say that the rights of preference shareholders should not be altered unless the preference shareholders agree to alter the conditions, themselves by a three-quarters majority.

1177A. But why? Why a three-quarters majority when they have subscribed to some other basis by taking up shares, even without looking at the articles of association, which is their own funeral?—

1178. By Mr. RODODEDA: Do you know of any case in which your provision would be harmful?—No; not at the present moment. I am only suggesting that the conditions should not be modified unless the preference shareholders agree to it.

1179. By Mr. ABBOTT: Don’t you think it reasonable that the company should have the right to pay off preference shareholders if it wishes to do so, and that the company should be free to alter those who have no interest?—In the last depression, I believe, preference shareholders’ rights were altered by a number of companies.

1180. I am putting it to you, if that forms portion of the view? When preference shares are taken up, that the company shall have the right to pay them off, is it not reasonable that the company should have power to do so without obtaining the consent of the preference shareholders?—We consider that the Act should be amended so as to bring it into line with the Victorian Companies Act, which gives preference shareholders full security. Many people subscribing to preference shares in companies are not aware of the articles of association.

1181. By Hon. A. THOMSON: They also subscribe to preference shares because they think they are, in some cases, an assured return. That is mostly the reason why people put their money into preference shares, that they are sure of the return of a particular dividend. I think that if the members of the committee would go through Victorian Companies Act, Sections 5 (7), 10 (3), 8 (3), 55 (1), 61 (1), and also Subsection 7, and would review those provisions, they would perhaps be able to effect amendments in the Bill such as would make it better legislation.

1182. By Hon. H. SEDDON: Don’t you think that the objective should be to protect the shareholder, as far as possible, in the investment?—Yes.

1183. Then a person goes into a broker’s office to buy preference shares. The information with regard to his rights is not readily available in the majority of cases?—Very often the shareholder might be selling a preference share which is listed on the Exchange, and the Exchange has full particulars of the memorandum and articles of association, and of the type of preference share. The information is of course available to members of the Exchange, but I don’t suppose that in every case the person buying the shares in a broker’s office would be acquainted with the whole of the memorandum and articles of the company.

1184. In any case, a person who was buying shares should be in a position to know whether the rights under those shares are liable to be varied at the will of the directors?—I don’t consider it should be three-quarters of the holders.

1185. Would you seek their consent by writing if they resided in foreign countries?—That would be necessary in that case. All we want to do is to see that the preference shareholders have a voice in the direction and management of the company.

1186. Cannot you visualise a case where, if you have to get consent from persons overseas, the delay necessarily resulting might seriously upset the company’s proposals?—Possibly there would be delays where shares were held overseas.

1187. Would it not be more advisable, if this requirement is necessary, to let it be done by a special resolution of the preference shareholders?—I think a special resolution would cover the point. I would like the committee to review the relevant sections of the Victorian Companies Act. Anyway, I think that if there was a special resolution, that would give more protection than exists at the present time.

1188. And you consider that would be a practicable proposition?—Yes.

Clause 120, Registered office of company: W.A. s. 10, S.A. s. 115. It is advocated that a company should be given the opportunity of establishing a registered office in the State within seven days after its incorporation, and not three days, as the South Australian Act provides.

I consider three days too short a term.

Clause 121, Name of company: Subclause (1), para. (c), Sub-clause (2), (3), and (4): W.A. s. 11, S.A. s. 117. The word “advertisements” appearing in this clause might easily enough be construed as applying to all general advertisements designed to “stimulate sales,” in which case the general provisions of this clause might involve obstacles of the company in some particular liability. This clause of the Bill requires that every company “shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company,” and provides that “any director, manager or officer of the company or any person on its behalf who issues or otherwise authorises the issue of any notice, advertisement, or other similar publication, etc., wherein its name is not mentioned, shall be liable to a fine not exceeding $50.” (Personal liability in the Commonwealth Act, and in all circumstances.) Recommended that after the word “advertisements” in the 26th line, the following words be added:—“other than ordinary trade advertisements.”

The addition of those words appears in the Victorian Companies Act.

Clause 123, Restriction on commencement of business: Subsection (2), para. (c), S.A. s. 118. Here again add the word “or shareholders” in line 16, and make the same provision concerning the need of two signatories to the declaration required. Most declarations in this State are signed by the secretary, and I think the word “manager” has been taken from the Eastern States legislation.
1193. By the CHAIRMAN: Your object is merely to facilitate the working of the Act—Yes, and we hope that this would be helpful; I notice that in Clause 3 (as reported) "manager" includes "the managing director, secretary and the principal executive officer by whatever designation he is styled." That may cover the position, but usually in this State the word "secretary" is used. I have already dealt with Clause 128, and have suggested in connection with the power to close the register, that the provision for seven days should be extended to 14 days.

1194. That is really consequential?—Yes.

Clause 134. Annual return: Subclause (1): Amend "twenty-one days" to "thirty days." Subparagraph (2) suggests that in this State the word "secretary" is used. The copy should be certified by a director or manager or secretary of the company to be a true copy and should be accompanied by a copy of the report of the auditor therein certified in the same way as the balance sheet.

Subclauses (2), (3), and (4). Consistent with the desire to have the secretary fulfill the functions which right officers of the board of directors are within the scope of his office, it is again suggested that "secretary" in this instance be added.

1195. By Mr. ABBOTT: Does not the interpretation of the word "manager" cover that?—Perhaps it does.

Clause 135. Annual return to be made by company not having share capital: S.A. s. 130. Sub-clause (1): Alter "twenty-one days" to "thirty days." Subclause (2) accepted subject to addition of "or secretary." Sub-clause (1): Every company shall cause minutes of all proceedings of general meetings and where there are directors or managers of all proceedings at meetings of directors or managers to be forthwith entered in books kept for that purpose. Delete reference to "managers" as according to interpretation of this clause of the Bill it might easily enough mean that if a group of departmental managers of the business were to confer upon some matter of policy or administration, a record of proceedings at such meetings would need to be entered in the books kept for that purpose.

1196. By the CHAIRMAN: Would you favour loose leaf minute books?—They are in use in many instances not in the commentary immediately following upon those suggested amendments we have suggested that Clause 145 be amended so as to provide for the use of loose leaf minute books along the lines of the provision in the S.A. Companies Act.

1197. By Mr. ABBOTT: In connection with an important matter like minutes, do not you think they should be recorded in a book rather than in a loose leaf minute book?—I am sure members of the Joint Select Committee have read the pamphlet dealing with the proceedings in the South Australian Parliament regarding the Companies Act Amendment Bill, 1895. On page 3 of that pamphlet you will find the following dealing with this subject:

Clause 9 contains a small amendment relating to the minute books of companies. The minute books contain records of important decisions affecting the rights and liabilities of shareholders and others, and are evidence of the transactions of the company. It is necessary, therefore, to ensure that they are not unlawfully altered or tampered with in any way. It has been found that some companies are using loose leaf minute books from which pages can be easily removed and into which new pages can easily be inserted. To prevent conduct of this kind it is proposed that loose leaf minute books must not be used unless the pages are numbered consecutively with numbers printed thereon, and unless every page on which minutes are written is signed by the chairman of the meeting at which the minutes were passed and counter signed by the secretary and dated.

We feel that if that provision were complied with, the position would be adequately covered.

Clause 140. Form of balance sheet: S.A. s. 141, sub-clause (1): Amend "for seven days" to "for seven days extended to 14 days." Sub-clause (2): As regards the notice, it is the practice in this State to give notice of any other private limited company or a proprietary company, a copy of the last balance sheet shall accompany and form part of the return. The copy should be certified by a director or manager or secretary of the company to be a true copy and should be accompanied by a copy of the report of the auditor therein certified in the same way as the balance sheet.

These particular sections of the Victorian Act received very extensive thought and discussion by interested bodies in Melbourne, and it is felt that some respects the clauses are much improved on legislation in England and in the various States of the Commonwealth. On the Victorian Act Clauses 122 and 123 make compulsory that balance sheets and profit and loss accounts of subsidiary companies must be published, whereas the Western Australian Bill appears only to require (1) a statement of the extent to which subsidiary companies have been brought into the accounts of the parent company, and (2) disclosure as a separate item in the balance sheet of the parent company of the aggregate amount of shares in, and the amounts owing by subsidiaries companies; vide Clauses 150 and 151 of the Western Australian Companies Bill. Another innovation considered to be of much value is the requirement under the Victorian Companies Act, Clause 123 (6), whereby directors must furnish information as to whether or not the results of the year's operations, as disclosed in the accounts, have in their opinion been materially affected by items of an abnormal character. We also suggest that the form of balance sheet in the Sixth Schedule to the Bill is not generally suitable. We suggest the deletion of the words "in case of a banking company" down to the words "of any other company," thus leaving the form of balance sheet optional, as in Victoria. I submitted this evidence yesterday.

1198. By the CHAIRMAN: With regard to Clause 153 (1), (e), enclosures of directors, do you think the amount should be published? You have made a recommendation agreeing to the South Australian amendment, which does not require that enclosures of meetings of directors explain their salaries—I agree with the statement made by the South Australian committee to the effect that where a director of a company is also an officer of the managing director of a company, it is not necessary to publish his salary.

1199. By Mr. ABBOTT: Would not this objection arise? Very often a managing director is actually the managing director of a company, and like any other private individual would not desire his salary to be publicly disclosed? Some views have been expressed that the salaries of managing directors should be disclosed; other views are that the salaries should not be disclosed. The amendments inserted in the South Australian Act are, I believe, the same as the English provisions and the provisions in the legislation of the other Australian States.

1200. By the CHAIRMAN: We know of instances in this State where small companies have been formed and the managing director has taken practically all the profits. We know of an instance where a small company was formed and had its place of business in Hay-street and the managing director's salary was about £4,000 a year—! will tell you why the salary was increased in that instance. It was because the managing directors were also the people who owned the property. They put up the rent so as to get more out of the company, and the managing director promptly raised his own salary.

1201. Do not you think the public should know all that?—No. It was a private company, and it would not be advisable to disclose that information to the general public. I notice that in the South Australian Act the provision was finally amended to read—
This section shall apply to a managing director and his emoluments, and the said emoluments shall include all fees, percentages, and other payments made or considered as given directly or indirectly to the managing director as such, and the money value of any allowance or perquisites belonging to his office. A resolution under paragraph (a) of the provision in Subsection (1) of this section resolving that a statement shall be not furnished shall be of no effect unless the meeting at which the resolution was carried was called by seven days' notice in writing given to each shareholder. They eventually passed the amendment that the remuneration of directors should not apply in relation to the managing director.

1202. By Mr. ABBOTT: Do you or do you not approve of the South Australian provision?—The Chamber of Commerce approves of it as it was amended in the 1939 Act of South Australia.

Clause 155. Appointment and remuneration of auditors; (S.A., Section 153.) Such appointment should be dealt with at the statutory meeting and at each annual meeting subsequently. Amend by inserting after the word "shall" in the first line, the words "at the statutory meeting held in accordance with Section 137 and "Subsections (4) and (5) should be amended by striking out in each subsection the words "the annual general meeting" and inserting in lieu in each case, the words "statutory meeting held in accordance with Section 137." That will have the effect of making the appointment of an auditor date back to the time of the first statutory meeting. Unless this provision is put through the company may carry on business for a year before holding its first annual meeting. In the interests of the shareholders it is desirable to have an audit for the first year.

1206. By Mr. WATTIE: What is the present practice with regard to the remuneration of auditors? Who fixes that remuneration not now?—It is fixed at the annual general meeting by shareholders' resolution and usually on the recommendation of the directors.

1204. That is what Subclause 6 of the clause we are discussing proposes except with regard to special cases.—Yes.

1205. Do you think that the shareholders at a general meeting are competent to determine how much the auditors should receive for their next year's services?—The amount is usually fixed on the recommendation of the directors and it is fixed; it does not depend on the auditor's recommendations. The shareholders should have the right to fix the amount he can always resign.

1206. Have the shareholders any means of judging what work the auditor is likely to have in the ensuing year?—They usually adopt the recommendation of the directors, you might get some resentful shareholder at a meeting who will say that the amount suggested should be reduced by 20 per cent. The amount is usually fixed on the recommendation of the directors, but the shareholders need not necessarily follow that recommendation. On the other hand, if the auditor feels aggrieved because he may consider he is not being adequately remunerated, he can resign.

1207. By that process you might lose a most desirable auditor simply because his services are not adequately recognised.—Yes, and also the directors might recommend the payment of only a small amount for the purpose of getting rid of him. Many auditors feel that they are not paid sufficiently for their services.

Clause 104. Report of inspectors to be evidence; W.A. Clause 61, S.A. Section 160. This provides for the report of inspectors of company's affairs appointed under the Bill being admissible as evidence, and a copy being lodged with the Registrar. There is no objection to this, but it is certainly desired to see it specifically provided that such documents shall not be available for public inspection which would not appear to be exempt from requiring to Clause 414 of the Bill.

Clause 172. Disclosure by directors of interest in contracts; S.A., Section 107. In this instance it is considered that such a director should not have power to vote when the matter of the contract is being determined. We desire to see the provisions incorporated accordingly.

Clause 183. Calls and forfeitures for non-payment. Forfeiture of shares to be exercised from 14 to 21 days, owing to distance Western Australia is from the other States where a great many shareholders reside. This matter has already been dealt with.

Clause 184. Forfeited shares to be sold by auction: Clause allows forfeited shares to be offered for sale up to six months from date of forfeiture. That is in accordance with the provisions of the South Australian Act.

Part VII. Clause 190. Application of this Part: W.A. a. 110. Accepted. (395/319.) Appropriate clauses of the Victorian Act have been amended in a manner to facilitate liquidation of mining companies with the least possible expense and delay. These provisions are contained in Division 29, Clause 411 of the non-liability section of the Victorian Companies Act.

Another commendable safeguard is provided by the Victorian Companies Act, Clause 409, which provides that in the event of liquidation of a mining company within twelve months of its incorporation, each subscribed capital must be repaid in full before vendors or promoters' capital participates.

Clause 196. Mode of winding-up: S.A. a. 180. Accepted subject to the following amendment:—It is recommended that it shall be clearly expressed that the Act shall bind the Crown as provided by Section 190, Sub-section (3), of the New South Wales Act which reads, "The provisions under this Part of this Act relating to the remedies against the property of a company, the priorities or debts and the effect of an arrangement with creditors shall bind the Crown." Clause 200. Contributions in case of bankruptcy of members: W.A. a. 115, provides for the right of disclaimer whilst the South Australian Act, Section 191, does not. Recommended that this section be extended to cover all proceedings under the Bankruptcy Act, including Parts X., XI, and XII. Also recommended that provision be made in this Act to allow for the bankruptcy act for disclaimer of shares by the trustee of a contributory's estate, whether under sequestration order or under Parts X., XI, and XII.

1208. By Mr. ABBOTT: On what principle do you suggest that the amount of a director's fees should be reduced by 20 per cent?—The Draftsman might look through the provisions and bring them into conformity with those of the Bankruptcy Act, so that there will be no conflict.

Clause 213. Meetings of creditors and contributories: S.A., Section 207. The provisional liquidator (if appointed) or if no provisional liquidator, a person appointed by the court shall convene separate meetings of creditors and of contributories to (a) nominate a liquidator, (b) determine whether a committee of inspection in necessary to work in conjunction with liquidator. Recommended that this section be amended to read as follows:—"When a winding-up order has been made by the court, the court may direct the provisional liquidator, or if no provisional liquidator has been appointed, then some person appointed by the court, to summon forthwith separate meetings of creditors and contributories of the company for the purpose of—

1. Determining whether or not the creditors and contributories respectively desire to nominate a liquidator and who shall be the person so nominated, and

2. Making a determination pursuant to Section 229 of this Act.

Note.—A provision should be made so that no public servant may be appointed as official liquidator (vide New South Wales Act).

1209. By the CHAIRMAN: What would be the position in the case of the Government being implicated and wanting to appoint its own liquidator—
In that case, I presume the Government would have to apply to the court and, if the court directed, it would then put in the official liquidator required.

2110. By Mr. WATTS: Not if the Act says that no power at all shall be appointed—I think the provision of that section in the New South Wales Act is to prevent liquidators being more or less associated with the manager of the company office, to prevent public servants being appointed to those positions. I gather that the Chairman's idea is that where the Crown is involved, it should be entitled to appoint its own liquidator and this provision would prevent its doing so. But if under the Bill it has power to appoint a registered auditor and liquidator, surely the official liquidator should be continued to choose persons.

Clause 218. Report of liquidator: S.A. s. 209. Liquidator to submit preliminary report to court on assets and liabilities—causes of failure and whether further inquiry concerning promotion, formation or failure of company is desirable. Recommended that after "shall," in the second line, there be inserted the words "if ordered by the court.", Recommended subject to the above amendment.

2111. By Mr. RODORADO: Would not the court now make the order to the No. No. He has compelled to do so now. If the word "if ordered by the court" were inserted, it would be necessary to make this statement only on such an order being made.

2112. By Mr. PITT: Is there not an implication that the court might state that it is not necessary? I was reading the last portion. Does it not provide that the court could say that this statement shall not be necessary?—it would be necessary to make an application and the court would determine whether the statement was necessary or not. The statement would have to be made only if it was ordered by the court.

Clause 222. Powers of official liquidator: (2) v. W.A. s. 130, 132, 134, S.A. s. 313. Subject to order of court, liquidator shall have power to realise the assets of the company. Recommended the following words be added—subject to any law of the Commonwealth relating to bankruptcy; vide Victorian Act, Section 101 (2) v. Delecy—may cause undue delay.

The subclause, as printed, means that no liquidator may realise any asset until an audited copy of the balance sheet has been lodged with the Registrar.

2113. By Mr. WATTS: The assets might be of a perishable nature—Yes. If the liquidator had to wait for a month it would mean it if a week or two. I do not see the need for the provision in Subclause (4).

2114. By Mr. PITT: Is that not in the Acts of some of the other States?—I do not think it is in the Victorian Act.

Clause 223. Exercise and control of liquidators’ powers: S.A. s. 214. Recommended that Section 212 (2) of the Victorian Act be inserted, providing for aggrieved person to apply to court. This is simply an exercise of control over the liquidators’ powers and seeks to give an aggrieved person an opportunity to apply to the court if he is not satisfied.

Clause 224. Audit of liquidators’ accounts: S.A. s. 217. Partly new—no special feature. gig as up control. Recommended that the Act be amended to provide for the filing of final accounts only on completion of winding-up, unless ordered by the court.

At present the accounts would have to be filed each year, as well as at the completion of the winding-up, unless otherwise ordered by the court.

Clause 225. Meeting of creditors: S.A. s. 255. Meeting to be advertised and all creditors receive notice. This meeting held immediately following meeting of members referred to in Section 256 and gives creditors right to consider and agree with or otherwise voluntary liquidation of company. It is considered that one local newspaper together with the "Gazette" is sufficient.

Subclause (4) of winding up in at least two local newspapers as well as the "Government Gazette." As the notice appears in the "Government Gazette" one local newspaper should be sufficient.

2115. By Hon. A. THOMSON: It might be desired to insert the advertisement in the "West Australian," Why not strike out the word "local"?—If you retain the reference to two newspapers, say the "West Australian" and the "Sunday Times" or the "West Australian" and the "Daily News."

2116. Or the "West Australian," and the "Kalgoorlie Miner"?—We consider that advertising in one newspaper should be sufficient, and the notice has appeared in the "Government Gazette."

2117. By Mr. WATTS: What about two newspapers and no "Government Gazette"?—These notices must be inserted in the "Government Gazette" in order to provide a permanent record.

Clause 203. Enforcement of duty of liquidator to make returns: (1) S.A. s. 204. Delete "four-" and insert "twenty-eight" days.

This will give the liquidator 28 days instead of 14 days, in which to make good his default.

Clause 207. Information as to pending liquidations: S.A. s. 311. In the first and last line of sc. (3) strike out the words "inquiry on." (See amendment S.A. Act, 1938.) The clause would then read, "No person who is not an authorised liquidator," etc. The only comment I received on this matter was, why should a registered liquidator be a receiver and not an auditor? The difference is that the liquidator has to provide a bond whereas an auditor does not.

Clause 209. Restrictions on offering shares for subscription or sale: (1) W.A. s. 294. S.A. 308. Prohibits house-to-house canvassing and requires all relevant information (apparently complete prospects), to be submitted to prospective purchaser. It is recommended in the first line, after the words "place to place," the following words be inserted—whether by appointment or otherwise.

Recommended, subject to amendment.

After the word "purchase" in the 28th line the South Australian Act has the addition of the words "or in exchange for other shares," which is not struck out. As the words were added. Sections 302–401 relating to shareholders appear to be novel legislation so far as Australia is concerned. Somewhat similar legislation was passed in England in 1930, entitled "Prevention of Fraud (Investments) Act, 1930." The English legislation appears to be more comprehensive than the sections of the Western Australian Bill. These clauses are objected to, vide the above remarks.

2118. By Hon. H. SEDDON: Have you any idea why the limitations in Clause 403 were adopted?—With respect to Clauses 403 to 412, dealing with investment companies, I have the following to say: It is noted that the Government proposes to adopt the provisions of the Victorian Act concerning investment companies. Clause 412, similar to the Victorian Act, provides for a period of three years from the passing of the Bill within which an investment company is required to comply with the clauses relating to investments and borrowing. This period was inserted in the Victorian Act to afford ample time to certain Melbourne companies which had borrowed excessively in relation to capital, to reduce their portfolios without undue disturbance to the market. Possibly there are no such companies now in existence in Western Australia which require such consideration. Clause 503 (ii) of the Victorian Act does not permit a Victorian investment company, during such time as its borrowings exceed the statutory limit, to reinvest the proceeds obtained from the sale of any of its securities, but such money must be used in reduction of its outside indebtedness. This provision was specially made so that such companies would gradually reduce their borrowings to
the proper limit, and not be permitted during the three years period to use excess borrowings for speculative purposes. Clause 423 (ii) in the Western Australian Bill does not provide this restriction, which is a desirable one. It is suggested that the following be inserted: "without increasing its total borrowing or indebtedness as at the passing of this Act or as at any subsequent date." I understand that in Victoria these provisions were inserted because companies were borrowing money and investing it in shares. It was then provided that companies should not borrow any money greater than the equivalent of 50 per cent. of the paid-up share capital, etc.

1819. Why was the limit of 60 per cent. adopted?—Apparent that was thought to represent a safe margin.

1820. Have you any knowledge of investment companies in Great Britain?—No.

1821. Would you be surprised to know that in the case of more than 200 investment companies in England the limits laid down are 100 per cent. of the paid-up share capital, and in some instances the right is given temporarily to borrow more—I am surprised to hear that. I may be able to obtain from Victoria the reasons why these provisions were put into the legislation of that State.

Clause 423, Registration of persons qualified to act as auditors or liquidators: No. 2. Bond to be provided only where required by creditors or the court. We recommend that a nominal fee of 51s. be provided on registration and to apply during the term of registration—there to be an annual fee. No annual fee is charged for registration of a trustee under the Bankruptcy Act.

Mr. A. H. Malloch, of Malloch Bros., has sent me a letter, dated the 9th January, which I promised to place in the hands of this committee. Attached to it is correspondence that Malloch had in connection with the matter. The letter is as follows:

The Secretary, 9th January, 1941.
Perth Chamber of Commerce, Perth.

Companies Bill.

Dear Sir,—On receipt of your letter of the 16th ultimo we obtained a copy of the proposed Companies Bill, and while provision seems to have been made for companies generally, we would like to make a plea for the framing of special regulations to facilitate the formation of small mining companies, instead of same being carried on as partnerships and syndicates.

People are, of course, chary about investing in a mining proposition without knowing the extent of their liability, and from our knowledge there are many small mining shows that would have a better chance of success if further capital were obtained, and we feel sure that a bill would be given to many such ventures if same could be formed into no-liability companies, at a minimum cost.

We note that on page 16 of the proposed Companies Bill, a no-liability company may adopt all or any of the regulations in Table B in the Second Schedule of this Act, and on pages Nos. 140-146 there are various matters relating to such companies.

While no doubt these details are necessary in connection with public no-liability companies, the ventures for which we would like to see special provision made, are those that are started, and carried on, by one or two men and as a protection against them and others who may put money into the show, we feel that it should be possible for them to register as a company, in somewhat the same way as hire purchase agreements are registered. Under the present law, various formalities have to be observed, and legal expenses incurred, that are beyond the ken and pocket of the average miner, who wants to get several outsiders to help him with finance.

The essence of our proposal is that these small shows be carried on in the same way as a partnership, with the exception that the shareholders have the same protection as members of a no-liability company, thereby encouraging the introduction of fresh capital when required.

Our secretary (Mr. Oydo), who has had many years' experience of these small companies with public companies, assisted the undersigned in presenting this proposal after studying the proposed Companies Bill.

Yours, etc.

(Signed.) A. H. MALLOCH.

1822. By the CHAIRMAN: Would not the provisions dealing with private and proprietary companies cover the case of these small companies—albeit they would, but Mr. Malloch may have overlooked them.

1823. And you consider that there is no reason why we in this State should not take advantage of either the proprietary or the private form, if they should be included in the measure?—That is my view.

REGINALD GYNE MILLER, Chartered Accountant, examined.

1824. By the CHAIRMAN: You wish to make a statement to the Joint Committee?—Yes, I appear as one of three appointed to represent the accountants and secretarial institutes. The evidence is divided into three sections. I shall deal with one, and the other two will deal with the remaining portions. My statement is as follows:

Evidence is hereby submitted on behalf of the following accountancy and secretarial institutes:—The Chartered Institute of Accountants (in Australia); the Commonwealth Institute of Accountants; the Federal Institute of Accountants; the Association of Accountants; the Trustees and Liquidators' Association; the Australasian Institute of Secretaries, and the Incorporated Institute of Secretaries.

The Bill has been examined by three groups, that is:—(a) the Secretarial group; (b) the Accountancy group; (c) the Trustees and Liquidators' Association. The work was then co-ordinated by a combined committee of the three groups. A representative of each of the three groups would be glad to have the opportunity of appearing before your committee to support the evidence submitted, and to amplify any points that have not been made clear.

The accountancy and secretarial institutes appreciate the opportunity which has been extended to them to examine the Bill and submit evidence to your committee. Many of the members of these institutes have had extensive experience in company law and practice, and that they are in a position to offer valuable suggestions. The Bill has been examined with a view to assisting the Government (which we feel) that the interests of the general public and the commercial community. The Bill is a voluminous document and a great deal of time would be required to carefully examine every clause. It is regretted that more time has not been made available, and the combined committee would like to have the opportunity of submitting additional evidence at a later date, should this be thought necessary after further examination of the Bill and other similar legislation elsewhere.

We are still of opinion that it would be in the best interests of the community not to proceed with this Bill at the present time, but to enact any urgently required modifications of the existing Companies Act by way of amendments thereto. In support of this contention we would point out:—

(1) Recent Australian State Companies Acts are inappropriate to a financially small State like Western Australia.

(2) The safeguards designed to protect investors in countries possessing millions of inhabitants and whose companies controlling millions of pounds worth of funds are unsuitable to our State with its small population and where the facilities of the Companies Act are largely used by the small trader, partnership, or syndicate. The number of public companies here is in a minority, and
so far as these are concerned, in our small community investors look to the personnel of the directors to safeguard their interests rather than the provisions of an intricate and cumbersome Act, which they cannot understand.

New legislation invariably gives rise to doubt and uncertainty and is generally followed by a crop of litigation, whereas the present Act is well known and understood in commercial and general circles and has been interpreted by case law over the years.

The cumbersome, restrictive and punitive provisions of the new Act will retard commercial progress in the State, necessitate more direct executive control by companies and require an undesirable expansion of a Government department to administer the new Act.

The present war conditions have already been responsible for depleted staffs and brought many difficulties and added costs to business concerns, and, as a matter of national interest, any additional complications and dissipations of energy should be avoided, unless essential to war effort. It is believed that the introduction of a new Companies Act will still further accentuate these difficulties and will seriously handicap us in our efforts to assist the development of secondary industries.

By Mr. RODOREDA: Dealing with your introductory statement, what part of the proposed Bill gives rise to the belief that it will have a restrictive effect on company flotation and industry generally—Right from the inception of a company, there are many restrictions, complications and difficulties which have been experienced in the past. We realise—and we agree—that it is essential that the interests of the public should be preserved and that investors should be protected as much as possible. But the danger in legislation of this kind is that, while affording protection to the public, a grave risk is run of retarding the development of industry. This, of course, is a vital matter in which all are concerned. Companies are formed more for the development of secondary industries than for anything else; and I know that it is the desire of the Government to do all it can to assist the development of secondary industries. Anything that will retard such development is not in the interests of the public generally. There are restrictions upon the issue of prospectuses. A tremendous amount of work will be of filing of returns and so on. This will have a bad effect and will cause expense to companies and additional work to secretaries just at a time when their staffs are depleted through enlistments. They find it difficult enough to keep their ordinary work up to date. They will have a great deal of extra work to do in order to comply with the provisions of the Bill. It is difficult enough now to raise money in this State for companies, no matter how good the project may be. In fact, local investors seem keener to invest in Eastern States propositions than in Western Australian propositions. We should do as little as possible to retard the formation of companies for legitimate purposes. The majority of companies are formed for legitimate objects and the majority of company directors are honest. Anything that will affect the efforts of legitimate and genuine company promoters to establish companies for industries that will help the State is not in the interests of the State. Even if the Bill is passed, we should bear in mind that while every endeavour should be made to protect the public we should do nothing to restrict the development of industry.

By the CHAIRMAN: Your contention is not borne out in South Australia and Queensland; we are trying to introduce uniform legislation.—I cannot say from my own knowledge what effect this modern legislation has had in the other States. I have heard a number of complaints about companies in this State, but my information comes more particularly from Adelaide.

By Mr. RODOREDA: Is it the opinion of those whom you represent that there is not much difficulty in tying up things, but that you have to keep industry functioning without so much restriction?—I think there is a great deal of difficulty in protecting the interests of the investor without at the same time retarding the development of industry. I am aware it is essential that everything possible should be done to protect the public; but there are occasions when the public cannot be protected against themselves.

By Hon. A. THOMSON: I presume you will point out as you proceed the provisions of the Bill which you consider would have a restrictive effect and place additional burdens upon industry. It is stated that we have examined the Bill on the lines that it will probably become law, and we have commented on it as it is drawn. I can indicate as we proceed where I consider the Bill will have a restrictive effect. With regard to Clause 3, Interpretation, the word "manager" is stated to include managing director, secretary or principal executive officer of the company. Is this word "manager" appears frequently throughout the Bill, but as far as we can ascertain there is no provision in the Bill for the appointment of a manager, though there is a provision for the appointment of a director and of a secretary. Is it intended that the word "manager," wherever it appears in the Bill, includes secretary? If so, we think this many of the duties ascribed to the manager should be allotted to the secretary.

By Mr. RODOREDA: Do you think there is any need for the word "manager" to appear in the Bill at all? Personally, no, for the reason that the manager frequently is an expert in his own particular line. Take, for instance, a mine manager. This will illustrate what I mean better than anything else. He does not know anything about the mining industry or what duties devote upon him as a manager under the Companies Act. The secretary, however, ought to know.

I think it has been well brought out that "manager" does include "secretary." Can you suggest any other words that we could insert in the interpretation?—I think in most cases throughout the Bill the word "secretary" should be used instead of "manager."

By Mr. WATTS: There are some things that only a secretary is able to do, whereas under the Bill the manager could do them and that would be wrong—Generally speaking, the manager does not know what the Companies Act provides.

In some instances it would be an ill-advised action to authorise the manager to do certain things—There are companies in which there is no necessity to have a manager and a secretary. The one person could have both titles.

The CHAIRMAN: It seems to me that the secretary often has the right of a manager.

By Mr. WATTS: And the manager has the right of a secretary.

The WITNESS: Is it intended that the word "manager" wherever it appears in the Bill includes "secretary?"

Subclause (14). Memorandum of a no-liability company: This provides for 5 per cent, of the nominal capital of the company being lodged to the credit of a company in a bank. Up to this point the company has not been registered. It is not possible to open a bank account in the name of a company which is not yet registered. We suggest that the bank account should be opened in the name of someone as trustee for the company. I specially draw attention to this because a good deal of difficulty prevails at the present time under the existing Companies Act. I think the position is usually overcome by a trust account being opened and the bank manager giving a certificate. That, however, is strictly not in accordance with the Act.

By Hon. H. SEDDON: Would you say that the object of that subclause was to ensure that the money was paid? If the words "lodged at the credit of the company at the bank" were deleted, would that meet the position?—I do not think it would overcome the difficulty because the Registrar of Companies would require a certificate from someone to say that the 5 per cent, had been paid. You can get that from the manager if you allow a trust account to be opened. He can then give a certificate to the effect that a certain sum has been placed to a trust account for a company to be formed.
Subclause 19. Mode of alteration of objects of company: Could not time and expense be saved by filing a special resolution and affidavit that all interests have been noticed, and allow 30 days for any objection to be lodged? Notice of the filing of this document could be advertised.

That needs explanation. The present provision is that before the memorandum of a company can be altered, certain procedure must be followed, that is, carrying resolutions and so on. But the alteration, according to the clause, shall not take effect until and except it is confirmed by the court. We think it should be possible for a company to alter its memorandum without an application to the court. Generally speaking, if a company wishes to alter its memorandum, that is done with the object of benefiting the company and the shareholders generally, and in fact it cannot be done without a resolution of the shareholders. We do not think it should be necessary to go to the expense, and in many cases delay, in having to apply to the court for permission. At Christmas time particularly, when there is a long vacation, you may be delayed two months or more before you can alter your memorandum, and one of the reasons for altering the memorandum would be the alteration of the objects of the company. You no doubt be prevented from undertaking some new lines of business because the court does not happen to be sitting. So we consider that a very great deal of time and expense would be saved and benefit to the company would result if, instead of being obliged to petition the court for permission, you filed your resolutions and an affidavit that all the interests of the creditors and shareholders had been consulted and that everyone interested had been notified. Thus it would be possible for anyone who wishes to object to do so within 30 days. If no one objected, the Registrar could permit the alterations to the memorandum to be made.

1237. Do you think that might leave a loophole of which smite companies might take advantage?—No; in the first place you must have a special resolution passed by the shareholders. You must first of all send out a notice of the meeting and you must specify on the notice the reason for which the meeting is being called, so as to give every shareholder the opportunity of attending and objecting if he wishes so to do. Then if a resolution is carried you advertise the fact and you file an affidavit at the court that all interests—creditors as well as shareholders—have been notified and that everyone interested had been notified. Thus it would be possible for anyone who wishes to object to do so within 30 days. That can be done without cost and without delay.

1238. By Mr. RODOREDA: Could you tell us what time is set down in the Bill for notice of a special resolution?—Fourteen days.

1239. By Hon. H. SEDDON: Do these conditions exist in the old Companies Act?—Not the present suggested conditions.

1240. The conditions in the Bill do not exist in the old Act!—No.

1241. What about Section 08 of the old Act?—Yes, I am afraid you are right. I had in mind more particularly the alteration of the articles. That applies only to the memorandum.

1242. Was any difficulty experienced in working under the old Act?—Yes, there was the matter of delay to which I referred.

1243. Could you give us an instance?—I am afraid I cannot. It is not often that a memorandum of association is altered for the reason that it is usually so wide as to cover everything that might be wanted.

1244. In those circumstances would it not be desirable to minimize the procedure that has been in force for so long?—There are many sections of the old Act that can be improved upon and we think this is one.

Clause 29, Subclause 3(a). Passing memorandum and articles before incorporation. It would seem to be very much easier if the Bill or the Act could provide that one vote be allowed for every share held.

The provisions of the Bill are “for every share up to ten, one vote; for every five shares beyond the first ten up to 100, one additional vote; for every ten shares beyond the first 100, one additional vote.” It is general to provide in the articles of association that one vote shall be given for every share held, and in fact, in other parts of the Bill that same provision is made. In this particular clause it is different.

1251. By Hon. A. THOMSON: That is the established custom—one share one vote—is it not?—Not actually. Table A of the Act, which may or may not be used as the articles of a company, makes somewhat similar provision, but I suppose that 99 times out of a hundred that is altered in the articles of association of a company.

1254. By Hon. H. SEDDON: Have you any idea why that section was included in the old Companies Act?—This clause deals with an unusual set of circumstances—the passing of memorandum and articles of association before incorporation. It is not often that a meeting of creditors nothing in the Act of passing the memorandum and articles before a company is registered. In fact, I have never known it to be done. The provision in Table “A” to which I referred is in article 46. Table “A,” of course, is the set of articles used by a company which does not provide articles for itself, but 99 per cent. of the companies provide their own articles and this provision is generally altered in a company’s articles. Article 46 provides:

Every member shall have one vote for every share up to 19. He shall have an additional vote for every five shares beyond the first ten shares up to 100, and an additional vote for every ten shares beyond the first 100 shares.

As I have indicated, however, that is almost always altered by a company’s articles.

1247. Could you give us any idea why that was inserted? Obviously it means that the larger the number of shares a man has, the less effective is his voting power?—By the Bill?

1248. Yes—Yes. I do not know why it was introduced, but I think it quite wrong.

1249. Do not you think it was introduced to prevent a person having control of a large batch of shares from dominating the meeting or a company?—It may have been. But while you may be protecting the public against one big shareholder under the clause as printed, you may be doing an injustice to a large number of shareholders. Generally speaking a company is not dominated by one shareholder, and surely a man with 1,000 shares is entitled to considerably more voting power than a man with 20 shares.

1250. Does not this occur in the old English Companies Act?—I do not know. In any event I cannot see any reason for it.

1251. I understand that was why it was introduced here in the first place?—If it is necessary here, why was it not considered necessary to legislate similarly throughout the Bill for all company meetings?

1252. It appears in the articles?—Yes, but they are generally altered; there is nothing in the Act.

1253. By the CHAIRMAN: But is it in the present articles?—In the present Table A, which, of course, is not binding except where a company has not its own articles.

1254. By Hon. H. SEDDON: As a matter of fact, is it not true that very frequently the attention of the investing public is drawn to the fact that the articles of the company do not comply with Table A, and that alterations have been introduced?—Very often the articles of a company states something like this: “Certain articles in Table A do not apply to this company.”

1255. By the CHAIRMAN: Article 54 in the Bill states:

On a show of hands every member present in person or by attorney shall have one vote. On a poll every member present in person or by attorney shall have one vote for each share of which he is the holder.

That is different from the provision I am referring to here. Why should it be?

1256. By Mr. ADIBOTT: Do you know of any Companies Act in England or Australia that has a provision similar to Clause 29—No. But quite likely there is such provision in other Acts.

1257. Do you think that this provision is necessary?—Do you mean the whole clause?

1258. Yes—It may be necessary, but very seldom is.
Clause 28, Subclause (2). Certificate to be gazetted and certificate to be conclusive evidence of incorporation. This clause provides for a statutory declaration to be made by a legal practitioner engaged in the formation of the company, or director or secretary. Very often a public accountant or a public secretary is engaged in the formation of a company, and we think that a statutory declaration by either, in addition to those already provided for in the clause, would be an advantage.

1239. By Mr. ABBOTT: An accountant is not supposed to engage in legal work. Would an accountant be likely to have the necessary knowledge? We do not wish to engage in legal work; in fact, it is the wish of our institutes generally that an accountant should not engage in legal work. Still, there are many matters in connection with the formation of a company that are not strictly legal work. I have been engaged together with the promoter of a company and the company’s solicitor, to advise on the formation of a company. As a matter of fact, a public accountant or secretary has a great deal of knowledge of the formation of companies, and must have a great deal of knowledge of the Companies Act. While we do not wish to draw memoranda and articles of association, or do anything whatever in the nature of legal work, if a client asks us to advise him in connection with the memorandum, we should be able to give advice.

1240. Is this not a question of advising; is it a question of the preparation of a declaration?—I do not think it is a matter of the preparation of a declaration; it is a matter of the making of a declaration, which is a different thing. It refers only to the preceding provision.

1241. It is a question whether the requirements in connection with the incorporation of the company have been complied with. Do you say that portion of the work of an auditor or an accountant?—The clause says that the Registrar may require a declaration to be made by a legal practitioner or a director or the secretary stating that all or any of the special requirements have been complied with. Those are the requirements in the preceding provision. I say a public accountant is qualified to do that, and that there is no reason why anyone should object.

Clause 31. The remarks I have already made also apply to this clause which deals with the name of a company.

Clause 32. Power to dispense with “limited” in name of charitable and other companies. We suggest that a similar provision be made here to one included in the New South Wales Act, to the effect that no new company be registered under this Act where a similar association already exists. See N.S.W. Act, Section 34, which includes the words: “but no such license shall be granted unless the Governor is satisfied that there is no other association with similar objects of which the members of the proposed company might become members upon reasonable terms and conditions.” This applies to an association like the Chamber of Commerce. Such associations in this State are generally registered under the Associations Incorporation Act, but the Bill provides that these associations may be registered under this measure. In New South Wales it has been thought advisable to limit the formation of associations or companies of this kind if there are existing associations which members may join upon reasonable terms and conditions. We think that provision is desirable.

1292. By Mr. WATTS: Do you not think the whole of the proposal might be dispensed with, and the Associations Incorporation Act relied upon? I think that the Associations Incorporation Act also needs amending. It is a very inadequate piece of legislation and very difficult to operate.

1293. I take it that the main idea of bringing a charitable concern of this nature under the Companies Act would be the freedom from liability other than for the amount of unpaid capital or subscription.—That is so.

1294. And that is satisfactorily covered by the Associations Incorporation Act.—I do not think it is. I have had experience of that Act, and it is not at all satisfactory. My legal advisers told me the same thing last time I registered an association under the Associations Incorporation Act.

Clause 33, Subclause (4): Should not Section 135 be included as well as Section 134? Section 134 relates to every company having a share capital, and Section 135 relates to every company not having a share capital. The Chamber of Commerce, the Institute of Chartered Accountants and charitable organisations have not a share capital, and therefore I think Section 135 should be included at the end of the subclause.

Clause 33, Subclause (6) deals with the powers of companies to change their name. We suggest that the words “or a copy of the certificate” be struck out of the word “certificate” in line 1. This addition is included in Clause 28, Subclause (1) (b).

Clause 37 is very regrettable. It gives anyone the right to a copy of the memorandum and articles on payment of not more than 9s. The Western Australian Act (section 23) affords this right to members only, but others may inspect documents at the office of the Registrar of Companies. Many companies do not satisfy themselves that the memorandum and articles printed and are of opinion that they should not be put to the trouble and expense of making copies of these documents for anyone other than shareholders. We recommend that the provision of the Western Australian 1889 Act, section 23, be substituted.

Clause 39, Subclause (4): The responsibility is on the director or manager to file an affidavit. Should it not be the responsibility of the Registrar, in this and similar cases, to satisfy himself that the articles of association are in order?

1295. A director or manager would frequently be in a position only to say that to the best of his knowledge the articles were in order?—This deals with proprietary or private companies. It provides for certain inclusions and for certain things to be left out of the memorandum and articles of association. We think the Registrar, or the man to certify that would be the manager or a director.

1296. By Hon. H. SEDDON: Do you not think that is provided with a view to saving time in registration?—That may be so, but very few headings are dealt with in the clause. It would not take the Registrar many minutes to satisfy himself that the provisions were in order. If he can satisfy himself there will be no question of the legality of the company afterwards as a private or proprietary company. The manager who gives the certificate may not be competent to understand the articles.

1297. Then he should not be a manager?—He may be a good mine manager but know nothing about articles of association.

Clause 45: We suggest it would be more appropriate if this provision were made in Clause 42. It is merely a matter of drafting. A person may look at Clause 42, see that Clause 45 does not follow but deals with another subject, and may miss Clause 45 which deals with the same subject.

1298. By Mr. ABBOTT: Do you think we require provision to be made in the Bill both for proprietary companies and private companies?—In this State we have no experience of private or proprietary companies. There is a close similarity between them, but they are not exactly identical. If there is any reason for differentiation between them, I do not know what it is.

Clause 128: This gives any company the right to close its share register for a period on giving not less than seven days notice by advertisement. During the period the register is closed, of course, no transfer of shares can be registered. The register is usually closed to enable a list of shareholders to be made up for the purpose of the payment of a dividend. In a large State like this we think that 14 days notice should be given instead of only seven days. If a shareholder fails to register before the date on which the register is closed he may have trouble in collecting the dividend payable on his shares. We, therefore, think that adequate notice should be given and no hardship will be caused to anyone by extending the period to 14 days.
1260. By Hon. O. FRASER: In your experience has the seven-day period proved a hardship?—Not in my experience.

1267. Do you think that 14 days would be adequate?—There are two points here. One is to give seven days' notice, and we suggest 14 days. The other point is that the register may be closed for seven consecutive days. We suggest that should be 14 also.

We think a company should be permitted to close its register for 14 consecutive days, and therefore suggest that the word "seven" in the second line of the proviso be altered to read "fourteen." It is very difficult in companies with big dividend lists to get out their dividends within seven days.

1271. Do you think 14 days would be adequate?—Yes.

Clause 134, Sub-clause (1): This sub-clause provides that returns shall be made within 21 days after the 31st day of March in each year. Twenty-one days does not allow very much time for the filing of a complete return and, also, as the Easter holidays would often intervene, we consider that the time should be extended to 60 days.

It does not appear necessary for a complete return to be filed every year, and we suggest that the return should refer only to transactions during the previous year or since the filing of the previous return; e.g., Sub-clause (1) (v) provides for the filing of a summary distinguishing between the shares issued for cash and shares issued as fully or partly paid up otherwise than in cash. It should not be necessary to go back to the inception of the company, but it should be sufficient if the return covers the shares issued during the previous year. Similar remarks apply also to Sub-clause (1) (xii), (ex), and (xiv). Complete return could be filed at longer periods; say, three years.

As regards the first of these paragraphs, the provisions in the Bill for the filing of what are termed the annual return and summary are very complete and entail a good deal of work in getting the information. The Bill allows for the making of a return and summary, which has to be filed within 21 days after the 31st March. By the way, nothing like this has ever been done in Western Australia before. This is one of the provisions of the Bill which will give a great deal of extra work to company secretaries.

1272. The CHAIRMAN: I think, but I am not quite sure, that other organisations have asked for 30 days.

1272A. Hon. H. SEDDON: Has there not been a suggestion that the 30th June be substituted for the 31st March?

1273. By the CHAIRMAN: Yes. Has your body considered that?—Yes, but there is another provision of the Bill that on application to the Registrar that date, the 31st March, can be altered to another date.

1274. You are more concerned with the period allowed for furnishing the return?—Yes. A reference to the schedule on page 320 shows the tremendous amount of information that has to be supplied. For a public secretary, at any rate, who has to file returns for a number of companies, 21 days is totally inadequate. Because of the interruption of the Easter holidays, very often at that time, we think the period should be 60 days. A chartered accountant's office is frequently closed for 10 days around Easter time, and that is a big hole in your 21 days.

1275. The CHAIRMAN: That suggestion seems to me perfectly reasonable.

1276. By Mr. ABBOTT: Do you consider that the whole of these requirements are advantageous in connexion with private and proprietary companies?—No; but the Bill contains no provision requiring private and proprietary companies to file those papers.

1277. It says absolutely "every company." Would you like to consider that point?—The point there is that, as I take it, those returns are required for the benefit of creditors generally, because I presume the shareholders can get that information; in fact, certain information has to be presented to the annual meeting. If you have creditors of a private or a proprietary company, they are just as much entitled to the information as creditors of a public company; but there is a great deal of information in that return which I think should not be filed by a private company.

1278. That is what I am suggesting, really. I said "the whole of it."—Yes. The filing of this annual return is one of the big bugbears. It will cause a lot of trouble and make many company directors very annoyed.

1279. Your suggestion really is that insofar as this clause applies to private companies or proprietary companies, it might be simplified?—Yes, definitely.

1280. By the CHAIRMAN: And as regards public companies?—We would like to criticise returns from a public company's point of view. I am not so sure what to do in my next paragraph. The provision now is to file a return every year under all those headings, and we consider that that should not be necessary. I have mentioned instances where a company is formed originally and issues shares as fully paid to vendors, we will say, or to promoters. It should not be necessary to make a return concerning those particular shares every year. It is done for the first year, in the first return, and then periodically, at periods of, say, three years; and that should be sufficient. I mention those shares particularly as just an illustration of several important items that might be filed only at three-yearly periods.

1281. Of course, I do not think there would be quite a lot of the information on the copy?—Yes. As you say, Sir, it might be quite a lot.

1282. By Mr. ABBOTT: Even the list and addresses of shareholders?—Yes. I think a return of those should be filed only where they vary.

1283. By Hon. H. SEDDON: In the case of a company whose shares are largely traded in by the public, couldn't you think it is as big a job as the alterations as to make out a fresh copy of the share register?—No. That is hardly the point, anyhow. You have to give a complete list of all transfers, all transfers in shares during the year, as well as of shares that are not transferred. We will say that 75 per cent. of the shares in a company do not change hands; or possibly 80 or 90 per cent.; but you have to make a return of the whole of those shares as originally held, together with all transfers, every individual transfer. You can imagine what the position would be with some companies. There are very many transfers during the year and the companies would be required to list returns showing those transfers.

1284. By Mr. ABBOTT: Surely not! Where is that provided for in the Bill?—You will find it is provided for in the Sixth Schedule. At the bottom of page 329 of the Bill you will find the following paragraph:—

The date of registration of each transfer should be given as well as the number transferred on each date. The particulars should be placed opposite the name of the transferee, and not opposite that of the transferor, but the name of the transferee may be inserted in the "remarks" column immediately opposite the particulars of each transfer.

That will be a terrific job.

1285. And you do not think that necessary for private or public companies?—No.

1286. By the CHAIRMAN: But I take it you think it would be necessary at the inception to provide one return and then there could be lapses, say, for a period of three years?—Yes, that is what I suggest.

1287. By Mr. ABBOTT: Did I understand you to say that it might be necessary to give a list of shareholders at a particular date but not to provide a list of the full year's transactions?—Yes. I do not want to provide a list of returns. In some instances where shares are issued as fully paid for other than cash, such transactions should be recorded, but only once. It should not be necessary to repeat the recording of such transactions each year. As regards shares held, if you provide a list as at the end of the year, it should not be necessary to give particulars of the whole of the transfers during that particular year. That provision was never meant, I should imagine, to apply to a no-liability mining company.

1288. By Hon. G. FRASER: That would involve a pretty fair job?—Yes.
1289. Probably three-quarters of such transactions are never registered.—That is so, but quite a number of them are registered just the same.

1290. By the CHAIRMAN: You will notice that a provision along these lines is made in the English, New South Wales, Victorian, South Australian, Queensland and New Zealand legislation. Probably the whole of the provisions contained in this schedule may not appear in all of those Acts.—We regard our suggestions as reasonable, because the object of filing this information at the court is so that anyone interested may inspect the details and it would not be difficult for anyone to go to the court to look up this year's return and then look back over the returns of three years to ascertain, for instance, if any shares had been issued. The individual would not be interested in all the details of transfers. With regard to the various Companies Acts, you will note that there are variations that do not appear in all those legislative enactments. We know that our consolidated companies law, being the latest, will be the best of all.

1291. You are aware that the object of the Government is to protect the public?—I know that, but I think the public could obtain all the information required if you adopt our suggestion.

1292. By Mr. ABBOTT: Would it be of any advantage to the public to know who held the fully paid up shares in a company?—There would possibly be some advantage, but very little. The main advantage would be to know who held the shares that were not fully paid up, because if they look solid, you can rely upon it that the calls will be paid up. If they are not solid, you will have your doubts about the position. We will place before you some comments regarding no-liability companies on that point.

1293. Do you think it would be sufficient in the interests of the public if particulars regarding the shares on which there are still liabilities, were given?—No, I do not. It has always been the custom to give a complete list of shareholders.

1294. I realize that—it is often interesting to inspect a list of shareholders to find out who held the shares.

1295. A matter of idle curiosity?—It is much more than that.

1296. From what point of view?—For instance, if you are considering making a contract with a company, you naturally would like to know with whom you are contracting.

1297. By Mr. WATTS: Particulars of the transfer of shares would be of no value.—No. Let me give you an illustration, perhaps not the best, but still one that comes to my mind at the moment. A company in difficulties and it can escape some obligation, but because the shareholders are who they are, they will not seek to evade that obligation. There is a moral obligation on shareholders to meet their liabilities, even if, in some instances, there may be no legal liability.

1298. By Mr. ABBOTT: I think you are hoping for the best?—I have a case that occurred in my office during the last fortnight.

1299. Do you think that because of such an exceptional instance as that you quote, provision should be made to meet the situation in this legislation? You will realize that the object of these remarks arises from the fact that a tremendous amount of work is involved and companies will be put to tremendous expense. If we can lighten the burden without doing injury to public interest, we wish to do so?—To be frank, if it were not for the fact that these returns have always been filed in accordance with the provisions of the Companies Act, I would agree with you, but I wonder why it is necessary. To continue with our proposals.

Clause 139, Subclause (1) paragraph (6).—Proposals relating to meetings: We think the word “originally” in the first line should be deleted.

The clause commences with the words: “The following provisions shall have effect, in so far as the articles of the company do not make other provisions in that behalf,” and paragraph (1) reads—

In the case of a company originally having a share capital, every member shall have one vote in respect of each share or each £10 of stock held by him, and in any other case every member shall have one vote.

One cannot understand why the word “originally” appears there. We think the same provision should apply to a company if the share capital were as at the time of the original share capital or whether it had been altered during the lifetime of the company. We certainly think the word “originally” should be deleted.

1300. By Mr. ABBOTT: Clause 139, (1), (b), provides that notice of a meeting of members shall be served on every member of the company and on the auditor for the time being. Do you consider it necessary that the auditor should be served in the case of private and proprietary companies?—You have to make a report to the shareholders. We, as auditors, would very much like to have the right to attend meetings of shareholders, often perhaps to explain or amplify our reports as it is to the utmost assistance to the shareholders.

1301. By Hon. G. FRASER: At present, unless auditors are invited, they are not entitled to attend the meetings.—That is the position.

1302. Mr. Abbott's question relates to private and proprietary companies; do you give the same answer with respect to all companies?—I think so.

1303. By Hon. H. SEDDON: Suppose such a provision had been in existence when the Litchfield company was operating, the auditor would have had the right to be present at meetings of shareholders. At least he would have been able to tell shareholders who were present what he thought.

1304. That indicates the desirability of the provision?—Yes.

1305. By Mr. ABBOTT: On the other hand, can you envisage a private family/company holding a meeting at which they want to discuss family matters and an auditor being forced on them?—Yes, for the reason that I do not think it should be possible for the leading shareholder in a private company to be able to wink the remaining shareholders, any more than the directors of a public company should be permitted to do so. It sometimes happens that a man controlling a large majority of shares in a private company, whatever he likes with the company and tells the shareholders only so much as he thinks fit. He cannot refuse to read the auditor’s report nor mislead it if the auditor is present. The other shareholders, upon it, would have the right to ask the auditor’s opinion on certain questions, and the auditor would have the right to give it. He might possibly lose his position as auditor. With regard to Clause 141: Definition of extraordinary and special resolution, in the present Western Australian Act there is no provision for an “extraordinary resolution” and we cannot see any advantage to be gained by introducing it now. A special resolution is all that is necessary if all reference to “extraordinary resolution” be deleted, and the special resolution, as defined in the present Western Australian Act, be allowed to continue. For an extraordinary resolution, there is the same necessity as for a special resolution; notice of the particular business to be dealt with must be stated. In the case of an extraordinary resolution, Subclause (1) provides that notice, specifying the intention to propose the resolution as an extraordinary resolution, must have been duly given. In the case of a special resolution, 14 days’ notice must be given. That appears to be the difference. The special resolution has worked perfectly well in this State and I can see no reason for the two types of resolution. Of course, there is the ordinary resolution, and then the special resolution, which has been in force up to date.

1306. By Hon. G. FRASER: If the shareholders wanted a meeting to be held very quickly, they could not hold it without giving 14 days’ notice.—You may defeat the interests of some of the shareholders who could not attend if you called a meeting in that way.

1307. By Mr. RODOREDA: Are you referring to the special resolution defined in the existing Act, or to the special resolution defined in the Bill?—We would prefer the interpretation of “special resolution” in the present Act. We would prefer to strike out all references to “extraordinary resolution” in the Bill.

1308. By Hon. H. SEDDON: Do you think it desirable that there should be a majority both in the case of an extraordinary resolution and in the case of a special resolution?—The majority is the same. In the case of the special resolution, it is provided "when it
has been passed by such a majority as is required for the passing of an extraordinary resolution. With regard to Clause 145, the tendency of proceedings of meetings and directors, the word "manager" used throughout the Act is sometimes confusing. We think that this word has probably arisen through the fact that in Victoria, and perhaps elsewhere, the official known in Western Australia as the "secretary" is styled the "legal manager." The definition of "director" in the Bill is: "Director" includes any person occupying the position of director by whatever name called. We cannot see why it should be compulsory for all proceedings at meetings of "managers" to be entered in books kept for that purpose. It is of course necessary for proceedings at directors' meetings to be properly recorded. The word "manager" for a mining company might mean branch managers or departmental managers, and we cannot see why it should be compulsory for proceedings at meetings of these managers to be recorded.

Clause 146, Inspection of minutes books: We think it very unwise to supply copies of minutes of general meetings to any member requesting same. A small shareholder might use the copy of the minutes against the interests of the company. We think it should be possible for a shareholder to inspect the minutes but we do not think it should be compulsory on the company to provide a copy of the minutes for the shareholder. A shareholder is entitled to attend the annual meeting and hear what takes place, but we do not think it should be right for him to get a copy of the minutes and take them around wherever he wants to. A great deal of information is to be supplied, under the Bill, to the Registrar of Companies, we think too much; but it is going too far to ask a company to have a copy of the minutes made and to supply that copy to members on request.

1306. By Hon, H. SEDDON: Many important companies do issue to their shareholders a precis of the proceedings of the annual meetings—a precis made all right, but a copy of the minutes is going much further than that.

1310. He can get any information he desires from the precis?—Yes.

1311. By the CHAIRMAN: Why do you take exception to supplying any member of a company with a copy of the minutes?—Company procedure generally is above board and a shareholder has the right to go along and make a copy of the minutes if he wishes to do so, but we do not want to encourage it. If a shareholder is given this right, shareholders generally may want a copy and then we shall find the minutes of a meeting floating all over the place.

1312. By Mr. RODORIDA: Are not the minutes always available if a shareholder wants to make a copy of them?—Yes, of general meetings.

1313. Statement as to remuneration of directors to be furnished to shareholders: The auditor of the company cannot certify as to the remuneration or other emoluments received by a director from another company. He has no authority to inspect the books of another company of which he is not the auditor. That clause provides that on the request of certain shareholders and in certain circumstances the whole of the remuneration and emoluments earned by a director in his own company and in addition any remuneration he receives from another company as director when he is appointed to that position as a director representing his own company, that information should be supplied to shareholders and the auditor should certify that the statement is correct. The auditor can certify as to the amount the director received from, say, "A" company, of which he is the auditor, but he cannot say how much the director received from the company of which he is not the auditor. It is quite impossible for the auditor to so certify because the legislation does not give him any right to inspect the accounts and books of the other company. You could make it obligatory on the part of the directors to supply that information.

1313. By Hon. H. SEDDON: Is that not qualified in line 84, page 131? That reads "or with such qualifications as may be necessary." That might apply to the remuneration of the other company and might overcome the position.

Clause 181, Returns to be made by no-liability companies: This clause sets out the information which has to be filed at the Registrar of Companies with relation to no-liability companies. It appears that this information will be of little use to either the shareholders or creditors. It is assumed that similar information in respect of a limited liability company so that interested parties may refer to the files for information as to who are the shareholders; the number of shares held; any outstanding shares, etc., etc., but this information in respect of a no-liability company would be of little use to anyone.

1314. By Hon, H. SEDDON: In the case of a no-liability company it was the procedure of working a mine and which company has become more or less dormant, what opportunity would the shareholders have of obtaining information with regard to the amount of capital still in hand and the position generally of the company?—It is compulsory for a company to hold annual meetings and supply the information. There are provisions in the Act to enable shareholders to secure that information from the Companies Office.

1315. Is not this return for the purpose of ensuring that that information is available?—I do not think so as regards the shareholders who can get the information from the Companies Office, but I think it is for the creditors and the general public.

1316. He could, if he wished, by following up this return, get the information from the Registrar?—Yes, but he could not get any information from the Registrar that he could not also get at the Companies Office. The shareholder, who is the only one interested, can get information from the Companies Office. There should be no occasion to file information of no use to the creditors.

1317. One factor which might be stressed is that in obtaining a certified return from the Registrar he would be sure to get accurate information?—I think there are other provisions in the Bill to stop the Companies Office from supplying false information.

1318. By Mr. WATTS: You are not referring so much to particulars of the financial position of the company. Information as to shares held and the outstanding liability are of no value either to a creditor or a shareholder in a no-liability company?—That is the point. The clause provides for filing with the Registrar a return containing information including a summary of the shares issued, distinguishing between those issued for cash and those issued fully or partly paid up other than for cash; the number of shares into which it is divided, etc.; the number of shares taken up from the commencement of the company until the date of the return; the amount paid up on each share; the date made since the issue of the last return or, in the case of a first return, since incorporation, was payable; the date since the last return or incorporation when shares forfeited were offered for sale and the price of offer; the number of shares sold at each sale of forfeited shares; particulars of all sales or dealings with shares under Section 186 of the Act, and so on.

1319. None of those things would give a creditor or a shareholder an opportunity to collect a solemnity in a no-liability company?—That is our point.

Clause 399, Subclause (3), Restrictions on offering shares for subscription or sale: It is suggested that this subclause be amended because, as it reads, it appears to exclude the use of block letters. Provisions should be made so as to allow the headings to be in larger type. This relates to an offer of a share or shares for sale to the public. It appears that when the offer for the issue of shares is made, certain particulars in the offer are to be printed in not smaller type than any other type used in the document. We suggest that the headings at least be printed in bigger type.

Clause 297, Subclause (1), Provisions relating to deposits made with Treasurer: It is suggested that this matter should not be left to regulations but the circumstances should be set out in the Act.

This applies to the case of a share-broker or dealer lodging a deposit while he is acting as a share-dealer,
and the deposit being repaid to him in certain circumstances. The subsistence states in part—

and the Governor may by regulations prescribe the circumstances in which, apart from the preceding provisions of this subsection, a sum or equivalent security deposited as aforesaid may be withdrawn; but save as aforesaid, no person shall be entitled to withdraw or assign any deposit made under this division as aforesaid.

We think that when a man lodges a deposit he should know beforehand under what conditions he is going to withdraw it. They should not be left to regulations that should appear in the Act.

1320. By Hon. H. SEDDON: The whole question of authorised share-dealers has been raised by previous witnesses; would you care to express an opinion?—As a matter of fact I had a good deal to do with the preparation of the evidence submitted by the Chamber of Commerce and I support that evidence.

1321. By Hon. G. FRASER: The evidence you are rendering at present is silent on that point!—There is no reference to it.

1322. You held the same viewpoint as the Chamber of Commerce, then?—Yes.

1323. By Mr. ABBOTT: And the Stock Exchange?—I do not know what evidence they gave.

Clause 419. Documents to be certified: We consider a solicitor, a public accountant, or public secretary or a director should be permitted to sign this certificate. The solicitor should include in a solicitor practising in any State of the Commonwealth. It is necessary to make this provision as, in South Australia, where a certain section to Clause 419 in operation, some difficulty has been experienced through the fact that a solicitor in another State is not permitted to sign the certificate.

When a memorandum and articles are prepared by a solicitor in one State for a subsidiary company in another State, that solicitor is not permitted to give a certificate and a solicitor must be employed in the other State to examine the document and give the certificate.

A director should not be confined to a person who is named in the articles as a director. Provision may be made in the articles for the appointment of the directors at a meeting of the company after registration and in that event directors would not be named in the articles.

It often happens that provisional directors are appointed to carry on pending the holding of the first meeting of shareholders after a company has been registered, when the directors are appointed. In those circumstances the directors are not named in the memorandum and articles.

A public accountant or public secretary should also be permitted to give this certificate. As accountants and secretaries are frequently consulted in connection with the formation of companies. We do not desire that accountants should be permitted to perform solicitors' work. In fact, it is our definite wish that they should not, as each profession has its own sphere of work. But it frequently happens that a company promoter wishes to consult his accountant as well as his solicitor, and he should be permitted to do so and to pay a fee for the advice received; therefore, the following words in the clause should be deleted: "Where the certificate contains a statement that no person has given advice in respect of the documents for or in expectation of fee or reward."

In the formation of a company there is a good deal of work to be done by a solicitor and by an accountant. Chartered accountants are consulted throughout the world in connection with the formation of companies and in connection with the provisions that should be included in the memorandum and articles. This company has nothing to do with the drafting of documents. We consider that chartered accountants should be permitted to give such advice and to charge a fee for it. We do not quite know what the clause means, but there is a restriction that a certificate must be given that no person has given advice in respect of or prepared documents for the company in expectation of fee or reward. We do not wish to take any risk of being cut out of work which we have been doing for years.

1324. Do not you think that statement is slightly contrary to your remark that you had no wish to conflict with the work of solicitors?—No. Mr. Abbott and Mr. Watts will agree that there is a conflict between the work of an accountant and that of a solicitor in the formation of a company. There are matters relating to company management, business accounts, etc., that have nothing to do with the legal side. I have been connected with the formation of several companies quite recently and have consulted with Mr. Durack, Mr. Williams, and Mr. Forbes, together with the promoter, and each had his sphere of work and none overstepped the mark and did the work of another man.

Second schedule, Table A, Article 19: The word "fourteenth" in the fifth line should be deleted and replaced by the word "seventh" to conform to the provision of Clause 128.

Table A contains the list of articles of a company which does not provide its own articles. Unless Clause 128 is amended as requested, this provision in Article 10 will conflict with it. We have asked you to amend Clause 128 by deleting the word "fourteenth" and substituting the word "fourteenth." If you do that, this article will agree with it. If you do not, this article will conflict with that article.

1325. By the CHAIRMAN: It is really a consequential amendment—Yes. A similar alteration will be needed in Article 17 of Table B.

Third schedule, Article 22: Authority to sell should specifically include "land" as is included in paragraph (1) of Article 21.

The third schedule relates to implied powers of companies limited by shares. Article 22 reads:

-To sell or dispose of or grant options over the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures or securities of any other company having its objects altogether or in part similar to those of the company.

In paragraph (1) (a) there is specific provision to purchase land and we consider that the same specific provision should be made in paragraph 22 to sell land. If it is necessary to have a specific right to purchase land, it should be necessary to have the same right to sell land.

Fourth Schedule: "Names and addresses of vendors of property." The word "property" should be defined as otherwise it will be hard to know what extent information is required regarding purchases by the company.

This schedule is a form of statement in lieu of prospectus to be delivered to the Registrar by a proprietary company or a private company on becoming a public company. On page 322 of the Bill will be found a paragraph providing for the supplying of names and addresses of vendors of property (1) purchased or acquired by the company within the two years next preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company. That information has to be supplied on behalf of the company that is carrying on business and we want to know what the word "property" means. A company carrying on business is buying from vendors all classes of goods. If it has to supply information of names and addresses of all vendors of all property, it will be an impossible job.

1326. The CHAIRMAN: The draftsman will consider that point.

1327. The WITNESS: I next refer to the sixth schedule as follows:

Note at the bottom of page 329: In the case of a large company having a number of transfers, it will be practically impossible to give the information required in this note with regard to all transfers.

1328. By Hon. G. FRASER: You could supply the transfers in operation at the date on which the transfers were supplied?—All that is necessary is the list of shareholders at the date of submitting the returns.

1329. By Mr. ABBOTT: To emphasise an old point, you do not think that a list of fully paid-up shareholders is at all essential?—I repeat my previous reply. If it had not been done for so long I should have said that it was unnecessary, but we get into a habit of doing certain things.
1330. By Mr. RODOREDA: If we altered the law, would it be difficult to break the habit?—We would raise no objection.

Tenth schedule: We are of opinion that the fees provided are excessive; e.g., on page 337 the fee payable on filing of any document, if filed within the period provided by the law, is £5; if within one month after the prescribed period, £1 5s.; and if after more than one month £5 5s. Some of the documents to be filed at the court will take a considerable time in preparation and if, on special occasions, it is necessary to obtain an extension of time for filing, the fee should not be increased to the extent provided in the schedule.

We consider that the fees should be revised. Some of them are very drastic. A very small amount of information will be required by the Registrar.

1331. By Hon. G. FRASER: You take exception to the charge of £5 5s.?—Yes. We are supposed to file our return taxes before the 31st August, but we all get an extension of time and we do not pay for the extension. If we can convince the Registrar that the circumstances are such as to entitle us to an extension of time for lodging a document, we should not be charged £5 5s., which practically amounts to a fine.


The Registrar might not be permitted under the Act to grant leave.

1333. By Hon. H. SEDDON: If we amended the Bill to give the Registrar discretionary power in the granting of extensions of time without penalty, would that meet your objections?—Yes, but some of the other fees are heavy.

1334. By Hon. G. FRASER: In that event, would you take exception to the fees remaining as they are?—The Registrar should be given power to grant extensions without penalty.

1335. But the penalties could remain as applicable to persons who did not file the documents within the proper time and had no extension granted to them?—That may be all right, but the £5 5s. penalty is excessive.

1336. That would only apply if no permission had been granted for an extension?—That may be so.

1337. By Mr. WATTS: Is there not liability to prosecution as well?—Clause 134 provides for a penalty of £20 with a daily penalty of £5. Mr. Seddon's suggestion that the Registrar should be given authority to grant extensions of time is an excellent one.

1338. By the CHAIRMAN: In the event of no application for extension being made, do you think the parties should be penalised?—Yes, but not to the extent of £5 5s. Heavy penalties are provided in many parts of the Bill.

1339. By Hon. H. SEDDON: Do you know if these progressive penalties are on all years with those imposed under the Land Titles Act?—We have not raised any objection to them in our evidence, but we hope not to be caught by them. I should like to comment on the amendments to the South Australian Act.

S.A. Section 9 practically means that, for the minutes to be valid, each page must be signed by the chairman and the secretary "at the meeting at which the minutes are confirmed." We cannot understand why the signing must take place "at this meeting" and suggest that they be considered valid if each page is signed by the chairman and the secretary at any time.

1340. By the CHAIRMAN: Meanwhile some page may be missing from the minute-book.—The practice with regard to minutes of annual meetings is for the chairman to sign them as soon as possible after they are prepared, rather than wait for the next meeting at which they would be confirmed. The chairman and acting shareholder, and others might forget what had taken place twelve months after. The practice is for the secretary to get the chairman to sign the minutes as soon as they are typed. We think the minutes should be valid if they are signed at any time by the chairman and secretary, but not later than the next meeting.

1341. By Mr. RODOREDA: The next meeting might be 12 months later?—Yes.
that a registered liquidator has to pay a fee—in South Australia it is an annual fee. We ask that you should not impose an annual fee, but only an initial registration fee. He also has to provide a bond, and that bond costs money. The bond provided under the Bankruptcy Act costs a registered trustee £7 10s. a year. So you can see it is quite possible that a very competent chartered accountant may not seek registration as a liquidator; but that should not be any reason why he should not as a registered auditor be permitted to act as a receiver.

1346. By Mr. ABBOTT: Is there very much difference, from a practical point of view, between a receiver and a liquidator?—Yes. A receiver would merely go into possession of the goods secured, realise them, and distribute the proceeds. A liquidator has to comply with complicated provisions of the Companies Act.

1347. I realise he does not simply go into possession and sell and realise; but are not those his principal duties?—Yes; but just what is the point?

1348. The only point is, should there be any distinction between a receiver and a liquidator?—In this case I am saying that because a man should be permitted to act as a receiver although he is not a registered liquidator, for the reason stated, he does not want to pay an annual fee and provide a bond.

1349. But the duties of a receiver are very similar; on the face of it?—Yes.

1350. As regards Clause 158, are you aware that there are a great many small companies which are merely personal and private concerns? Do you think that auditors are at all necessary, if all the shareholders agree that they are not required?—It is a point that I have not considered.

1351. By Hon. G. FRASER: But as an auditor you would say yes?—Let me consider now. You are asking me whether I consider that necessary. Naturally, I am thinking of places where it would be necessary. Now, what are the duties of an auditor? Principally to certify the balance sheet. Frequently balance sheets are presented to creditors, or bodies of creditors, or the bank, and if a balance sheet is certified by a competent auditor the bank will as a general rule accept it, and so will merchants.

1352. Your answer is yes?—I think it is very desirable; yes.

1353. Clause 177 deals with the transferance of property of a company in connection with reconstruction. Contracts of service are not property, and in the case of a reconstruction the benefits of any contract of service are not available to the new company under this clause. Do you think they should be?—I have not given the matter any consideration, and would not like to express an opinion.

1354. Clause 180 makes a director of a no-liability company the guarantor for four weeks' wages. Do you think that is a reasonable provision where the director has no recourse against the shareholders?—I would like to explain, if I may, that this Bill, when considered by the bodies we are representing, was divided into three sections. Each section was carefully considered by the different institutes. Then, representatives of those three sections met together and eventually formulated three separate portions of the evidence to be submitted to the joint select committee. When each section was considering this particular clause, it was considered that four weeks was not fair and that the period should be reduced to two weeks. When the matter went before the combined committee, the view was taken that this is not a matter in which we are vitally interested and therefore we would not say anything about it.

The Committee adjourned.

THURSDAY, 27th FEBRUARY, 1911.

Present:
Hon. E. Nulsen, M.I.A. (Chairman).
A. V. R. Abbott, Esq., M.I.A.
Hon. L. Craig, M.I.C.
Hon. G. Fraser, M.I.C.
A. J. Reid, Esq., M.I.A.
Hon. W. Scaddan, M.I.C.
Hon. A. Thomson, M.I.C.
E. Watts, Esq., M.I.A.

HENRY CHARLES HOLTON MERRY, of Perth,
Chartered Accountant, examined:

1355. By the CHAIRMAN: You are submitting evidence on behalf of the accountancy group?—Yes. This group starts with Part III, Share capital and dividends: Division 1, Prospectus. Dealing with Clause 54, Subclause (2), we suggest that Section 34, Subsection (3) of the Victorian Act be substituted for this clause. The Victorian section is more complete in regard to registration and filing of contracts, that is, material contracts vitally affecting the operations of the company from its inception. With regard to proposed new Subclause (6): We suggest the addition, after Subclause (5), of a new Subclause (6) on the lines of the Victorian Act, Section 34, Subsection (6), which governs the inspection of contracts.

1356. By Mr. WATTS: Can you tell the committee the essential differences between the proposed Subclause (6) and Subsection (6) of the Victorian Act?—The proposed subclause provides for inspection at all reasonable times at the Registrar General's office. Subsection (6) of Section 34 of the Victorian Act reads—Every copy of a material contract filed in accordance with this section with the Registrar General shall be open for inspection at all reasonable times by any person on payment of the prescribed fee.

1357. You are now dealing with Clauses 54 and 55 of the Bill?—Yes.

1358. Neither of them makes reference to filing of documents, other than the prospectus?—No, but we think a provision similar to that in the Victorian Act should be inserted in the Bill, making provision for that filing. We think it desirable that these clauses should be filed at the court, so that they may be available for inspection if necessary. They are quite an important feature of a company's operations.

1359. By Mr. ABBOTT: You are suggesting that all contracts, or copies thereof, relating to the prospectus should be filed?—Yes, with the prospectus.

1360. Is it not usually understood that any interested person can inspect the prospectus either at the company's office or at the office of the company's solicitors or accountants?—Yes, that is usually provided.

1361. In view of that custom, do you not think it would entail unnecessary expense to file the documents?—The prospectus must be filed. If the contracts are not filed there is always a possibility that what was the original contract may change over a period of years and become something different when a question is raised.

1362. Are you suggesting that we should provide against a criminal act, forgery and so on?—That is the idea of filing the prospectus, is it not?

1363. You do not think that would interfere too much with private enterprise, to make open to the general public all the interested, private details of a company's operations or proposed operations?—Is it likely that anybody not interested will inspect them?

1364. By Mr. WATTS: Certain sections of the Press might!—They could also go to the Companies Office and get particulars. I hold the view that the whole of this Bill is unduly restrictive. I think that view has been expressed already on behalf of our particular group; but if the Bill is to become law it might just as well be complete.

1365. By Mr. ABBOTT: What do you mean by "it might just as well be complete"?—You might as well block all the loopholes there are.

Clause 56. Specific requirements as to prospectus: After Subclause (1) we suggest that there
should be added Section 35 (4) of the Victorian Act, which provides for the written consent of trustees for debenture holders, auditors and solicitors to act in their respective capacities.

The reason for this is that there is a certain amount of responsibility thrown upon people who come under those categories, and particularly trustees, auditors and solicitors, and it should not be possible for their names to be shown on a prospectus issued to the public without their having given written consent.

1366. By Hon. L. CRAIG: Is that not an offence?—It is frequently done in actual practice.

1367. But is it an offence to include somebody's name on a prospectus without his consent?—Not that I know of. Consent is assumed.

1368. By Mr. WATTS: As regards auditors and solicitors, it would be better if they signed the actual official prospectus—if they gave their written consent I think that would be sufficient.

Clause 55, Subclause (1): In view of the fact that the signatories to a memorandum of agreement are usually persons not actively interested in the company, it is not thought that any useful purpose will be served by publishing their names, addresses, etc., in the prospectus and it is suggested that this provision be deleted.

The prospectus to be issued under the Bill will be a very voluminous affair and it should contain no more extraneous matter than can be helped. We do not see what can be gained by publishing these names because they are usually only temporary solicitors' clerks and persons not actively interested in the company. The publication of their names does not convey anything to the public.

1369. By Hon. H. SEDDON: Is it not necessary, in order that the memorandum may be complete, that there should be signatories equivalent to the required number?—They have to be on the memorandum, but I see no reason for publishing them in the prospectus.

1370. It might be an advantage to have the names of persons of repute on the prospectus?—They usually are not.

1371. There might be an advantage in that case?—If a company wanted to publish them, it could do so.

1372. You would make it optional?—Yes.

Subclause (13): The word "contract" in line 28 should be amended to read "contractual." Subclause (15): We suggest that after the word "director" appearing in lines 32, 33 and 42 there be inserted, in each case, the words "and of every expert."

This amendment is in line with the provisions of the Victoria Act, Fourth Schedule, (13) (a).

The provision governs matters which are required to appear in a prospectus and the particular clause states that full particulars shall be given of "the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by the company, etc." We consider that an expert's interest in the company, if he has any, should also be stated because considerable weight is attached by the public to the opinions of experts.

1373. By Mr. RODOREDA: How would you define an expert? There is no definition in the Bill—There is a definition in the Victorian Act which could be used.

1374. By Hon. L. CRAIG: That is intended to apply to a no-liability company?—In the case of any other company, too, I think, but particularly mining concerns. That is where the danger would mostly arise but it could arise in other companies. I think there should be a general provision.

1375. Could the provision not be easily evaded?—We should have to have an interpretation of "expert"—That could be provided.

1376. I had in mind experts connected with an in distress company being promoted. We would have to be careful of our definition of "expert."—The point is that if the prospectus contains a statement signed by somebody who purports to be an expert and the prospectus is issued for the guidance of the public, then if that expert has an interest in the concern the facts should be disclosed. The definition of an expert appearing in the Victorian Act is—

"Expert" includes an engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Clause 53, Part B, Subclause (2): We suggest that after the words "public accountants" in line 39 the words "who shall be auditors registered under this Act" be inserted.

We feel that all people of renown, something as accountants will be registered as auditors, and it would be unwise to leave the position open to anyone else to have the right to make a report such as is contemplated in this provision. If a person is not capable of being registered as an auditor, he cannot do it. This is a form of protection that ought to be inserted.

1377. By Hon. H. SEDDON: Do you think that the term "public accountants" altogether meets the case with regard to the competency of the individual who will be appointed?—No, because anyone may call himself a public accountant. He does not need any qualifications at all. That is why we suggest that the person should be a registered auditor, because it means that he must have some qualifications before he can obtain registration.

1378. By Mr. RODOREDA: How would it be to omit the word "public" and insert the words you have suggested?—I prefer to retain the words "public" as well. It should be confined to practising accountants.

Clause 55, Part C: The word "paragraphs" in the first line should be amended to read "parts."

Clause 55, Part C, Subclause (1): Specific requirements as to prospectus: We consider that the effect of this clause would be somewhat strengthened by the addition of the words "and has in fact commenced business." This subclause deals with certain features that may be dispensed with in the case of companies that have been formed for more than two years. The proposed amendment will not quite meet the point we have in mind, but will tighten up the position. We had in mind the possibility of some mining groups of a dozen or so mining companies and keeping them for two years before putting them into operation and then proceeding to float the concern. That might seem fair-fetched, but it explains the point.

1379. By Hon. H. SEDDON: There might be a number of companies that have become more or less dormant?—That is so.

Clause 56, paragraph (iii): Power to issue abridged advertisement: If this clause is intended to mean that a complete prospectus, with application form attached, is to be lodged by every applicant for shares, it is thought that the procedure would be far too cumbersome, and it is suggested that the position could be met by providing that while application forms may only be issued attached to prospectuses, the forms may be altered and returned by the applicant without the body of the prospectus, provided there is a statement contained in the form of application that the applicant has persuaded the prospectus.

We agree that the form should only be issued with the prospectus, but it would be much too cumbersome to ask every applicant to send back the whole of the prospectus with the form. He might require to retain the prospectus for his own information. If there is a statement that the applicant has persuaded the prospectus, that should be sufficient.

1380. Is not that the meaning of the words in the clause?—We say that if that is the meaning, well and good.

Clause 57. Restriction on alteration of terms mentioned in prospectus: We suggest that in addition to the statutory meeting as provided, the terms of a contract may be varied at an extraordinary general meeting held prior to the statutory meeting. Possibly a company may hold an extraordinary meeting before the official statutory meeting and we think it should be capable of altering these contracts at such a meeting.

1381. That would be a special meeting?—It would be an extraordinary meeting called for that particular purpose. That could be stipulated.
Clause 58, Subclause (1) (3). Liability for statements in prospectus: It should be made clear in the Bill that this subclause shall not be deemed to include the auditors, bankers and solicitors by virtue only of the fact that they are so named in the prospectus.

The paragraph makes every person who has authorised the issue of a prospectus liable to pay compensation to persons who have subscribed to shares. We do not want it left so that it might be held that auditors, bankers and solicitors, by virtue only of the fact that their names appeared on the prospectus, have authorised its issue and are liable to the penalty. Auditors, bankers and solicitors are not in sufficiently close touch with the company to warrant that responsibility being placed on them.

Clause 60, Subclause (2). Application monies: In this clause and elsewhere in the Bill the term “officer of the company” is used. We assume that auditors are not regarded as officers of the company except where they have been appointed as public officials under the provisions of the Taxation Acts. In two or three parts of the Bill references are made to “auditors whether officers of the company or not,” which presupposes that in some circumstances they might be regarded as officers. We do not know what the circumstances might be, but would like to have the matter cleared up.

1885. By the CHAIRMAN: That will be a matter for the draftsmen?—Yes.

Clause 64, Subclause (2). Return as to allotments: We consider that it should be made clear that it will not be obligatory on the Registrar to exact the penalties provided by this clause, but that he will be allowed to use discretion in this regard.

The clause provides substantial penalties if certain returns as to allotments are not lodged within the prescribed time. There might be sound reasons or reasonable excuse why the returns have not been lodged, and the penalties should not be obligatory as provided in the Bill.

1881. The matter should be left to the discretion of the Registrar?—He should have power to grant an extension of time without our having to go to the court. Under the clause a man would have to apply to the court for an extension, which is not a reasonable proposal.

1884. By Hon. L. CRAIG: Would not you suggest placing a time limit on the Registrar?—I do not think that would be necessary.

1885. By the CHAIRMAN: The Registrar would be too anxious to clean up the business as soon as possible?—Yes, and get the revenue. One would have to submit a reasonably good excuse in order to obtain an extension.

Clause 4, Subclause (3). Provision where no contract registered: A suggestion has been made that this clause would be better placed in sequence to Clause 40. That is a small matter which might be submitted for the consideration of the draftsmen.

Clause 68, Subclause (9). Power to issue redeemable preference shares: Provision is made for the utilisation of the capital redemption reserve fund for the issue of fully-paid bonus shares. There appears to be no good reason why the fund should not be used to distribute a cash dividend, and it is suggested that provision be made accordingly. It may be inferred from the present wording of the clause that the distribution of the capital redemption reserve fund is to be made to all members of the company, whereas it is considered that preference shareholders should not participate in any such distribution unless the conditions under which they hold their shares so provide.

We see no reason why the use of the capital redemption reserve fund should be limited to an issue of bonus shares, and why it should not be distributed as cash dividends, if the company so desires. This would be a reserve fund in the ordinary way built up by the company.

1888. By Hon. H. SEDDON: In connexion with preference shares, do you think it desirable that the full particulars of the preference involve should be stated on the share certificate?—That might involve the setting out of many conditions on the certificate, though it might be all right to do so in certain circumstances.

1887. That would show people what they were buying?—That would all be set out in the prospectus, which would indicate what was covered by the preference shares, and what the rights of priority were.

1889. There might be a paragraph in the articles authorising the directors to vary the rights?—Then it would be necessary to call in all the preference shares and have them re-issued.

1890. By Mr. ABBOTT: Would you not have to print on the back of the share certificates practically the whole of the clause?—Yes.

1891. By Hon. L. CRAIG: Do you know of any instances where the conditions have been varied?—No. Such an alteration could only be made by special resolution of the shareholders concerned. There is not much to worry about in that regard.

1891. By Mr. WATTS: The suggestion has been made in evidence that the provision in the Bill should not stand?—I feel it should stand. Preference shareholders should not have their rights altered without their consent.

1892. By Mr. ABBOTT: If the right to repay is reserved in the prospectus, the company should have the right to carry that into effect without the consent of the shareholders?—The shareholders would then have accepted the shares under those conditions, the company would have the right to repay. That is not an alteration of the terms under which the shares were issued.

1893. By Hon. H. SEDDON: There are many kinds of preference shares. Unless investors have the fullest information, they might be buying under a misapprehension?—I do not like the idea of having all these things printed on a share certificate.

1894. By Hon. L. CRAIG: The directors have the right to alter the conditions?—They can only do so if power is given in the articles.

1895. In that event they would cease to be preference shares?—They would cease to have the value of preference shares.

1896. By Hon. A. THOMSON: Suppose that the interest on preference shares was reduced from 8 per cent. to 6 per cent. Do you think the shareholders themselves should decide that reduction?—Yes, unless the original prospectus gave the company power to make the change.

1897. By Mr. WATTS: In connection with the redemption of preference shares, can you say why the subclause states that no such shares shall be redeemed unless they are fully paid should be retained in the Bill?—I have a recommendation dealing with that under Clause 66.

Clause 66, Power to issue shares at a discount: We consider it advisable to include a provision that redeemable preference shares should not be re-issued at a discount.

If you allow redeemable preference shares to be re-issued at a discount, the position would be left open to improper practices. A company that desired to be good to certain shareholders could issue the shares at a discount, redeem them at face value, and continue along those lines. Provision should be made that redeemable preference shares should not be issued at a discount.

1898. By Hon. L. CRAIG: Have you ever heard of that being done?—No such provision has appeared before in our legislation. Companies have not been able to issue the shares at a discount.

1899. By Hon. H. SEDDON: That was probably taken from the English Act?—Yes.

1460. By Hon. L. CRAIG: What is your opinion?—A company may have one pound shares valued on the market at 10s., and wish to make a new issue. It would have no chance of getting 5l for every fresh share issued, and in the circumstances it would perhaps be justified in issuing the shares at a discount.
1401. By Hon. H. SEDDON: The idea is that the company might have the issue underwritten.—That may be so.

1402. By Hon. L. CRAIG: Under the present Act, the value of the shares could be written down.—That is not quite the same thing, and would not affect the new issue.

1403. But the unissued shares would be written down to compare with the written-down value of the other shares?—With the consent of the shareholders and of the court.

1404. By Hon. G. FRASER: You think there might be some instances where it would be a legitimate advantage to the company to be able to do this?—Possibly, but I have not heard of a case.

1405. Are there not sufficient safeguards in the Bill to prevent the fraudulent use of the clause?—I do not know that I have seen any safeguards beyond those providing for the consent of the shareholders and of the court.

1406. That should be a valid safeguard?—Yes.

1407. If the procedure is going to be of advantage in some instances?—Probably that would be sufficient protection, because whatever objections there could be voiced in the court.

Chauses 77 and 78: We consider that these should be deleted on the ground that they serve no useful purpose. It is thought that the position could adequately be met by means of guarantees by the directors or managers who are prepared to assume unlimited liability.

These clauses provide for directors or managers of companies assuming unlimited liability. I know of no cases where that has been done here, and we see no reason for such a provision. If a man wishes to be responsible for the company's debts, he can make himself responsible by means of the ordinary guarantee under existing practice. That would save the necessity for all this elaborate procedure.

1408. By Mr. ABBOTT: That, apparently, is not in the Victorian Act?—I don't think it is. It is not mentioned here. If it should be decided to retain these sections, there is just one safeguard we think should be provided, that a copy of the notice to the person whose liability is to be unlimited should be signed by him and filed in court. Otherwise there is nothing of a definite nature to show that he has had that notice, and there is a penalty provided for the man who should have given the notice to him.

1409. By Hon. L. CRAIG: What is the object?—I don't know. I think both those clauses should come out.

1410. You may have directors who are men of straw, and who could give any guarantee of unlimited liability which however would mean nothing but would mislead the public. If, say, Smith and Jones, who have given unlimited guarantees of liability, have nothing, the guarantees mean nothing; and people might be induced to take up shares in the company on a false notion representation. What is the object of it?—I do not know.

1411. In fact, it is no real good.—No.

1412. You have never known of a case where it has been done here?—I have not struck one myself, but possibly it may have occurred.

1413. By Hon. H. SEDDON: Chauses 77 and 78 look to me to be dangerous!—The director or manager could, of course, always resign.

1414. Perhaps it might be a means of getting him to resign?—We did discuss that this might be one way of getting rid of an unwanted director.

Clause 95, Subclause (1). Duties of company with respect to issue of certificates: Section 68, Subsection (1) (a), of the Victorian Act is considered to be preferable. This provides for the issue of share certificates, etc., within two months from the date of lodgment of the transfer, instead of within one month from the registration of the transfer. We consider that the Victorian provision should be adopted.

The point is this that in the Bill the company is required to issue share certificates within one month after the registration of any transfer. There is nothing to say that the transfer shall be registered within a reasonable time. We feel that the Victorian provision is better.

1415. By Hon. L. CRAIG: Don't you think a month is a bit short? A director of a company may be ill, and often the scrip has to be signed in the presence of two directors?—It is two months we are suggesting.

1416. Two months from the date of lodging the transfer?—Yes.

1417. I can see difficulties in connection with private companies, which meet only once a year, I take it that a lot of these things would be suitable for public companies and not suitable for private companies?—That is so.

1418. I know of several companies which have only one meeting a year, and occasionally 18 months might elapse between two meetings! Then it is up to such companies to arrange for their directors to meet oftener.

1419. I am thinking of pastoral companies?—How many transfers do they have?

1420. Of course they might have only one?—The difficulty could be overcome by having a minute signed by all the directors, which is equivalent to the holding of a meeting.

1421. That is what is done today, but it is difficult to send these things all over the country?—I come now to Clause 96—

Clause 96, Certificate of shares or stock: Section 70, Subsection (1) of the Victorian Act sets out the information which must be shown on share certificates. We suggest that the Victorian wording should be adopted in lieu of the present clause.

The Victorian provision is a more complete provision than that included in the Bill, and we think it represents an improvement. It reads—

70. (1) (a) A certificate under the common seal of the company specifying any shares held by any member shall be prima facie evidence of the title of the member to the shares. (b) Every certificate of the shares of a company (including a company keeping a branch register in Victoria) issued on or after the commencement of this Act shall—

(i) have printed or written thereon the title of the Act or other authority under which the company is incorporated, the amount of the authorised capital of the company, and the address of the registered office, or the principal office of the company in Victoria, or, where the certificate is issued by a branch office of the company, the address of that branch office;

(ii) be impressed with or have imprinted thereon the common seal or (in the case of a company keeping a branch register in Victoria) the common or official seal of the company; and

(iii) state the extent to which the shares are paid up.

(c) Every company which makes default in complying with the provisions of this subsection, and every officer of the company who is in default shall be liable for each offence to a penalty of not more than fifty pounds.

(d) The omission to comply with this subsection shall not affect the rights of any holder of shares.

Clause 99, Subclause (3), right of debenture holders to inspect the register of debenture holders and to have copies of trust deeds: In line 28 after the word 'forwarded' we suggest the addition of the words 'within a reasonable time after such request.'

1422. Who is to decide what is a reasonable time?—The court.

1423. By Mr. ABBOTT: I think it means that now?—If it means that, it does not matter.

1424. By Hon. H. SEDDON: Regarding debentures, Don't you think it would be an advantage to have a clause inserted providing that no debenture shall be
issued unless it is secured on some or all of the assets of the company - I see no reason for issuing any debentures unless some security is given.

1425. In the Old Country there are certain securities issued under the title of debentures, which are really little more than preference shares — Yes. It would be undesirable to have any provision enabling debentures to be issued which would avoid any of the requirements of the Act which apply to preference shares; and probably with that in view some provision such as you suggest would be a good thing.

1426. By Mr. ABBOTT: Might not a company wish to issue debentures that were not secured on the assets of the company?—What conditions have you in mind? 1427. The company might wish to raise money from the public on their personal security — Do not they become, in effect, preference shares under those circumstances?—No, because preference shares do not give them rank with other creditors of the company?—Yes, there is a distinction there.

1428. The point I put to you is this: Is it advisable to place restrictions where there is no practical value apparent, as in this instance?—I am inclined to think it would be of some importance in the case of a company desiring legitimately to raise money in that way, without the necessity for giving any charge over its assets. At the same time people who lend money under such debentures would be in a prior position to preference shareholders because they would be creditors of the company. In the circumstances, it would be as well to leave it open for the issue of debentures without any security being involved.

1429. Do you suggest, Mr. ABBOTT?—By Hon. L. CRAIG: Do you think they should be called debentures, seeing that that term implies securities?—I do not think it makes any difference. The conditions are set out on the debenture and the holder of the debenture knows what security, if any, there is.

1430. By Hon. H. SEDDON: Not always; not until he wakes up?—I do not think it matters very much what you call them. What matters, are the conditions under which the debentures are taken up.

1431. By the CHAIRMAN: You cannot protect everyone?—No.

1432. By Hon. L. CRAIG: But you can try to do so?—You cannot protect a man who will not read the document.

Clause 105. Filing of documents and particulars relating to charges: It would appear from the present wording of the clause that companies are in a position to register bills of sale and other charges over their assets without giving the notice which they have at present to give under the Bills of Sale Act. It is not thought that this is a desirable amendment and it is considered, therefore, that provision should be made for similar notice to be given as if the companies were registering under the Bills of Sale Act.

It appears to us that a company could simply lodge a document at the court and have it automatically registered without its creditors receiving any notice of intention. We feel that the protection now given, under the Bills of Sale Act, to all creditors should be preserved in any amendment now under investigation.

1433. By Hon. L. CRAIG: In other words, you suggest bringing these matters under the Bills of Sale Act?—We suggest that the conditions should be made similar.

1434. Would you agree that all the clauses dealing with bills of sale should be excised from the Companies Bill and left in the Bills of Sale Act?—At first sight I cannot see any objection to that being done.

1435. It would save a lot of extra work? — Yes, you would have one set of provisions applying to the registration of such documents without the necessity to be following with two separate sets of provisions.

1436. By the CHAIRMAN: Do not you think it would be better for all papers dealing with companies to be registered at the Companies Office, and so facilitate searches?—Perhaps so. Whichever way you do it, the provisions of the Bills of Sale Act regarding notice of intention should be preserved.

1437. By Mr. ABBOTT: If certain documents are not required to be registered in the Companies Office, the public might be deceived in that they would expect to have all documents registered there?—Yes, I can see the desirability of having everything under one roof.

1438. For instance, the registration of mortgages over land is most important. There is no provision in the Bill for the registration in the Companies Office of them?—No.

1439. Do you not think that the general public would go to the usual office to find where securities should be registered? Do you think you should make any distinction in these matters between companies and individuals?—Probably not.

1440. Therefore, do you think it would be more effective if we kept securities over chattels, whether given by a company or by an individual, in the same register?—Do you mean that you would retain the existing provision under which land charges would be registered at the Titles Office and bills of sale at the Bills of Sale Office?

1441. By Hon. L. CRAIG: What security, if any, is given?—I think that point is correct, for otherwise it would mean duplication of work.

1442. Then that would apply to mining matters, too? — They are in the same category.

1443. Regarding chattels, it would be more effective if registration took place at the office dealing with securities over chattels?—I should say that was desirable. It would merely be duplicating the work if it had to be done elsewhere.

1444. Do you consider that the law appertaining to individuals relative to the registration of chattels should be the same as that applying to companies?—I can see no reason for any difference between them.

Clause 147. Subclauses (1) and (2). Accounts: We suggest substitution of Victorian Act, Subsection 123, Subsections (1) and (2), which are more satisfactory worded, in view of the varying requirements of different businesses.

This is the clause which provides that every company shall cause to be kept proper books of account and then proceeds to indicate what books are required, Section 123 of the Victorian Act, Subsections (1) and (2), read as follows:

(1) Every company and the directors and manager thereof shall cause to be kept proper books of account in which shall be kept full, true and complete accounts of the affairs and transactions of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

Because requirements vary with different types of companies, we feel that this Victorian provision is more appropriate than the clause in the Bill. There is a recognized practice in keeping accounts and if you have a section like that appearing in the Victorian Act, it merely becomes a question of fact as to what is necessary. If you attempt to specify all that is required, and you happen to leave out something that ought to be included, you merely give a company an excuse for not keeping books that are necessary.

1445. By Hon. H. SEDDON: There is a point there that may arise. That applies to the definition of 'Books and papers.' Would that cover the looseleaf system?—Yes, you must preserve that.

1446. By Hon. L. CRAIG: The suggestion has been made that we should delete the words "proper books of account" with a view to inserting more appropriate words such as "proper accounts."—We wish to retain that because modern practice tends more and more towards the use of the looseleaf system. We regard the looseleaf system as in the nature of books.

1447. Would the court?—I do not know about that. "Proper accounts" would probably be a more desirable term.

1448. By Mr. ABBOTT: Do you think that position should apply to private and proprietary companies?—Yes. It is with private and proprietary companies where the most trouble occurs. By not keeping complete records, you frequently find creditors being
taken down, and there is nothing to prevent what is being done. It is desirable that everyone who wants the protection of the Companies Act should keep complete books.

Clause 148 (2), Profit and loss account and balance sheet: Exempt private companies from the provisions of this clause after the words "is made up" in line 16.

The clause reads—

The directors shall cause to be made out in every year, and to be laid before the company in general meeting, a balance sheet at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up.

We suggest that as far as private and proprietary companies are concerned, the clause might stop there. Then the clause might carry on with regard to public companies—

There shall be attached to every such balance sheet a report by the directors with respect to the state of the company’s affairs, etc.

This is a matter that would scarcely apply to private and proprietary companies and could well be left out. The main reason for omitting it is that if a director does not comply with the provisions of the clause, he will be subject to a heavy penalty, and it might be the most formal of matters at the best in a private company. If there should be a row between a director and a shareholder, a lot of trouble could be caused by the shareholder.

1450. By Hon. H. SEDDON: Might not circumstances arise whereby complete information might not be made available to the shareholders—I do not think so; a profit and loss account and balance sheet have to be furnished.

1451. There might be information that should be made available—There is nothing to say what the report by the directors shall contain. It can be a sketchy report or a full report.

1452. By Mr. ABBOTT: Do you think that the clause will be a great hardship on small private companies operating say, in country districts?—If you step at the point I suggested, I do not think it would. The company is required to hold an annual meeting and it would be no hardship to present the balance sheet and profit and loss account.

1453. You will be satisfied if the clause stops there?—Yes.

Clause 148 (2), Form of balance sheet: The form of balance sheet set out is not suitable for general adoption nor is it desirable to compel the use of a stereotyped form. We suggest deletion of the words "in the case of a banking company ... of any other company," thus leaving the form of balance sheet optional as in Victoria. Under the present Bill the position is optional with regard to a banking company. The conditions of every company vary and the types of balance sheets that are prepared vary also. We do not consider it desirable to lay down any statutory form that should have to be complied with.

1454. By Hon. H. SEDDON: It has been suggested that the Victorian Act makes provision in the case of a company having shares in a subsidiary company that the full particulars of the subsidiary company must be made available—I think that is quite desirable.

1454A. It goes further than our Act?—I can see no objection to that; it is quite a good provision.

Clause 153 (1) (c), Loans to directors: We consider that this should not apply to the managing director or to similar salaried positions but should be restricted to fees as distinct from salaries. Disclosures of such salaries to the opposition would not be in the company’s interests. This position has been recognised by recent South Australian amendments which should be adopted here.

We consider it undesirable that a company should be required to disclose the actual salary paid a managing director. It would be giving gratuitous information to opposition firms who might come along and offer a little more.

1455. By Hon. L. CRAIG: The reason for it, I presume, is to avoid having to show the excessive fees paid to directors, and to prevent possibly the appointment of other directors as salaried officers?—It is difficult to cover loopholes. I admit I do not like the clause as it stands now.

1456. By Hon. H. SEDDON: You would delete paragraph (c)?—We are quite agreeable that directors’ fees as such should be disclosed, but we do not think the clause should cover salaries such as that paid to a managing director.

1457. By the CHAIRMAN: It is but fair that the public should know what salary a managing director is receiving—I think the objections outweigh the advantages to be gained.

1458. There has been and will be much criticism on this point?—I suppose there will be. More objections will be raised if you leave the provision in the Bill.

1459. Only from those concerned?—And from the companies themselves. Someone who desires to obtain information about the company will send along a representative who has acquired a few shares in the company, and he will be able to obtain the information.

1460. By Hon. L. CRAIG: I cannot understand a public company allowing a managing director to get the total proceeds of a company?—That position could not exist; it would be quite impossible in a public company. It is exceedingly undesirable that the information should be disclosed. If the clause were made to apply to private companies only, that might get over the point which you raise.

1461. By the CHAIRMAN: I believe there was a company in Perth where the directors of which on one occasion decreased his salary to £4,000 a year; the position was an ordinary one, and the salary absorbed nearly the total profits of the company;—But this provision would not give the shareholders redress.

1462. But the salary would be published only in the accounts placed before the general meeting?—That is so, but, unfortunately, anyone can get access to general meetings of companies and obtain the information. We are strongly opposed to the provision.

1463. Have you any alternative to suggest?—Not at the moment. I could look into the matter and if I found an alternative I could let the Committee know what it is.

1464. By Hon. L. CRAIG: But the Bill does provide for more information to be supplied than is required by the present Act. At present the directors’ salaries are included among other figures. Do you agree that directors’ fees should be shown in the balance sheet?—We have no objection at all to that.

1465. By Mr. ABBOTT: A director is a trustee for the company?—Yes.

1466. And he must act as such. If he did not, would not the court step in to protect the shareholders? Is not that the general principle?—I understand it is. As a matter of equity, any aggrieved shareholder can apply to the court for protection.

1467. Did not a peer of the realm go to gaol for overstopping the mark?—I believe so.

1468. By the CHAIRMAN: No shame attaches to the disclosure of a director’s salary?—It is not a question of shame.

1469. By Hon. H. SEDDON: Might not an instance occur where a rival company would be able to find out a director’s salary and then offer him a higher salary to induce him to join the rival company?—That is precisely what I suggested. It gives information to the opposition, who could simply offer a little more. It gives the opposition a starting point.

1470. By the CHAIRMAN: But the opposition could get any information if it wanted to?—But it would not be thrown at the opposition. With regard to Clause 153, Subclause (1) (d), we suggest that the words “due and payable” in line 21 be struck out, and the word “owing” substituted, otherwise an advance may be made on condition that the debt is not due and payable until demand is made by the company, and in such cases the debt would presumably not be shown.
as intended. With regard to Clause 153, Subclause (3), this places an onerous duty on the auditor which he could not reasonably discharge, particularly in the case of large companies with many employees. The clause should therefore be deleted. That refers to a statement setting out the amount of loans and think allowances to directors including all fees, percentages and emoluments. Admittedly it only requires the auditor to certify so far as he is able to do so, but in many cases for him to do so is quite impossible. Boman Boas, for instance, have hundreds of employees, all of whom might be paying. I do not know if Boans sell on credit to their employees, but under such conditions it would be impossible to certify which employees owed money.

1471. By the CHAIRMAN: The amounts would all be there—I, yes, but the task is a colossal one to throw on him.

1473. It would not take long to get the balances—How is it to know who the employees are?

1474. By Mr. ABBOTT: Do you know if this provision appears in any other Act? No, I have not checked up on that point. The next point with which I wish to deal is Subclause (1) of Clause 154. Our comment is as follows:

Clause 154, Subclause (1), Signing of balance sheet: Clarification is required as to what is meant by auditors' report. It is assumed that what the Bill means is a statement covering the various points prescribed by the Bill and which comprise what is generally termed the auditors' certificate. This point should be cleared up as various sections include the term "auditors' report." If the Bill means report as generally understood in the profession some of the requirements are not desirable, as much information contained in such reports should not be disclosed to the general public which would be the case if copies of the report were circulated.

We suggest clarification of the meaning of "report," by inserting in line 6, after the word "company," the words "as provided in the certificate in Form C attached to the sixth schedule." At this stage I will also refer to the amendments we suggest to Clause 160. That will clear the whole point up. The amendments are as follows:—

Clause 160, Subclause (1), Powers and duties of auditors: See comments on Clause 154, Subclause (1), and with a view to clarifying the position delete the first four lines and insert "the Auditors shall certify on every balance sheet and profit and loss account laid before the company in general meeting during the tenure of their office."

Clause 160, Subclause (1) (b): Delete the words "referred to in the report,"

The reason for these amendments is that while it is quite proper that a certificate in the terms required by the Act should be disclosed to the public and the shareholders, while it is quite right they should have a certificate to the effect that the matters referred to in it have been inspected and verified, an auditors' annual report as a rule goes a great deal further than that. It is only sets out matters connected with the year and the steps the auditor has taken to verify assets, check vouchers and so on, but it also frequently goes into great detail in the matter of percentages and costs and makes suggestions for improvements, and all that kind of thing. It is undesirable that information of that nature should be disclosed to the public thereby giving away the whole of the private part of a company's business and making it available to the opposition, which is not to be thought of. What we think is intended here is that a certificate should be issued with the balance sheet, and it is only a matter of amending the wording of the Bill to make that clear to overcome the difficulties to which I have drawn attention. The wording we have suggested will, I think, meet the situation. On this particular point I do not know whether any members of the company have here of the McKenzien and Robbins case, which caused a tremendous stir in America two or three years ago. In that connection a Securities and Exchange Commission was appointed to investigate tremendous stock frauds, and there to make recommendations as to future procedure. Extracts from the report of that commission appear in the "Chartered Accountant in Australia," the official journal of the Institute of Chartered Accountants in Australia. On the appointment and responsibility of auditors the commission said among other things—

The certificate (sometimes called short form report or opinion) should be addressed to the shareholders. All other reports should be addressed to the board of directors and copies delivered by the auditors to each member of the board. That draws the distinction we want to make between a certificate and the report as such, and we would like to see that clearly provided in the Bill.

1476. By Hon. L. CRAIG: Subclause (1) of Clause 154 states that the auditors' report "shall be laid before the company in general meeting and shall be open to inspection by any member." Do not you think that the auditors' report should be read to the annual meeting unless the meeting decides otherwise? It all depends upon what is in the Bill.

1476. I agree with you that information about reduction of costs and that sort of thing is a matter for the directors, but the auditor is appointed by the shareholders and has to report to them. Therefore do you think that his report should be compulsorily read unless the meeting decides otherwise? He is a member of the company and directors will appoint him and he will report to them. The whole point is that the auditor shall represent the shareholders. That is why he is appointed by them—He is there to protect the shareholders' interest and to check up on the directors. If there is anything about which the auditor requires to report to the shareholders, nothing should be done to prevent that information reaching the shareholders. It is very desirable that such information should get to them.

1478. What happens is that in 19 out of 20 the auditors' report is taken as read. It is

1479. My point is that unless the meeting decides otherwise it should be an obligation on the secretary to read that report?—Yes, so long as there is a clear definition of what report should be given to the shareholders and a distinction is drawn between it and the full report containing other information which I suggest should be for the benefit of the directors only.

1480. The auditor would decide what should go to the shareholders and would address his report to them. It seems to me that the report of the auditor, which is meant for the shareholders, is hardly ever read to them?—I can see the difficulty, but I can also see another difficulty in settling down provisions which may be interpreted to mean that the auditors' full report must be disclosed, which I do not think is desirable.

1481. By Hon. H. SEDDON: Would it be an advantage if the words included the words, the auditors' report to the shareholders?

—Two reports could be made, one for the shareholders, and there would be no objection to that. In fact, it is very desirable that such a report should be read at the meeting. There might be something which they wish to disclose. I see some criticism they wish to make concerning the directors.

1482. By Hon. L. CRAIG: They would not do that?—It is quite possible. That is not the sort of thing we desire to protect.

1483. Certain monies may be transferred to capital reserve about which the shareholders might know nothing. It would be disclosed in the auditor's report to
the shareholders, and the report should be read. Of course any shareholder might inspect it.—Under the measure the report would have to be circulated.

1484. I do not think that would be desirable.—Neither do I.

1485. It would mean giving the report to the public.—That is so.

1486. But the shareholder is entitled to the report of the auditor?—Yes, if you could protect the position. Some provision of the sort could well be adopted, but care should be taken that the position is fully protected. The auditor, under the measure, will have the right to be present at meetings of shareholders, and if, in his opinion, there is anything that should be made known to the shareholders, the onus rests on him more or less to get it at the meeting.

1487. In effect, the auditor is subject to the directors for his appointment?—If he does not do his job, he should not be in the position.

1488. But in effect he is appointed by the directors?—I do not think we can assume that.

1489. The shareholders confirm the appointment?—I do not think you can assume that because an auditor is appointed by the directors he is going to do merely as they wish. If he adopted that attitude, he should not be an auditor. Auditors get into awkward positions frequently, but they have to take the responsibilities attaching to the position.

1490. By Mr. ABBOTT: By the same token, the auditor would not put in his report if he was told not to do so.—That is not so.

1491. By Hon. H. SEDDON: When the auditor’s report was referred to the meeting, the meeting could refuse to re-appoint him if dissatisfied with him?—If it would, the auditor is answerable to the shareholders?—Yes, there is a definite responsibility on the auditor to disclose information that the shareholders should have, but I do not want the auditor to be placed in the position of being compelled to disclose information which should not rightly go before the shareholders.

1492. By the CHAIRMAN: If he disclosed any information and the shareholders or directors disapproved of his action, he would be suit to get the sack?—That is one of the risks the auditor must take.

1493. By Mr. ABBOTT: You do not think that the auditor’s report needs to be circulated?—It should not be circulated under any conditions. The certificate, which we think is intended, should be sent out with the copies of the balance sheet. This would show that the requirements of the Act had been complied with.

1494. By Hon. L. CRAIG: That applies today?—Yes, but it is not compulsory to-day.

1495. By Hon. A. THOMSON: What do you mean when you say that the report should not be circulated? Are not the shareholders entitled to have the fullest information?—Yes, if they attend the meeting, but they are not entitled to information about the company’s operating costs, etc., which are essentially private, and, as a matter of policy, are never disclosed by the directors. On matters affecting them as shareholders, they are entitled to information. It is very difficult to get a definition of ‘report,’ without risking the inclusion of matters that should not be disclosed. That is why we prefer that the term ‘certificate’ should be used.

1496. By Hon. L. CRAIG: Is not that what is intended?—Yes, we believe so, but on the wording appearing in the Bill, it could easily be read the other way. The term ‘report’ would imply a complete report. If the essential requirements are borne in mind, I think the difficulty can be overcome, but we feel that the shareholders should be told that the auditor has carried out the duties that the Act says shall devolve upon him, and that that certificate should accompany the balance sheet when issued to the shareholders. Beyond that, we do not think that any form of report should be circulated.

Clause 154, Subclause (2): After ‘report’ insert the words ‘as required by Subclause 1 hereof.’

Clause 155. Publication of balance sheet: After ‘report’ insert the words ‘as required by Clause 160, Subclause (1).’

Clause 158, Subclause (1): Appointment and renumeration of auditors. Add proviso stipulating that shareholders may, by resolution, delegate to the directors the fixing of the auditors’ remuneration.

At the time of appointment, the volume of work is frequently not known and it would be extremely difficult for the shareholders to assess a fee, or for the auditor to indicate a fee at that stage. The shareholders should have the right, where they so desire, to delegate to the directors the power to fix the remuneration when the amount of work involved is known and an appropriate figure can be assessed.

1497. By Hon. L. CRAIG: As is done in practice to-day?—In many instances it is done to-day.

1498. Should the provisions of Clause 158 apply to a private company?—That question was raised yesterday and an answer was given with which I am fully in accord. The accounts will presumably go before creditors—banks and other people—who have been asked to extend credit to the company.

1499. That would apply in some extreme cases?—It would apply if you think that where the accounts are kept the certificate of an auditor, they will be of some value to the creditor concerned, but if they do not bear a certificate they will be of absolutely no value.

1500. Many private companies are purely family concerns, stations, for instance, and a bank as a rule knows the only creditor involved in the case?—In 90 per cent of such cases it is usual for the account and secretarial work to be done by a person who, under this measure, would probably be a registered auditor. Most of the accounts are kept by public accountants, and, in contact, they are able—under the circumstances—to give the accountant another term. It would not affect his work.

1501. A public accountant generally keeps the books of a private company of this kind?—Yes, based on a series of returns forwarded from the station.

1502. The books are made up from the returns. Under the Bill it would be necessary to appoint another public accountant to act as auditor. In many cases of these cases there is no auditor. The accountant keeps the books which are submitted to the annual meeting. Do you think it is necessary to appoint another public accountant or auditor?—There might be provision to the effect that if the books are kept by a man who is a registered auditor, no other appointment need be made. That would probably overcome the difficulty.

1503. Do you think that every company, private or otherwise, should have its books audited and incur all the expense?—I see your point. Whilst in some cases you mention, such as station properties, the books are already kept by an accountant, there is not the same necessity for the appointment of an auditor as there is where we have to remember that even in some cases there is a nominal auditor in the persons of the directors, and that the books are kept as the directors indicate.

1504. Not as the directors indicate. All the directors want is a profit and loss account at the end of the year?—That is so, but the accountant must make such provision in the books as is instructed to make by the directors. There may be some provisions that would not be properly made, although I do not think that is likely to occur. In that case, the company can have its own accountant, if it is a reputable man, would take no notice of the direction.

1505. In those circumstances the shareholders may insist upon an audit. Do you not think that in the case of private companies the shareholders should be allowed to exercise discretion in this matter?—No. In many instances the books and accounts are kept by a public accountant. I recall the case of a small shopkeeper in Victoria Park. To escape personal liability he formed his business into a company, and his wife and he were the only shareholders. They indulged in all kinds of funny tricks.

1506. What would be the object of an audit there?—This man could not have gone on as long as he did if his books had been audited, because the figures would then have been available to the creditors. As things were they could not get any information.
1507. By Mr. ABBOTT: Do you suggest that the creditors would have instructed the auditor to give them the information?—The man could have been called upon to provide the necessary figures had they been available.

1508. Is an audit of any great value after all, seeing that the auditor relies upon the information supplied to them by their employers?—I cannot be expected to agree with that point of view.

1509. In ninety-nine cases out of a hundred does not the auditor accept the stock values supplied to him by the firm?—Only subject to certain checks. The auditor does not as a rule take physical stocks, but he checks the basis of valuation of the stocks and the costing of certain lines in order that he may examine the basis upon which the stocks are valued. In many instances, too, he checks on the asset items here and there to indicate the physical quantity. When he is specifically asked to do so he arranges a physical check of the whole of the stock.

1510. Would it not be of advantage to creditors if private individuals had their accounts audited?—That may be so.

1511. Why do you recommend it in the case of private companies?—I have endeavoured to explain my views.

1512. By Hon. L. CRAIG: Is there any real difference between a partnership and a private company?—Yes. In a partnership the individual is liable for the debts, but he escapes that liability in the case of a company. When a man gets the protection of the company provisions he should be prepared to accept the disabilities that go with them and keep him up to the mark.

1513. You are of opinion that the accounts of all companies should be audited?—I think the provision should be retained.

1514. By Mr. RODORERA: For the average private company, what would that involve?—It is impossible to say. Everything depends on the type of audit carried out. It may be a cash audit, or a complete audit, or an annual audit or a continuous audit. The audit could be limited in character or cover host of operations. It might be merely an audit at the end of the year to verify the assets disclosed in the balance sheet.

1515. By Mr. ABBOTT: You think that the advantages to be gained are greater than the disadvantages to the commercial community?—I think so. In the case of the private companies to which Mr. Craig referred, the scope of the audit by agreement with the shareholders would probably be limited to a narrow sphere.

1516. By Hon. L. CRAIG: And therefore be of no value?—I do not suggest that. It would probably give even members of a family information that they found it necessary to obtain.

1517. They do not even read the balance sheets?—The information would be there if required.

1518. By Mr. WATTs: There are no private companies at present. Those referred to by Mr. Craig are registered companies under the Companies Act of 1893. Even if we absorbed private and/or proprietary concerns the clause we still would not absorb the companies referred to?—Mr. Craig suggests that most private companies are family concerns. That is not the case. Many companies that are registered as proprietary and private companies are trading concerns. That is especially so in the Eastern States, where the circumstances are not limited as has been suggested by Mr. Craig.

1519. Do you conceive the duty of those who are endeavouring to put up a satisfactory company law to be the protection of the investing public or to include also the protection of all persons doing business with companies?—I should say they must take both factors into consideration. The investing public possibly is the primary concern, but I think there should be provisions which will not leave it open to any company to do things that are improper from the point of view of the people with whom it is dealing.

1520. Yes, but is not there some obligation on the creditor to ensure that he does not stretch his credit beyond reasonable bounds? Are we going to hedge this Bill with such provisions that we place a company in the position of being examined into by every creditor without that creditor having to consider whether he get paid last month's bills or not?—Perhaps not; but at any rate we do not want to have an Act which will allow unscrupulous people to use company legislation to cloak their activities; and that is what it seems the Bill, if the provisions for auditing are omitted, will do.

1521. So you think that a private company as described by the Bill is to have an accountant as well as an auditor not because its shareholders are concerned but because the shareholder may have just enough sense to restrict his credit if he does not get paid regularly?—I think the shareholder comes into it too. The duty of the auditor is to protect the shareholder as well as the creditor, though primarily the shareholder.

1522. But private companies visualize a limited number of shareholders, do they not?—Yes, possibly; but usually one has a larger interest than the others.

1523. Yes, that is quite so?—And you want to protect the interests of the others.

1524. So, in short, you do think that the Companies Act should set itself to do something for creditors which is not attempted in the Partnership Act or in the case of private persons?—I don't think I would quite put it that way, but I feel that these provisions for the auditor are for the protection of the shareholders as well as the creditors.

1525. By Hon. L. CRAIG: Mostly the shareholders?—Yes.

1526. By Mr. ABBOTT: If the whole of the shareholders agree that an auditor should be dispensed with, do you think that would be a good provision?—It only leaves the thing open, as I have just endeavoured to indicate, to any company that is unscrupulous to dispense with an audit and use the provisions of the Companies Act to cloak its activities.

1527. By Mr. RODORERA: Some of these proprietary companies are in a very big way of business?—Yes.

1528. By Mr. WATTs: I have confined my last three or four questions to private companies, and I fail to see why there should be objection to a private company dispensing with an auditor if all the shareholders agree?—I can only repeat what I said before, that a private company does not necessarily mean a family concern. It may mean a concern that is using the provisions of the Companies Act for improper practices.

1529. What provisions of the Act?—The restriction of liability on its members.

1530. Simply the restriction of liability on its members, which every creditor knows exists, and which the records already existing in the court would show him, as regards the capital and subscribed capital and all that sort of thing, and he would know exactly what remaining liability there is on the shareholders, and he is aware that he would have to know what would be the individual solvency of the persons who hold shares not fully paid?—He probably accepts a balance sheet from this concern, and if it were an unscrupulous concern the balance sheet might not be worth the paper it was written on.

1531. By Hon. L. CRAIG: You are protecting the creditor now?

1532. The CHAIRMAN: I think we have had sufficient debate on this. I fear we are straying a little.


1534. The CHAIRMAN: Getting away from the point.

1535. By Mr. ABBOTT: Don't you think this provision will cause quite considerable expense to numerous small private companies?—I do not think the additional expense need be considerable.

1536. The accounts would have to be kept in a much better form?—That is very desirable.

1537. And the fee for registered audit would be quite an item?—I don't think it would be considerable. The fee depends, of course, on the amount of work to be done.
Clause 158, Subclause (1) (a) and (b). Disqualification for appointment as auditor: These provisions should not apply to private or proprietary companies, where it is becoming a usual and very desirable practice to utilise the auditor's knowledge of the particular business and of financial matters generally by giving him a seat on the board in what is actually an advisory capacity. The position of director gives him the necessary authority to make his recommendations effective, which is not always the case without that authority. It would be quite unwise to force the company to dispense with the services of such a man either as auditor or director, as under the circumstances outlined, the two positions are actually inter-related, and the knowledge gained in the course of the audit places the director in a position to give the best advice to the company. This benefit would be entirely lost if the appointment of another auditor is required.

Moreover, auditors are frequently appointed alternative directors or proxies for directors during temporary absence, and are admirably fitted to fill those positions; more so, in most cases, than anyone else available. This applies also to cases where banks or similar institutions desire a representative on the board of a company which is financially involved.

This particular clause provides that no person shall be qualified for appointment as an auditor to a company of which he is a director. Substantially, that is the effect of the provision. We fully appreciate the desirability, in the case of public companies, of keeping the two positions of director and auditor entirely distinct. Even in these concerns we feel that probably the auditor would be of value as a director; but the disadvantages would outweigh that consideration. So far as public companies are concerned, we are quite in accord with the measure as it stands; but as to private and proprietary companies we feel that the auditor should be capable of appointment as director. That is a practice which is growing. The general trend is to have a financial man on the board of a company, and there is no financial man who knows more of the company's affairs than the auditor himself does. If his appointment to the board is to disqualify him from being auditor, he immediately loses a good deal of his value as a director, because there is information in his possession, as auditor of the company, which enables him to be of the most value to the company on its board. If a separate man is to be appointed as auditor, the man on the board ceases to have that close touch with the books and accounts of the company which he has as auditor; and moreover the expense will be duplicated.

1558. By the CHAIRMAN: Is there a precedent in the legislation in the Eastern States along the lines on which you have spoken?—The South Australian Act makes provision for the employee of a director to be an auditor of a private or a proprietary company, but that is not quite the same thing. When this matter was discussed yesterday we suggested that the provision could be extended to proprietary companies as well and to include the partner of a director. If an employee of a director is eligible for appointment as an auditor, surely a partner should be equally eligible. Then if you are to go that far and you agree that the man best qualified should fill the position of director, an auditor should be given power to accept such a position.

1559. By Hon. L. CRAIG: You think it should be compulsory to have an auditor for a private company and that he may also be a director?—Not necessarily, but only if that is desired.

1560. You have a man who is keeping your books to-day and he can be your auditor. You appoint that man a director, which is often done, so your accountant becomes a director and he can also be your auditor?—I do not know that that necessarily follows, but, in any case, that is a different point altogether.

1561. I do not see that. In a private company the man who keeps the books is often a director of the concern.—That is so. The accountant can be a director of a company. There is no objection to that.

1562. And you say the director should also be allowed to be the auditor?—Yes, that frequently happens to-day.

1563. And that man being the accountant as well you would override the provisions of Clause 158?—We do not ask for that.

1564. That is in effect what you suggest?—No, not at all.

1565. But under your suggestion it would be possible for an accountant to audit his own books?—The fact that the accountant may be the director of a company does not necessarily mean that he would also be the auditor.

1566. He may be?—But not necessarily.

1567. By Mr. ABBOTT: You ask for that?—We do not.

1568. By Mr. WATTS: You say he shall not be disqualified?—That is so.

1569. By Hon. L. CRAIG: But that would be one effect of your suggestion? The accountant could be a director and could be appointed as auditor?—I do not think that has anything to do with the point. The fact that you say the accountant may be a director does not mean he must be the auditor.

1570. But you could appoint him to the position of auditor. Supposing a private company wanted to evade the necessity for the auditing of its books?—The accountant need not be a director to accomplish that end. If a private company appointed its auditor one who had written up portion of the books, the fact that he happens to be a director would not enter into the question.

1571. Let me put it to you this way. John Smith keeps the books of a private company. The legislation is introduced and becomes an Act of Parliament. As it contains what now appears as Clause 158 the necessity arises to appoint an auditor and the directors go to John Smith and say, "You are a director and auditor for our company?"—Why should that be said to him?

1572. To avoid the necessity for an audit of the books?—Why not?

1573. By Mr. WATTS: That would carry into effect your suggestion regarding the accountant who could be a director and might be the auditor?—I think you quite misunderstand the proposal. It is not the connection between the man as accountant and as director and that the man has to be an auditor merely because he keeps the books. That is not the idea.

1574. By Mr. ABBOTT: But that position could be carried into effect if you were to accept it?—Whether that proposal be accepted or not would make no difference to such a position.

1575. Yes it would, because if a man were a director of the company he could be the auditor as well.—He could be the auditor if required. Most accountants who have charge of the books are not directors of the concern, but they could be appointed directors.

1576. By Hon. G. FRASER: The point that is being made is that with the adoption of your suggestion a man could be the accountant, one of the directors and the auditor?—I do not say he could become an auditor.

1577. But he could with the amendment you suggest?—I fail to see that that would be done.

1578. By Hon. L. CRAIG: But there would be nothing to prevent such a man being the auditor?—I do not think the point is whether a director should also be an auditor, but whether the man who is the auditor should keep the books. If you suggest that the auditor should not be the man who keeps the books and would therefore attend his own books, I do not think so either.

1579. In small companies to-day the accountant is often a director?—That occurs in a minority of instances.

1580. No, it happens in many instances. If a man happens to be the accountant and a director of a company, under your suggestion he could also be appointed the company's auditor. Is that not so?—Yes, under those conditions, but I think the introduction of the accountancy factor is quite extraneous.
1561. By Mr. WATTS: In our discussion of Clause 158, if we accept your view as a satisfactory solution, that must lead us to the conclusion that all companies, including private companies, should require an external auditor?—I think that is so, but I do not suggest that it would be proper for the man who is the accountant of a company to be the auditor of its books.

1562. Then if we adopt your suggestion and have regard to Clause 159, your position is that the auditor should be one who is not a member of the board of directors of the company?—Yes.

1563. On the other hand, you raise the presumption that there are, in your opinion, neither dishonest nor incompetent or partially incompetent auditors?—But you have the necessary protection regarding the people you register. We propose that there shall be a board to register these people and that registration shall be limited to those possessing adequate experience and known qualifications that are apparent by virtue of their membership of one or other of the institutes.

1564. Have we not had registered trustees under the provisions of the Bankruptcy Act and has that proved a complete cure for dishonesty?—No. Unfortunately; but we suggest better conditions under this measure.

1565. And you would contend it would be absolutely impossible for some people to appoint dishonest auditors under this provision?—I would be foolish to suggest that because men are human beings and they do go astray. We find that in all professions, even amongst barristers, and they have tight enough regulations.

1566. By the CHAIRMAN: Then you are not in favour of a secretary or accountant of any company acting as his own auditor?—No.

1567. By Mr. ABBOTT: You say that many private companies would be large trading concerns?—Proprietary companies.

1568. And private companies? Do you think in such cases what you suggest is advisable?—Yes, I do. Shareholding is limited to a smaller number and holders are in a better position to see that a man is not appointed a director if he is going to be influenced by the board.

1569. By Hon. G. FRASER: There would be greater opportunities for fraud in smaller companies?—Not if they were debarred from registering as auditors. What we seek to do is carry out the Act, and it is a growing feature to increase the internal check to such an extent as is consistent with safety.

1570. By Mr. ABBOTT: Do you think that auditing is of sufficient importance to justify its being done by a registered auditor?—Certain features of it, yes. Audit work has gone a long way beyond checking a few figures. That part of the work can be done by anyone, but there are many features that can only be done by people of experience and with the necessary knowledge.

1571. If an auditor may employ others to do a portion of his work, why should not an employee of a company be permitted to do portion of the auditing?—Because a company takes no personal responsibility. It is an indefinite body which has no hide to kick. With regard to paragraph (d), this provision might operate unfairly, and should be deleted, that there are adequate provisions existing to ensure that auditors will carry out their duties. The paragraph reads—'

‘Any person who is, or becomes indebted to the company in an amount exceeding £50.’ At third, we should decline to suggest a larger amount; but, on thinking the matter over, we felt it unnecessary to include in the Bill a provision of this kind, for the reason I have indicated. One must bear in mind that there are insurance companies, where the amount of the indebtedness might well be in excess of £50 or even £500. There is also the possibility of an auditor purchasing a motor car from a motor car company for whom he acts as auditor. He would naturally want to buy a car from that company. The same remark may apply to a house-building company. Other instances could be mentioned. In our opinion, such a provision is not required to ensure that an auditor will not be influenced by Clause 160, with this exception, that we suggest the addition of a further subclause, Subclause (9), on the lines of Section 133, Subsection (2), of the Victorian Act, reading—'

In case of a company which has branches outside Victoria, it shall be sufficient if the auditor is allowed access to such copies and extracts from the books and accounts of any branch and such returns as have been transmitted to the office of the company within Victoria.

That would oblige the auditor from the necessity of examining the branch books, which is quite impracticable. We think it desirable that the Bill should contain such a provision.
their duties would it not be better to use the words "as he may reasonably require" ?—Yes. It must be left to the auditor to decide, not to the directors.

1586. The auditor must be given authority to decide what is necessary—I think that is implied, but it would be well to make the provision quite clear. We now pass to Part XI., Foreign companies. With regard to Clauses 347 and 348, we suggest that to avoid confusion there should be a definition of the term "carrying on business." It is understood there has been some uncertainty in other States as to what constitutes carrying on business; for example, would the appointment by a foreign company of a buying or selling agent in this State be regarded as "carrying on business" ? I understand that New South Wales—although there is no specific provision in the Act of that State—has adopted an interpretation that the mere appointment of a buying or selling agent does not constitute "carrying on business" by the company; but if the company carries consignment stocks or opens an office in its own name, that would constitute "carrying on business." The position should be clearly defined, otherwise considerable confusion may arise.

With regard to Clause 349, no provision has been made for public holidays. Moreover, the clause should be brought into line with Clause 350, Subclause (3), governing companies other than foreign companies. This provision requires that the company's registered office shall be accessible to the public for two days weekly. A foreign company is required to keep its office open five days a week, but the ordinary company is required to keep its office open for only two days a week. We think these two provisions should be brought into the same category, and that provision should be made for public holidays, especially for periods like Christmas and Easter. With regard to Clause 354, why should foreign companies, particularly those concerned only with the purchase and sale of goods, be required to post their balance sheets when local companies are not required to do so? The provision seems unnecessary. It has been the practice of banks and insurance companies to post up a copy of their balance sheet in their offices, but we cannot see any particular reason why they should do so, or why a trading company should.

1581. By Hon. G. FrasER: In your opinion, the provision serves no useful purpose.—Yes. With regard to Subclause (4) we suggest the deletion of the words "private or proprietary," so as to bring the clause into line with the recent South Australian amendment.

1582. Does that mean that a foreign company must file its balance sheet?—It means that a foreign company which is a private or proprietary company would not be required to comply with this provision. Ordinary private companies are not required to file their balance sheets. We suggest the provision should be struck out.

1583. By Mr. ABBOTT: How would you know whether a foreign company was a private or a proprietary company?—The memorandum and articles of association would, I think, determine that point. A foreign company must register in this State as a foreign company and also, I presume, as a private or as a proprietary company.

1584. By Hon. J. CRAIG: There are private station companies in Victoria and New South Wales.—There are many private companies in the Eastern States trading here, and they will be registered here as foreign companies, but there is no reason why they should not be given the same privileges as local private and proprietary companies.

1585. By Mr. ABBOTT: There may be Fiji companies that are called private but are not within the definition?—It will be necessary for their circumstances to be such as to bring them within the terms of our Act.

1586. By Mr. WATTS: As foreign companies, they would be able to register within the provisions of the Western Australian Act for private and proprietary companies, or else be regarded as public companies?—Exactly.

Paragraph (ii) (b) provides that every company to which this part of the Act applies shall carry on the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads, letter paper, notices, advertisements and other official publications of the company. Apparently it is not required to be done in the case of foreign companies.

1587. By Mr. ABBOTT: If a letter was posted in Victoria and addressed to you here, how could you make it conform with the regulations?—It would be difficult unless the company is responsible for the fact that a letter has been sent at all. It is true its property, appears in the State in that form. However, we are not seriously concerned about the matter.

Clauses 370 and 376. Local register to be deemed part of company's register of members; and local register to be evidence: It is suggested that it would be better if these two clauses were in sequence.

This is purely a drafting matter.

Clause 378. On issue of new shares or debentures State members' proportion to be reserved: The period of two months is considered unnecessarily long and the period provided should, it is suggested, be that allowed to shareholders in the State or country of origin with a minimum of one month.

This refers to issues of debentures or additional shares by a foreign company. The Bill provides that the company shall give two months' notice to shareholders in this State of any such issue. We feel that probably adequate notice is required, but if it is given a longer period in its own State or country, the same length of time should be allowed to shareholders here.

1588. By the CHAIRMAN: There will be no adverse effect if the clause remains as it is?—It is only a matter of whether two months is not an unduly long period.

1589. There would be no detrimental effect?—The issue might be held up a little longer.

Clause 380, Subclause (1). Notice of any right or option accruing to members to be given in Gazette and their rights to be observed. This will require a similar amendment.

Clause 382—Interpretation: It would be more convenient to have the Act if this clause were placed at the commencement of Part XI., instead of at the end.

Clause 429—Miscellaneous registration of persons qualified to act as auditors or liquidators: Clause 399, Subclauses (c) and (d), provide that members of the Stock Exchange can be registered as share-dealers on application. A similar privilege should be extended to practising accountants who are members of reputable institutes and who, to become so, are required to qualify by examination which is not necessary in the case of the Stock Exchange. We appreciate that in addition to examination qualifications, a man to be competent to act as auditor or liquidator must also have practical experience and we suggest, therefore, that the right of registration on application be restricted to members of one of the recognised institutes (to be scheduled) who—(a) have been in public practice on the spot or in the immediate vicinity of the place of application for at least two years immediately preceding the date of application; or (b) After having been admitted to one of the institutes named have been in the employ of a public accountant for not less than two years immediately preceding the date of application. This proposal will mean the automatic registration on application of all those who are qualified by examination and experience.

In the interests of the commercial community and of the public generally we regard the experience qualification as essential and, therefore, as regards all applicants other than those entitled to automatic registration as above, we consider that to ensure the necessary qualifications it will be preferable to have a board of experienced men to deal with registrations. We consider that a board comprised...
as in South Australia would be the most suitable. Only persons who are in practice on their own behalf as public accountants should be eligible to apply.

The institutes referred to above are:—The Chartered Institute of Accountants (in Australia) of the Commonwealth Institute of Accountants, the Federal Institute of Accountants, and the Association of Accountants of Australia.

There are two points in connection with Clause 42 which is the question of the automatic registration of people now in practice, and secondly, the question of applications from people who are not now in practice or who do not fall within the automatic definition set out in the Bill. We feel that those who have been in practice for the last two years, or who have been qualified by examination and have been in a public accountant’s office for two years, should be capable of carrying out the work of auditors and liquidators, and are entitled to automatic registration, just as a member of the Stock Exchange who is in his position virtually by payment of a sum of money. The conditions under which a man can be admitted to the institutes named are such as to ensure that he is of good character and he must have had, in the case of the Chartered Institute, a good deal of experience before being admitted, and must have passed certain examinations which are reasonably strict. We feel that, having done all that, he should be entitled, without having to go before any body and set up his qualifications, to automatic registration; in other words, continue to carry on his job.

1590. By Mr. ABBOTT: Do you think that a member of the Stock Exchange or a share-broker should be a director or a non-responsibility company?—I have not considered the matter.

1591. Would you like to express an opinion?—Not without giving the subject more thought.

1592. By Mr. WATTS: Your proposal means that a person, although a member of one of the institutes to which you have referred, would not be qualified to act as an auditor to a company unless he had been in practice on his own behalf for so many years.—He would not be entitled to automatic registration, but he would be entitled to apply to the board for registration and, if the board considered that he had sufficient qualifications, he could be registered. There is a difference between automatic registration and subsequent application by people who we consider are not at the moment qualified.

1593. There is no such provision as this in the English Act?—No.

1594. There, I understand, large concerns have auditors continually employed who are not capable of being dismissed in the ordinary way except by resolution of the shareholders, much the same as the Auditor General cannot be dismissed by the Government; a resolution of Parliament would be necessary. Those men conduct the whole of the audit right down to the presentation of the report on the balance sheet and the profit and loss account. Would there be any objection to such a practice in Western Australia?—No, but I do not think the occasion would be likely to arise because none of the concerns here is large enough to warrant such an appointment.

1595. At the moment that may be so, but are we always going to struggle along with our Companies Act in anticipation that it will be amended only when Western Australia develops?—Most likely it will be amended only when Western Australia develops.

1596. We feel that such a board would be more desirable than the provision in the Bill which requires applicants to apply to the court. A board of that kind would be in a better position to determine whether a man possessed the necessary qualifications to act as auditor. It is not altogether a matter of his having the knowledge; it is a matter of his having the necessary experience behind him.

1597. Have you any idea what an application to the court would be likely to cost? You might be able to gauge it by your knowledge of applications for registration as auditors under the Bankruptcy Act?—I have no idea what the cost would be.

1598. Do you intend, by this proposal, that those persons who do not get automatic registration but are registered by the court should be confined to those who belong to one of the institutes?—They would be entitled to be registered, not merely for the matter entirely for the court or for the board to decide. It would not necessarily be so. A chartered accountant might come from England and he might have ample qualifications for registration. I suggest that registration be limited entirely to members of the institutes. At the same time it is improbable that you will find anyone outside the institutes possessed of the necessary qualifications. This is the natural course that a man follows when he takes up the profession of accountancy. He passes his examinations and is admitted as a member of an institute.

1599. By Mr. ABBOTT: Are English chartered accountants usually granted admission to local institutes?—They would be entitled. There are many bodies overseas that have not the same status as the chartered institute of England. It would be a matter for the man to establish his credentials before he was eligible. That is the point the board would have to investigate. Trustees have to make application to the court, and I think it is the Registrar in Bankruptcy who recommends or otherwise, but the qualifications of a trustee are more or less limited to a knowledge of the Bankruptcy Act. That is not so in the case of an auditor, and that is why we think provision should be made for a board rather than the court to determine this matter. The board would be in a better position to assess a man’s qualifications as auditor than the court would be.

1600. No one would allow you to do so. You stipulate experience in public practice on their own behalf to two years. A man might have been in practice on his own behalf for two years and have gained experience in handling the affairs of a big company, and yet he would be as much entitled to registration as you, who I know have had many years’ experience, would be?—Yes, but we cannot block everything.

1601. My suggestion is that you presume the examination is sufficient?—You would be quite wrong in presuming that.

1602. It is generally so regarded in other things. How would it be to leave the persons who employ auditors to satisfy themselves as to the desirability of employing a particular person?—I do not think it would be wise. The main purpose of the measure is to
provide safeguards, and one of the biggest safeguards you contemplate is the examination of accounts by a qualified man. If you leave it open to a company to appoint someone who has only the sketchiest knowledge of business accounts, it is likely to nullify the very protection you are trying to provide.

1603. Two years' practice might, in many instances, have brought with it but little knowledge of company affairs.—That may be so, but it would be too restrictive to make the period unduly long.

1604. By Hon. L. CRAIG: In practice, a qualified man is appointed to do the audit, the work in effect is done by that man's employees.—Under supervision.

1605. That supervision could be either lax or effective. The work is still done by the employees.—A qualified man in charge of the auditors and he is down a programme to be followed, indicates what investigations have to be made and takes the responsibility for the work done by the employees. He sees that the work is done. By providing for two years' practice, you establish the position where a man has something behind him by way of experience. He has a business he would be loth to lose. If you leave it open to any member of these institutes to conduct audits, you could have a set of people who at present are occupying the post of clerks, and who have nothing to lose except their appointments. They would have no real responsibility.

1606. By Mr. RODOREDA: Do you not think it advisable, on your own showing, that every applicant should go before the board? Very little expense would be involved in that.—I see no necessity for putting people to that trouble or expense.

1607. By the method you suggest, you leave open the possibility of incompetent men being engaged in the work. Experience extending over two years would not necessarily qualify a man to act as auditor.—If a man has practised for two years as a public accountant, and there is nothing against his character, I do not think the board would decline to accept him.

1608. Of what use would that procedure be if the board were to register everyone who came along? Those who had the necessary qualifications should be automatically registered.

1609. By Hon. THOMSON: Those who are now carrying on the business ought to be accepted.—Yes. We do not say that because a man is a member of these institutes, he must be registered, but if in addition to that he has the necessary experience, he should be accepted.

1610. By Mr. RODOREDA: Who would assess the value of the experience he has had?—If a man has had two years' experience, he must have some qualifications.

1611. By Hon. A. THOMSON: Those who are at present practising in the country would automatically be registered.—I see no reason why they should not be. Why should they have to apply to the board for permission to carry on a business they have been carrying on for 20 years?

1612. By Mr. WATTS: You contend that experience before an examination is a qualification. That has been proved in many instances. What about the people who have been in practice for 10 or 15 years but did not pass an examination at the time?—They could go before the board, and if they established their qualifications, they would be registered, but would not be entitled to automatic registration. Generally speaking, those who are outside the institutes are people who are not capable of getting into them, because they have not the necessary qualifications.

1613. By Hon. L. CRAIG: Some people were practising before it became necessary for them to join an institute.—They have been taken in. In the early days any reputable person who was already practising was taken in without examination.

1614. By Mr. WATTS: But to-day everyone must pass an examination before being admitted.—Yes.

1615. They would be compelled to pass an examination?—Yes, if they wished to join an institute. We have no wish to exclude any persons who are qualified.

1616. THE WITNESS: I continue with Clause 423—Subclause (2), Registration of persons qualified to act as auditors or liquidators: No bond should be required in the case of auditors, as they will not be handling trust funds. As regards liquidators and receivers, provision should be made that they be required to establish a bond only if requested by the court, for the protection of the creditors, and not in the case of a man who may be at the time of appointment or subsequently. This is desirable, as most practising accountants will wish to be registered as liquidators, but in view of the paucity of liquidations, it is unreasonable to expect them to pay a bond fee annually when they may have no liquidation work in hand. In any case, where a bond is required the cost should be borne by the company.

We feel that is reasonable, because there will be supervision over the persons appointed. They should be people of repute, and in cases where the court or the shareholders or creditors, as the case may be, consider a bond is necessary, the company should be asked to meet the cost of that. It is not reasonable to ask a man merely because he is registered as a liquidator to take out a bond and pay an annual premium when in fact there may be many years in which he does not handle any liquidation work at all.

1617. By Hon. L. CRAIG: The Bill says the court may require a bond if it thinks fit. There may be special circumstances in which the court would say that there must be a bond.—We are not in the position where the court should not have to be taken on the lines of the Bankruptcy Act in the case of trustees.

1618. By Mr. RODOREDA: If the man was not registered, he could not act.—No. He would need to be registered.

1619. By Hon. L. CRAIG: Every registered liquidator must take out a bond?—We suggest that is not necessary.

1620. In ordinary cases, certainly not.—Nor do we think that auditors should be required to take out bonds, seeing that they do not handle trust funds.

1621. By the CHAIRMAN: There might be a case where the court would accept him without a bond, and would we require them to pay a bond?—In that case a bond would be quite unnecessary.

1622. It would depend on the size of the bond and the business, of course.—Yes. In cases where a bond is required, we think it only right that the company should bear the cost.

1623. Does this provision apply in the case of any other Act?—I do not know of any other case where a bond is required, except under the Bankruptcy Act. In that case, the trustee bears the cost. But it is a rather onerous provision. The bond required is for £2,000, and the cost varies, I think, with different companies from £7 10s. to £10 a year. That is quite a substantial amount to ask a registered man to pay when he may not be handling any business.

1624. Quite so. The only thing is to guarantee his honesty.—That is so; but if he is not handling any business, it is hardly fair to ask him to pay an annual fee of that description.

Clause 423: Only registered persons to act as auditors or liquidators: Provision should be made for firms of public accountants to be eligible for appointment as auditors provided all resident partners are registered. This is important to safeguard the interests of firms who have been practising for years under the firm name.

There are many cases where the actual partners who conduct audits have not their names included in the name of the firm under which they practice. Their firm name is a valuable asset so far as auditors are concerned, and they feel that they should be eligible to accept appointments in the names of their firms, provided all the resident partners are registered auditors.

That protects the position. We think that position might be preserved. In this connection there is another point—

The term "authorised auditor" is used as well as the term "registered." We suggest that "authorised" be altered in all cases to "registered." "Registered" is a more appropriate term.

Clause 426, Subclause (1): Qualification for registration as auditors or liquidators: Insert after "body corporate", "nor any director nor employee thereof."
This follows on the lines of a similar suggestion made in connection with an earlier clause. We suggest that some proviso be added here as was suggested for Clause 159, Subclause (3).

1625. By Hon. L. CRAIG: Then you agree with Subclause (2) of Clause 426?—I am just coming to that.

Clause 426, Subclause (2): We suggest that this be altered to read: "Any person who is in practice on his own behalf as a public accountant and who has attained the age of 21 years, is of good character, and is competent to act as liquidator of companies, may be registered as a liquidator if approved by the board." That is on the lines of the suggestions I put forward this morning.

1626. By Hon. L. CRAIG: What action do you take with regard to former members of recognised institutes of accountants who for, say, non-payment of fees, or some other reason, have ceased to be members of those institutes? Would you say that such men should be registered automatically?—Do you mean men who had formerly been registered?

1627. By Hon. L. CRAIG: What action do you take with regard to former members of recognised institutes of accountants who for, say, non-payment of fees, or some other reason, have ceased to be members of those institutes? Would you say that such men should be registered automatically?—Do you mean men who had formerly been registered?

1628. They need not necessarily have been registered at all?—If not registered at all, we suggest that they should not be entitled to automatic registration, but should have the right to approach the board for registration. If they had been registered but had subsequently ceased to be members of an institute, we could not do anything about it.

1629. You do not intend to make use of this provision to keep up the membership of accountancy institutions?—No.

1630. It would have that effect?—I do not think so.

1631. They would have to pay an annual fee—Yes, but I do not think the adoption of what we have suggested would make any difference to institute membership. We are not looking at that at all. The only reason we suggest membership of an institute as a qualification for automatic registration is that we think we have definite pointers regarding suitability for registration in three factors. The first is that membership demonstrates qualification by examination. The second point is that it is an indication of character and repute, for members are not admitted unless they can produce a sufficient number of adequate references to demonstrate that their admission is warranted. The third point is, in the case of the chartered institute at any rate, experience as well.

1632. In your reference to membership, do you include associate members?—Yes, and licentiates as well.

1633. By Mr. RODOREDA: Reverting for a moment to your earlier comments on Clause 425, in which you suggested that the term "authorised auditor" should be altered to "registered auditor," perhaps you have not noticed that the interpretation clause contains a definition of "authorised auditor"?—I had not noticed that, but I see that the terms mean much the same thing. In any event, that is only a matter of drafting.

1634. Still, if we adopted your suggestion, it would involve much alteration?—Quite so.

Schedules—Fourth Schedule: Page 323 of Bill. To bring the wording into line with other parts of the Bill, for example, with Clause 55, Subclause (1) paragraph (b), we suggest amending the fourth paragraph by deleting the words "the amount as certified" in the third line, and inserting in lieu thereof the words "a report," and by inserting after the word "audited" in the fifth line the words "as to the amount.

This schedule concerns the form of statement in lieu of prospectus to be delivered to the Registrar by a proprietary company or a private company on becoming a public company. Among the details required to be included in the statement is the following:

If any of the unissued shares or debentures are to be applied in the purchase of any business, the amount as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement . . . . and so on. We suggest that that paragraph should be altered by the amendments we have mentioned.

Sixth Schedule: As regards the forms of balance sheet, I refer you to our comment in Clause 149, Subclause (2), which suggests that the adoption of the form be left optional. This schedule deals with the form of balance sheet which it will be compulsory for all companies, other than banks, to issue. In my previous evidence I suggested that a formal balance sheet of a stereotyped description should not be prescribed as compulsory, but that the matter should be left optional, as in Victoria. This suggestion is in line with my previous evidence.

1635. By Mr. WATTS: Do not you think uniformity would be better served by using a specified form, as outlined in the Bill?—I do not think it practicable.

1636. Would you not sooner recommend some other form rather than leave it optional?—I do not think it practicable to formulate a balance sheet that will be used in all businesses, because conditions vary so much. For that reason, it is not desirable that people should be prevented from preparing balance sheets along standard lines. Certain provisions are contained in the Bill for inclusion in the balance sheet.

1637. I am referring to the form in the schedule?—I know.

1638. Do you think it would be better to leave it out?—I do not think so.

1639. By Hon. L. CRAIG: Do you think that any of the information which is not set out in the Bill itself but is included in the schedule, should be compulsorily included in the balance sheets? The point I make is that if you leave out the schedule, the only matters that must compulsorily be included in the balance sheets will be those matters mentioned in the Bill?—That is so. I think there is provision in the measure for all the necessary details to be included.

1640. By Mr. WATTS: Is the form in the schedule impracticable from your point of view?—As it stands there will have to be provided information which appears in all balance sheets. I consider it is unsuited to restrict it.

1641. By Hon. G. FRASER: You think that there are other matters that could be included?—The form does not include all items that have to be shown.
1642. By Hon. L. CRAIG: Such as what shares have been paid for in cash and what shares have been issued as fully paid—I cannot at the moment recall all the items, but I know they are not all here.

1643. The Chamber of Commerce suggested that we should follow the Victorian Act—it is optional there. There should be a line drawn between fixed and floating assets. I do not think you should lay down anything hard and fast here, as you have attempted to do.

1644. By Mr. WATTS: There are two alternatives; either have a form or have none. Could you supply us with the omission or the details? If the committee decides to have a form we should have one that is satisfactory, or have none at all—I would prefer to see the position covered by a provision in the measure as to the break up of the assets between fixed and floating rather than have a form laid down.

1645. Could you supply us in writing with what you suggest in that direction?—Yes, I will do that. From memory I think the Victorian Act covers the ground very well.

1646. By Hon. L. CRAIG: Is it not in accord with accountancy practice to value stock at cost or market value, whichever is the lower?—Yes.

1647. Would it be of any advantage if it were made compulsory to do that?—I do not think it would be desirable.

1648. Stocks could be written up to an inflationary value which would not disclose the true position. Certain stocks may be shown on the assets side at a greater value than the actual value or shown at cost, which may be greater than the actual value. Would it not be of some advantage to insist that in this respect accountancy practice should be carried out?—You could provide that the value should not exceed cost or market value, whichever was the lower value. I would not like to see you limit it the other way.

1649. What you say would allow you to put the stock in at cost or market value, whichever was the lower? Would you agree that that should be made compulsory?—There would be no objection to providing that the value should not exceed the lower of the two.

1650. It might solve a lot of problems to-day. There are trust companies which may be holding a great number of shares at cost, say £1, and the market value of which is say £10. Personally I would have no objection to such a provision.

1651. By Mr. ABBOTT: There seems to be an enormous amount of information to be filed. Having in view the labour that would be entailed do you consider that what is suggested is warranted; in other words, the fact that a few people might derive an advantage which would be outweighed by the burdens that would be imposed on others?—I cannot see that there is much to be gained by the return form at all. It is in the old Act to a modified extent. I suppose it is useful to people like the Trade Protection Society; but when you consider that what they are looking at may be 12 months old, it probably will not convey much to them.

1652. By the CHAIRMAN: How do you account for such a provision appearing in the legislation of the other States and the United Kingdom?—I do not know. I suppose there is some reason for it.

1653. By Mr. WATTS: Would you suggest that it was building up overheads and the cost of distribution?—Yes, and create a great amount of work in the Registrar’s office.

1654. And although in some cases it may be of benefit to the community, generally speaking it will be an additional and useless overhead charge?—I agree that it is so. Before I conclude I should like to suggest that there should be a comprehensive index to this Bill. Just one instance that I call to mind. One part of the Act is headed “Foreign Companies.” People may be led into a trap by reading what is there and failing to find what appears elsewhere in the Bill.

ALLAN MARTIN, of Perth, Chartered Accountant, examined:

1655. The WITNESS: I am representing the Trustees and Liquidators’ Association. I understand the committee wishes the questions to be dealt with expeditiously.

Clause 217, Subclause (2) (d): It is thought that this subclause might be clarified. What is the meaning of the word “officer” in the third line?

We have an idea what it means, but the provision strikes us as being involved. Mr. Abbott, with his legally-trained mind, might be able to throw a little light on the provision, which reads (omitting certain words)—“who are . . . officers of a company which is . . . an officer of the statement relateth.” It may refer to a company which might be acting as a liquidator. We do not know what meaning to give to the words “of the company.” Dealing with Clause 222, Subclause (1) (e), Powers of official liquidator, this clause conveys a power with the sanction of the court or committee of inspection “to pay any class of creditors in full.” In view of the preference provisions provided elsewhere, it is recommended that this clause be deleted. We were surprised to find this provision in the Bill. In our opinion, it would be an onerous duty to throw upon a committee of inspection such a determination, as the priority provisions elsewhere contained in the Bill are comprehensive.

1656. By Hon. L. CRAIG: There are wages and salaries.—They are provided for. There is a further reference in my evidence to these priorities; but the priorities set out in the Bankruptcy Act are admitted to be equitable and comprehensive and they cover the question of the distribution of the assets of a company. This provision, however, is entirely different; it is to pay “any class of creditor.”

1657. After the priorities have been satisfied?—It is a question of interpretation who shall receive the priority. It is provided that the official liquidator shall have power, with the sanction of the committee of inspection, to pay any class of creditors in full. The question is whether that sanction shall be in priority to the other provisions. This is an important point.

1658. By Hon. G. FRASER: It may be linked up with them?—Yes. We say definitely that the clause is obscure, unless something can be submitted as a reason for it. The Bankruptcy Act contains a power, on certain notice being given and certain formalities being complied with, to pay any particular class of creditors, or any particular creditor, outside the normal priorities.

1659. By Mr. RODOREDA: This provision is contained in the present Companies Act?—No. There are only two priorities in the present Act of which we are aware.

1660. I refer to Section 183 of the Companies Act. —What does that say?

1661. The liquidator may pay any class of creditors in full?—That has never been implemented. The only preferences to which effect is given in a company liquidation are, first, Crown debts, and then wages and salaries.

1662. By Hon. G. FRASER: This may be a power to permit of its being done?—We think the provision unnecessary. There should not be such power in view of the priorities elsewhere provided, which are comprehensive.

1663. By Mr. ABBOTT: The Bankruptcy Act provides for these priorities?—It provides for certain preferences as approved by a resolution of creditors, after due notice has been given, that such priority, along with others, is imported into this Bill by a later provision.

1664. I doubt that.—See Clause 290.

1665. By Hon. G. FRASER: Although the preference is provided for, the liquidator may not have power to pay?—But the provision is “to pay any class of creditors in full.”

1666. Yes, but in another part it is stipulated what the first charges shall be.—Clause 289 provides, “Except so far as is otherwise enacted in the winding-up of an insolvent company the same rules shall prevail
and be observed with regard to the respective rights of secured and unsecured creditors . . . as are in force for the time being under the law of bankruptcy."

1607. By Mr. ABBOTT: The provision to which you refer is not one dealing with priorities?—No; it is to enable a special priority to be given for a particular purpose, for instance, in the case of current supplies. That power is contained in Section 84 (1) (j) of the Bankruptcy Act, and can be applied here in view of the general importing of these priorities. Is that not so?

1608. I do not think so?—The Bill provides that the provisions as to priorities contained in the Bankruptcy Act shall apply.

1609. By Hon. L. CRAIG: You wonder whether Subclause (3) over-rides Clauses 289 and 290?—Yes, or conflicts with them. If it is supplemental we think it is unnecessarily so. That is all we wish to say on the point.

Subclause (4): It is considered that this restriction of sale will adversely affect realisation in the liquidation and it is recommended that the subclause be deleted.

The submission of a duly audited balance sheet may take a very considerable time and the realisation of certain assets would be prejudiced by such delay. We consider that such restriction will militate against the most beneficial realisation. If there were a big quantity of potatoes it was desired to sell and it was necessary to wait for some months, as is the case sometimes, to get the accounts of a limited liability company accounted for, serious loss might arise.

1610. By the CHAIRMAN: That might apply to the sale of anything?—Yes. It is considered however, that to assure a correct recording of all assets and liabilities of the company, provision should be made for the audit of the company’s accounts right up to the date of liquidation. We do not perceive that the Bill makes any special provision for the auditing of accounts up to the date of liquidation. It is provided that there shall be an audit of all final accounts, but we cannot find there is an obligation for the accounts to be brought up to date and audited up to the time of liquidation.

1611. By Hon. L. CRAIG: In ordinary bankruptcy the accounts would be in such a position that the liquidator would have to bring them up to date?—Yes, very frequently.

1612. Having done that and passed the accounts, he goes on to the liquidation?—Yes. The reason behind our suggestion is that frequently accounts up to a final audit are in a fairly good shape, but the trouble is, when things have become serious, the executives of the company have lost interest and the accounts have got into very bad order. We think there is all the more occasion for an audit of the accounts in those circumstances.

1613. By the CHAIRMAN: Is it a protection to the liquidator to a certain extent?—Yes, but we are not concerned with the protection of the liquidator. As liquidators we are quite prepared to carry due responsibility, but there should be an audit in the interests of the public.

Clause 226. Subclause (3): Audit of liquidator’s accounts: It is recommended that a time limit of 12 months be provided within which the audit should be conducted.

At present accounts can lie indefinitely during which time no check is made on them and it is thought that a liquidation should be effected by the Registrar within a certain limit.

1614. By Hon. G. FRASER: Have you known it to go over the 12 months?—We know that in the case of the Bankruptcy Act the administration has called on certain estates several years after realization when the trustee may perhaps be not available and when certainly the circumstances of the realisation have become vague in his mind.

Subclause (5): The accounts having been audited and then being available for inspection, in view of the fact that a final copy of the liquidator’s realisation account is sent to creditors before the final dividend or on the finalisation of liquidation, it is considered that the circulation to creditors of a copy of the audited account is not warranted. This is more so as by the time accounts are audited many creditors may not be available. It is recommended that this subclause be deleted.

The liquidator sends out final accounts, a copy of which he files at the court. He sends them out with the final distribution—the last dividend. After an indefinite period he would then be required to send out another copy of the accounts now audited to the creditors. It is only in very remote cases in which creditors would be interested in these audited accounts. By that time they would have cleaned up their accounts.

1615. By Hon. L. CRAIG: Would it be possible for an auditor’s certificate to go out with the final payment and copy of the balance sheet?—Only if provision is made in the Act. We are not asking for it, but we do not mind if it is there.

1616. Do you think it would be advisable? It would satisfy the creditors that was the final balance sheet and the final payment and they would have the auditor’s report saying it was all correct?—I do not think it is necessary, because final accounts go out on the final liquidation and if anything arises in the course due publicity will be given to it. Is anything wrong in the trustees’ or liquidators’ accounts, it is brought to the commercial public’s notice, and any creditors interested could be made aware of it and be advised by the court officials.

1617. Would they be?—I feel certain they would be. In the course of the inquiry the creditors’ notice would automatically be drawn to any impropriety in the liquidator’s account.

1618. I am not suggesting that there would be any impropriety, but there might be a mistake and if a certificate went out with the final payment and statement of affairs the creditor would be satisfied that that was the final payment?—I do not think it would have any practical value.

Clauses 243, Power to order costs of winding up to be paid out of assets; 289, Application of bankruptcy rules in winding up of insolvent companies; 289, Preferential payments: The comments are as follows:—Clause 289 provides for a distribution of the assets of the company in the order of priority laid down by the Bankruptcy Act. Section 84 of the Bankruptcy Act is considered to be quite comprehensive, for which reason Clause 289 of this Bill is thought to be superfluous and its deletion is recommended. For simplicity, and, further, in view of the consideration that in the bankruptcy priorities are equitable, the provisions regarding secured and unsecured creditors, etc., and order of priorities as laid down by the Bankruptcy Act, should be imported into this Act in their entirety. To effect this, it is recommended that Clause 243 be deleted and Clause 289 be enlarged to provide for priorities of costs, charges and expenses incurred in the winding up in similar manner as provided by Section 84.

I think Mr. Abbott’s doubt on this matter would be resolved if the order of distribution as provided by the Bankruptcy Act were imported into this measure.

1619. By Hon. L. CRAIG: Do you say that wages, salaries, rates, etc., should be in priority of costs of winding-up?—No, the order of priority in the Bankruptcy Act should be the order of priority under this measure.

1620. In the Bankruptcy Act, do the priorities start with costs?—Yes, costs, wages and salaries. This uniformity will make for commercial simplicity and general standardization of practice. Our experience indicates that considerable confusion exists in the minds of the public—merchants and others—regarding the question of distribution. They will think in terms of wages and salaries and expect the wages to be paid first in all cases. This is not the case.
with the practice, still expect the same preferences under the Companies Act as apply in bankruptcy.

1681. There is no reason why companies should be treated differently—No. The Bankruptcy Act, of course, is a more recent piece of legislation than our Companies Act.

1682. By the CHAIRMAN: Are the priorities stipulated in the Bill similar to those in the Bankruptcy Act?—Yes, in so far as Clause 298 imports the provisions of distribution from the Bankruptcy Act. We ask you to make that quite definite as regards the costs of winding up, and excise the other preferences provided. Clause 299 provides for some wages. That provision is merely copied from the old Act. In our opinion it conflicts with Clause 298.

1683. By Mr. WATTS: You wish to adopt the provisions of the Bankruptcy Act in relation to the distribution of priorities so that if the Bankruptcy Act is altered you will still be adopting the bankruptcy methods?—Exactly.

1684. By Hon. L. CRAIG: In other words, you want to treat a company as you treat an individual?—Yes.

1685. By the CHAIRMAN: Under the Bankruptcy Act, there is a provision for wages and salaries as a priority charge?—Yes.

1686. And that charge ranks next to costs?—Yes. We say definitely that in view of the cases that have been decided since the enactment of the Federal bankruptcy legislation in 1924, the provision for distribution appears to be equitable. It does not seem to have caused any clamour from any quarter.

Clause 292. Fraudulent preference: To conform with bankruptcy practice, it is recommended that "fraudulent preferences" be altered to "undue preferences."

This, to a certain extent, is academic, in that an undue preference may not be a fraudulent preference, but the bankruptcy law provides power to upset all preferences which disturb equity and fair-dealing amongst creditors generally.

1687. By Mr. RODOREDA: Whether fraudulent or not?—That is so.

1688. By Hon. G. FRASER: Perhaps the clause could be made to read "fraudulent or undue preferences"?—Yes.

1689. By Mr. WATTS: Is it possible to have a fraudulent preference under the Federal Bankruptcy Act?—Yes.

1690. The Act does use the word "fraudulent"?—Yes.

Clause 307. Information as to pending liquidations: This clause appears to be superfluous, Clause 299 making the necessary provision for submission of accounts. This is probably a matter of drafting, unless it contains some meaning that it has not occurred to us. Clause 299 makes provision for the filing of liquidators' accounts, and Clause 307 seems to repeat it.

1691. By Hon. H. SEDDON: Is it not necessary that people dealing with a company should know it is in liquidation?—We do not say that that should not be so. What we say is that the two clauses appear to provide for one thing, and that one of the clauses should be deleted.

1692. By the CHAIRMAN: You simply point it out as something that appears to be superfluous?—Yes. The two clauses appear to be identical.

Clause 314. Subclause (6). Registrar may strike defunct company off register: If a company is struck off by the Registrar, does not a period of twenty years seem unduly long to allow for its subsequent reinstatement? If a company is struck off the register by the Registrar, a period of three years should be quite ample.

1693. By the CHAIRMAN: I think six years was suggested by another witness?—Yes.

1694. By Hon. L. CRAIG: What period do you suggest in lieu of twenty years?—Three, or perhaps five years. Three years would perhaps be quite long enough. I do not see why three years should not be ample time in which to discover whether a company is entitled to reinstatement.

1695. By Hon. L. CRAIG: But in time of war a company might cease to carry on business?—But there would be no necessity to strike it off the register if it merely suspend its activities.

1696. A company would not be automatically struck off the register if it ceased business for a certain period?—No.

Clause 320. Meaning of "unregistered company": Consider the effect of this in view of a similar provision in the Bankruptcy Act.

1697. By Mr. WATTS: Does the Bill mean by unregistered company to mean a company that has never been wound up?—Yes.

1698. By the CHAIRMAN: It has been copied from the British Act and appears in various other Acts?—Yes.

1698a. It is a matter for consideration by the draftsman?—Yes.

Clause 321. Subclause (1) (ii). Winding-up of unregistered companies: Presumably an unregistered company may be wound up only by order of the court.

1699. We do not see any special reason why an unregistered company should be wound up by order of the court. It could be wound up on action or voluntary. There is no need to cumber the procedure by the more restrictive provisions associated with compulsory winding up.

1700. By Mr. WATTS: The purpose of the special paragraph is obvious. It is desired that partnerships should not be wound up under the Companies Act because they wind themselves up voluntarily under the Partnership Act. It is only when the court has ordered the cessation of business and realisation that those provisions are supposed to apply—that may be so.

1701. No unregistered company can be wound up except voluntarily?—The provision is for such companies to be wound up voluntarily. There may be some confusion on this question in the mind of the draftsman.

1702. Only by order of the court?—Exactly.

1703. The voluntary winding up of a partnership could not be enforced under the Act?—Why not? If the provisions of the Act provide for such a system to be followed, we do not see the necessity for a restrictive winding up under the supervision of the court. If provision is made for the winding up of the partnership or association of more than five members, why should the procedure be restricted to a compulsory winding up? The Bankruptcy Act provides for the voluntary winding of partnerships. There may be some confusion on this question in the mind of the draftsman.

1704. The Bankruptcy Act provides for the winding up of partnerships, but I can see no reason for bringing a voluntary winding up or a winding up under supervision within the ambit of the Companies Act in regard to a selection of individuals who are governed by the Partnership Act and can manage their own affairs?—That is what we mean by our comment, namely, that the Committee should consider the effect of this in view of a similar provision in the Bankruptcy Act.

1705. It will be wise to leave the provision as it is. It would then only be in exceptional circumstances that the court could order the winding up of the partnership under the Act?—That is really a technical matter.

1706. By Hon. L. CRAIG: Could not partnerships be left out altogether?—We raised the question so that it might be considered.

1707. Would you see any objection to this part being eliminated from the Bill?—I would not go so far as that. We have not had time to give careful study to the relative provisions of the Bankruptcy Act and this Bill. The examination of this section of the measure fell entirely to me. We then had committee meetings when this subject was discussed and it was decided that it should be referred to the draftsman so that he might consider whether some clarification was not advisable. We have no particular objection to the provision.
1728. By Hon. G. FRASER: If you cut this out the Companies Act could be invoked in the case of a winding up.—We will give further consideration to the matter.

1709. By Mr. RODOREDA: What advantage will an unregistered company gain by winding up voluntarily under the Companies Act?—Winding up is an ordinary process.

1710. Apparently some partnerships have been wound up voluntarily under the Companies Act. This clause makes it impossible for the partnership voluntarily to wind up under that Act, but at a later stage it may be compulsorily wound up.—That is a partnership of more than five members.

1711. Is there any advantage in a partnership being wound up under the Companies Act rather than under the Partnership Act?—I do not think so.

1712. This clause seems to prevent a partnership being wound up unless so ordered by the court.—I will make further inquiries into that phase of the Bill.

Clause 395, (2), Delivery to Registrar of accounts of receivers and managers: We consider the penalty too drastic.

This refers to the obligation of a receiver or a manager of a company to file with the Registrar his accounts of the receivership. He must do so every six months. The penalty if imposed in some instances anywhere near its maximum of £5 per day, would be practically impossible of collection.

1713. By the CHAIRMAN: Do you know whether any other Act provides for those fines to be inflicted?—Yes. We quite agree that there should be a serious penalty attached to the matter. We know that in the event of an oversight, or in a case where there was no intention, the court would not impose a serious penalty.

1714. By Hon. L. CRAIG: The penalty might amount to hundreds of pounds for an oversight.—Yes.

1715. By Mr. ABBOTT: Did you hear Mr. Merry say that the provisions as to filing accounts are likely to be a serious overhead charge imposed on industry?—Yes, and I agree with Mr. Merry's comments. Incidentally to the question of the form for filing of accounts, we had the same thing in connection with the Bankruptcy Act, in which instance certain antiquated forms were imposed. To be brief, I would say that where a competent registered accountant is provided for the audit of a company's accounts, he will automatically see that the form is the proper one; further, he should not be restricted to a form prescribed by someone who perhaps is not as well fitted to lay down pro forma requirements.

1716. You are connected with a good many mining companies.—We have interests in some.

1717. I am not speaking about your official position now. What do you think of the provision which makes directors of no-liability companies liable for four weeks' wages, personally?—More than that, is it not?

1718. Four weeks wages, or £50?—We are in two minds. My personal opinion is that a director may not realise fully the responsibilities of his position, but I must confess that there was quite a diversity of opinion among those who were concerned that particular provision of the Bill. I have now a liquidation of a mining company in which 59 per cent. of the liabilities of the company were wages. That reflects very seriously on the administration and management of the company. If directors, many of whom accept such positions without due regard to their responsibilities, were only alive to this, they might be a little more careful to promote people who are deserving of protection.

1719. Have you noted any provision in the Bill which you consider should not be made applicable to private or proprietary companies?—I did not give any particular attention to that portion of the Bill.

1720. Do you consider it should be compulsory on private companies to employ an auditor irrespective of whether all the shareholders agreed that one should not be employed?—I am in rather a blessed position. Quite apart from that professional attitude, I am generally of the opinion that at least that companies, or any business enterprise, having shares held by people not in contact with the administration of it, should be protected by qualified audits.

1721. By Hon. L. CRAIG: Even in the case of a private company?—Yes, with very selective proposition because inevitably some shareholders do not get the same opportunity to contact with the company as others get.

1722. Stock Exchange evidence is that the members consider they should be the only ones permitted to deal in shares. What do you think of that?—I do not agree with that at all.

1723. What is your opinion as to share-brokers being no-liability company directors?—I like the least regimentation in business the better. The public should be permitted to make its decision as to what directors should be. In the practice ruling to-day in many cases the most beneficial results may not accrue, but I would not like to see any such circumscripting action in legislation.

1724. By Hon. G. FRASER: In answer to Mr. Abbott's question regarding all share-dealers being required to belong to the Stock Exchange, you said you did not agree with the view that they should be members?—I do not agree that arrangements for subscriptions for shares in an undertaking should be restricted necessarily to stockbrokers.

1725. You think that provision should be made so that people may set up as share-dealers?—I do not think it would be. On the contrary, I think the conditions under the Companies Act could be practically impossible of collection.

1726. In the course of evidence we have had from stockbrokers, objection was taken to that portion of the Bill which relates to the licensing of share-dealers, not necessarily members of a Stock Exchange.—I do not really think it matters much what my opinion is on the point. Personally I do not see why there should be any special section reserved for that business.

1727. Why there should be any special monopoly of it?—Quite so. On the contrary, I have the highest regard for members of the Stock Exchange and have dealt considerably with them.

1728. By Mr. ABBOTT: In your opinion, is it a good or a bad idea that all securities relating to companies should be registered in the Companies Office rather than be registered in the usual places for such securities?—I think the present provisions for registration are quite sufficient.

1729. Then you think that, for instance, bills of sale given by a company should be registered in the Bills of Sale Office?—Yes. I do not think there should be any special provision for a company as distinct from the individual.

1730. By Hon. L. CRAIG: In other words you think that companies should be dealt with in individuals in connection with bills of sale?—Yes.

1731. Then do you think the provisions regarding bills of sale should be deleted from the Bill?—Yes. I think the present provisions regarding the registration of securities are quite adequate.

1732. By Hon. A. THOMSON: Yesterday a witness stated that the Bill, if passed in its present form, would be detrimental to the establishment of industries in Western Australia. Is that your opinion?—No, I do not think it would be. If capital is available, it will overcome foibles. I am of the opinion, and have advocated at our meetings, that we should endeavour to have the consideration of this legislation deferred. Its introduction was contemplated four or five years ago. Why should we wait for action along these lines in the face of what could be confronting us today and be asked to consider the introduction of a tremendously complex piece of legislation such as this, is beyond my understanding—but that is for Parliament to consider.

1733. By Hon. H. SEDDON: Have you had any experience regarding investment companies?—Not with trust investment companies. I have had associations with finance companies dealing with motor discounting and so on.

1734. Not with an investment company of the type of the Australian Foundation Trust?—No.
1735. Reference has been made to the question of the authorisation of share-dealers as provided for in the Bill. Have you any evidence with regard to what has happened in the past concerning persons who undertook the business of dealing in shares, these being other than sharebrokers?—Yes, I had an experience concerning subscriptions for a company in a private manner by personal canvass. I am opposed to that. Adequate safeguards should be provided in the Bill because of considerable abuses that have existed in the past.

1736. By Hon. G. FRASER: That refers to share hawking?—Yes.

1737. By Hon. H. SEDDON: Consider the position of the person who sets himself up in boom times as a broker?—That practice lends itself to abuse unless safeguards are provided in legislation. However, my attitude boils down to this: I believe in the least restriction and regimentation regarding these matters, provided adequate safeguards are embodied in necessary legislation.

1738. By Hon. G. FRASER: Do you consider the Bill under investigation contains adequate safeguards?—I have not studied the Bill from that standpoint, but I think our accountancy section thinks it does.

1739. By Mr. ABBOTT: Have you ever known of companies being registered elsewhere than in Western Australia for the reason that transfer fees and stamp duty on the transfer of shares are so much higher here than elsewhere?—I have not heard of that, and I have no particular opinion to express on the point. Nevertheless I do not think the imposition represents an onerous matter.

The Committee adjourned.

Tuesday, 25th March, 1914.

Present:
Hon. E. Nilsen, M.L.A. (Chairman)
Hon. G. Fraser, M.L.C.
Hon. A. Thomson, M.L.C.
Hon. H. Seddon, M.L.C.

ERNEST BLANKENSEE, Legal Practitioner, examined:

1740. Do you not think one per cent is unreasonable?—No.

1741. By Hon. L. CRAIG: You do not think it affects trading in shares?—No.

1742. Would you care to express an opinion on the question of taking stock and other assets into a balance sheet?—I have already told you that I am opposed to regimentation. The commercial community considers the safeguards already provided are quite sufficient, without provisions in the legislation setting out specifically what shall and shall not be done. I do not agree with Mr. Merry's concurrence regarding this matter.

1743. You do not think that certain assets of a company should be put in the balance sheet at the marketable cost?—I do think so, but I do not think that should be expressed in the Bill.

1744. If it is not, you could not enforce that provision?—Yes, by the provision of a competent auditor.

1745. We know that an auditor is subject to appointment by directors—in fact, if not in theory. The company may hold a huge number of shares in a subsidiary company or in another company. These shares may have no market value, but may be put in the balance sheet at their face value. Should that be allowed?—No. In auditing the accounts of such a company, I would most definitely insist upon these shares being included at a value no greater than their real worth. Notwithstanding that fact, you must remember the old adage that hard cases do not make good laws. Simply because there may have been abuses of this description, does not mean that you should embody such restrictions in legislation.
association, or by filing a contract in writing with the Registrar of Companies at or before the issue of the shares. I cannot imagine that any creditor proposing to deal with a company and to give a company credit would carry himself as to whether in fact these machinery clauses had been complied with. He would see, according to the register— if he bothers to look at it— shares have been issued as fully paid.

1748. By Mr. RODOREDA: A previous witness said that this clause was identical with Section 23 of the existing Act. Has it caused any hardship to date?—Yes. It has caused a great deal of hardship. I put this to you: you are buying shares to-day in, for instance, the Swan Brewery Company. The shares are shown as fully paid. Unless you investigated the circumstances under which those shares were issued, you would assume that they were actually paid for in cash, but they might not have been paid for in cash. They are marked as fully paid but they may not have been paid for in cash. In the event of the company being wound up it would be hard for you as the holder of those shares, if the liquidator came to you and said that the shares had never been paid for—"in cash" though they were marked as being fully paid, that the fact that they were to be issued as fully paid was not referred to in the memorandum or articles and no contract was filed when the shares were issued and that you would have to pay for those shares in cash because there is supposed to be the holder of the company in liquidation. While you might say that the person who originally takes the shares, being subject to paying for them in cash should look after himself, it is very hard for a person who subsequently acquires the shares to have that responsibility thrown on him.

1749. By the CHAIRMAN: Do we think that a person subsequently taking the shares should carry a certain responsibility and should see whether the shares are paid up?—No. I think it is unfair, when shares are marketable security, to ask a shareholder to sift for himself the circumstances under which those shares were originally issued.

1750. By Hon. G. FERASER: You consider it would considerably restrict share dealing?—It would. Personally, being a lawyer, I would be very diffident about taking shares, even in a good class company, without investigating the circumstances under which they were originally issued.

1751. By Mr. RODOREDA: You have had to do that up to date?—Yes, but there are very many people who do not take that precaution. The man in the street would have to go to considerable expense to ascertain whether these provisions had been complied with.

1752. By Hon. A. THOMSON: Take the case of the Bank of New South Wales whose shares are of a certain value but have not been fully paid up. Let us assume they are £20 shares. If the bank went into liquidation, would all the shareholders be liable for the amount of uncalled capital?—Yes, because those shares have not been issued as fully paid. They are only partly paid.

1753. What is the position in regard to the Swan Brewery Company which recently issued to some of the shareholders a certain number of free shares?—They were issued as fully paid.

1754. Actually speaking, no cash was paid for those shares. No, but I think they utilised certain of their reserves. Cash of the company was taken out of reserve and put into the ordinary funds of the company for use and in lieu they issued these shares as fully paid. Assume then that the company did not take the legal steps required by this clause in regard to the issue of these shares. It would be hard for a person to find himself suddenly saddled in years to come with the responsibility of paying up for those shares at their face value. The fact that this is an unreasonable provision has been recognised. It was taken out of the English Act and from all the Eastern States legislation so far as I can gather, I have looked through the book on the Australian Companies Acts which includes all the legislation of the Eastern States, and that provision is not there.

1755. You think it is unnecessary?—It is unreasonable and has not been so recognised by legislation that has been passed. The position is that it was included in the old 1867 Act of England when companies were in their infancy, and in those days it was looked upon as a reasonable provision. As years passed it became a hardship and certain remedial legislation was passed in England and in the Eastern States to protect subsequent shareholders, if shares had been issued as fully paid. When this new legislation was passed in England and the Eastern States, opportunity was taken to wipe out the section entirely. So far as future transactions are concerned, the provisions of Clause 64 (3) would not operate. But Section 26 of the old Companies Act would still operate in regard to shares that were issued before this Act came into operation. It is for that reason that Clause 64 (3) was suggested.

1756. By Hon. H. SEDDON: Could you give us any idea why that section was originally introduced in the old Companies Act?—There must have been a reason. Yes. The reason was to avoid this position arising: that a company could issue shares as fully paid without having them paid for in cash or without notifying the world that those shares had been issued other than for full cash. In other words it imposed a penalty on the directors of £20,000 and 20,000 shares have been issued, it is assumed that the company has £20,000 in cash to carry on its business. A company often acquires a good deal of money standing on it. It was assumed that if a provision of the Act had not been complied with, and proceedings were taken, that would prove a deterrent against failure to observe the requirements of the Act in future.

1757. Possibly it would meet the position if we eliminated it altogether. I think it is a rather dangerous state of affairs to create unless provision was made for some protection. The opportunity would certainly exist.

1758. You do not think that there would be sufficient protection by the opportunity to file a contract with the Registrar of Companies when seeking incorporation?—That section only imposes a penalty on the company and officers of the company for failure to comply with it. If the sections of the Act were properly policed, sufficient protection would be afforded. Once a case arose in which it was verified that the provisions of the Act had not been complied with, and proceedings were taken, that would prove a deterrent against failure to observe the requirements of the Act in future.

1759. Possibly it would meet the position if we eliminated it altogether. I think it is a rather dangerous state of affairs to create unless provision was made for some protection. The opportunity would certainly exist.

1760. By Mr. RODOREDA: Through somebody else's fault?—Yes. I have had very many cases of shares having been issued quite bona fide but the section requires that the contract be filed before or on the issue of the shares. The secretary of the company has not carried out his job and the contract has been filed perhaps a day afterwards. The contract was of no benefit, yet it was a bona fide transaction. The contract was actually lodged with the Registrar, but it was lodged a day after the time stipulated by the Act, namely, at or before the issue of the shares. In such cases I have had to advise my client that if the company went into liquidation, he would be compelled to pay for the shares again, and he quickly got rid of the shares. It is a most unreasonable section to put into practical effect. I venture to say that there are hundreds of shares at present held by persons who own full value for them but, because that section has not been complied with, if the company went into liquidation, they would be held responsible for the payment of those shares in cash again.

1761. By the CHAIRMAN: Seemingly, the fully paid-up shares were issued for a consideration?—Yes. As an illustration let me take the case of a man carrying on business and desiring to form a company. In consideration of transferring the whole of his premises and assets to the company, the company issues fully paid-up shares in proportion to the assets transferred to the
to have it paid up in cash merely because the provisions of the section had not been complied with.

1703. By Hon. A. THOMSON: Would not the company, in respect of such shares, hold shares for the Registrar of Companies at or before the issue of the shares.

1704. But if a legal document was drawn up, would not he be protected?—Not unless it was filed with the Registrar.

1705. I have in mind one or two companies who floated a local company with the directors having issued to them a considerable number of shares on which they paid nothing and the parent company took a number of shares for promoting the local company. If the local company went into liquidation, you say there would be no protection for the ordinary shareholder and he would have to pay?—Yes.

1706. And the directors might be able to escape?—They would not by the shareholders on whom the liquidator would call. There is a provision to the effect that the person who held shares within one year previous to the liquidation may be called upon to find the money, but if he had disposed of the shares more than one year before, he would be free.

1707. I have in mind an off-shoot of a company in the East. The parent body received a certain number of shares; I think the face value of them was about £30,000—1 emphasise that it is so easy to evade compliance with the section. All that is necessary is to pass over a cheque and then the shares would be considered as having been paid for in cash. If I received 1,000 fully paid-up shares without giving any asset or paying actual cash, all I need do is to make an agreement with the company, suit to serve in the city of manager for six months. For that service I would receive a salary of £1,000 and the 1,000 shares could be issued to me. I have to do is to hand in with my application a cheque for £1,000 and I could receive £1,000 by way of salary. Such shares would be regarded as having been paid for in cash, but the company would not have the equivalent in cash for the shares held by me. Usually, it is a person who tries to evade the law who knows what to do; the section imposes a hardship on the bona fide investor. As I have explained, I can overcome the difficulty quite easily by giving a cheque and receiving one in return. It is the person out to do something wrong who gets round the section; the bona fide man is not protected.

1708. By the CHAIRMAN: Under the clause in the Bill, there is a possibility of a person having to pay twice over for the same shares?—Yes, that is the sum total of its effect, and usually it is the bona fide man who gets hurt.

1709. By Hon. H. SEDDON: Would the position be improved if the clause was amended to provide that the shares were held subject to the payment of cash or for consideration received? It seems to me that with such a clause the bona fide transaction would not be affected?—But who would determine whether the consideration given at the time was bona fide? The question might not arise until 20 years later and the people acquainted with the circumstances might not be living or might not be available.

1770-75. A full record would be in the company's possession?—That may be so. My strong point is that it is easy to evade the law for anybody who knows what to do. I hold that a bona fide person be hurt merely because he does not know the law? Clause 84 (3) is intended to protect antecedent transactions, those which have taken place before the Companies Act comes into force. Subclause (2) of the clause states that where shares in any company were issued prior to the commencement of this Act we fully or partly paid up for a consideration other than cash, but no provision relating thereto was contained in the memorandum or articles and no contract was filed as provided by Section 28 of the Companies Act, 1893, hereby repealed, then if the shares (a) were alloted and taken in good faith at least six years prior to the commencement of this Act or (b) were alloted and taken in good faith and for a substantial consideration or (c) after the allotment thereof were sold at any price without notice of the omission aforesaid—the allottor or holder of such shares shall not be liable to pay to the company in respect of such shares any sum other than the difference between the amount of the shares and the amounts paid up in cash or treated or deemed to have been so paid up thereon.

The clause gives to future transactions protection that I hold should be given also to past transactions. Why should future transactions receive such protection when past transactions have not received it? I see no valid reason for that. The Associated Banks very nearly take transfers of shares. When they do take them they investigate such matters as the general shareholders being members of the staff. When they take transfers of shares by way of securities they take them in the names of nominees. Banks have been chary about taking transfers of shares. When they do take them and the company is wound up, if the shares have not been properly issued the banks will be forced to pay up in cash. They therefore avoid that method of taking security. The usual method is to deposit with the bank, accompanied by the personal lien form giving powers of sale, etc., in order to protect the shares. The banks would not get protection under the subclause I have read, because they would not become the holders of the shares at their face value which may appear to be good security, and against which money has been advanced, might turn out to be no security whatever for the reason that they have not been properly issued. We asked me to request the committee to agree to the exclusion of the period of six years. In cases where shares have been issued within the last six years the bank in whose possession they are should have the same protection as if the shares had been issued more than six years prior to the passing of the Act. If it has been necessary to protect past transactions that have occurred, it should be equally necessary to protect future transactions.

With respect to Clauses 104 to 119, the banks' main concern is as to their effect in relation to the filing of charges. At present we have for the purpose of relating to the registration, inter alia, of charges affecting land and chattels:—(1) The Transfer of Land Act, 1893, dealing with land under the operation of that Act; (ii) the Registration of Deeds Act, 1893, dealing with land still under common law title; (iii) the Bills of Sale Act, 1889, dealing with chattels; (iv) the Mining Act, 1904, dealing with mining tenements. If the proposed clause is passed the present legislation in relation to charges affecting land and mining tenements would still require registration at the Land Titles Office, the Registry of Deeds Office, or the Mines Office as the case may require.

Clause 105 (1) only exempts from the necessity of registration under the Companies Act charges registered under the Transfer of Land Act, the Registry of Deeds, but makes no exception for "charges" affecting mining tenements. No provision is made for the registration of documents such as bills of sale and hire purchase agreements in respect of chattels. These would not be "charges" within the meaning of the Companies Act, but would still be "bills of sale" within the meaning of the Bills of Sale Act and require registration under that Act. No provision is made by the present legislation in relation to charges over chattels for the following matters which are provided for by the Bills of Sale Act in relation to instruments requiring registration under that Act:—(a) Renewal of registration: Sections 14-17, Bills of Sale Act; (b) entry of partial satisfactions: Section 21; (a) protection of bona fide purchasers from grantor: Section 27; (d) priority of charge: power for grantee to bid for and purchase chattels: Section 30; (f) protection of bona fide purchasers from grantee: Section 36 (a); (g) the giving of bills of sale over growing crops: Sections 39-41; (b) the giving of bills of sale over vehicles: Sections 42-45; and (c) the giving of notice of intention to register charges over chattels with the opportunity to protest: Section 2 of No. 17 of 1906; (j) the giving of notices of intention to register charges over chattels with the opportunity to protest: Section 13 of 1906. Clause 119 requires registration.
The result of these two clauses would be that a charge previously subject to avoidance under the old Act for non-registration under that Act would not be avoided under the new Act, although not registered under that Act, and would even take priority over a subsequent registered charge. This advantage is gained by providing for registration of charges under the Companies Act unless it is possible to provide for registration in one office of all charges by companies, whether in respect of land, mining tenements or chattels. This could not be achieved, as it is essential that all charges relating to land and mining tenements should be registered in the particular office providing for registration of dealings generally relating to lands and mining tenements. This would be more satisfactory than one office for individuals and those dealings by companies with chattels which would not be 'charges' under the Companies Act, and another for 'charges' by companies. The suggested provisions for registration of "charges" in the Companies Office would not result in benefit to anyone but would only add to the cost of searches by requiring searches in two places instead of one. At the present day, if we want to find out what mortgages or charges or dealings have been given by companies with their property, we have to search in the Titles Office in regard to land which is registered under the "Transfer of Land Act," at the Deeds Office in regard to land which is still under common law, at the Bills of Sale Office with regard to chattels, and at the Mines Department if the company is at all interested in mining tenements. At the present time we have a Bills of Sale Office in which all dealings regarding chattels are registered, whether those dealings are by companies or by individuals. It is now suggested that for certain kinds of chattels, those dealings should be registered in the Companies Office. There are certain dealings with chattels which are not "charges" within the meaning of the Companies Act, and which will have to be registered under the Bills of Sale Act because they are "bills of sale" within the meaning of the Bills of Sale Act. For instance, hire-purchase agreements by companies and leases by companies of chattels are still bills of sale within the meaning of the Bills of Sale Act and would need to be registered under the Bills of Sale Act to protect the person taking the benefit of those documents as against creditors and other persons dealing with the company. So that if the above were passed in its present form, we would have to register charges dealing with certain chattels in the Companies Office, and other instruments dealing with chattels in the Bills of Sale Office, and we would still have to register our dealings with lands under the "Transfer of Land Act at the Titles Office, and dealings with land under the general law title would still have to be registered in the Deeds Office.

I cannot see that any advantage at all is gained by providing another office for registration unless it were possible to have one office in which all dealings by companies could be registered. As I have pointed out, you could register dealings with lands under the Companies Act, but that would afford you no protection in regard to persons who were dealing with land under the "Transfer of Land Act or common law title, because both those Acts give priority according to the time of registration, and not according to the time of performance. So we would still have to register in those three offices and also under the Bills of Sale Act if we are dealing with chattels which do not come within the meaning of "charges," and now the Bill seeks to provide another office for mortgaging mortgages which come within the meaning of this Bill. With what benefit?

1776. By the CHAIRMAN: That is only a matter of policy and will not affect the Bill in any way. I think that the members of the Committee really agree with what you have said—We now have a system which everybody is used to. Our case now helps everybody, whereas immediately this Bill is put on the statute book it will be a first-rate hunting-ground for the lawyers. The Bill would need a tremendous lot of alteration.

1777. I think the idea was to concentrate everything pertaining to companies in registration under the Companies Act?—That would be an excellent thing if you could get the registration in one office; but say a company owns a piece of land registered at the Titles Office. If the only registration office were the Companies Office, a person dealing with the company would have to search at the Titles Office, and then go down to the Companies Office to see whether dealings had been registered there. You would have to go twice under the "Transfer of Land Act" so as to provide for these provisions in this Bill. Registration under the Companies Act would need to be made equivalent to registration at the Titles Office. A person would have to go down to the Titles Office, and then go down to the Companies Office to search dealings there. It would be almost impossible for the Titles Office ever to know what was the position of searches at the Titles Office, and then go down to the Companies Office to see if there were any dealings by mortgage registered there. The situation would be impossible. I see nothing to be gained by just having another office in which certain dealings are registered. On the other hand, there would be a great deal of expense to the Government in setting up another office with all these registrations, having to provide new registers and various clerks to handle registration of these dealings whilst you have the machinery all available at the present time in the Bills of Sale Office.

1778. By Hon. A. THOMSON: I think there should be no difference between an individual and a company?

1779-81. By Mr. RODOREDA: From your present evidence it appears your contention is that all these clauses, from No. 104 to 119, should be deleted from the Bill?—Yes. If companies carry out their obligations, they will always have in their own office a file registering all dealings by companies with their property. I have very strong reasons for saying that these clauses will require considerable amendment if they are to remain in the Bill. Our Bills of Sale Act provides that all bills of sale affecting chattels shall be made every three years, so that persons may know whether the registrations are stale or not; and if the registrations are not renewed, then any person can safely buy with the company while taking notice only of those registrations which are less than three years old. No similar protection is given here; so there would in course of time be hundreds and hundreds of stale documents on registers unless such a provision for renewal were contained in the measure. Provision has been made in the Bill for the entry of a satisfaction of a charge by a company, but no provision has been made for a partial satisfaction as is provided for by the Bills of Sale Act. Often a Bill of sale-holder releases a Bill of Sale from the chattels to cover the security, but the Bill does not provide for partial satisfaction by a company. Provision is made for total satisfaction, but not for partial satisfaction of mortgages or charges. If the Bill passes in its present form it would be necessary to give a total discharge and then to take a partial charge, thus putting the company to additional expense. Hopefully, that might be easily provided for by an amendment in the Bill. Section 27 of the Bills of Sale Act provides—

No bill of sale shall be valid or effectual against any purchaser bona fide and for valuable consider-
We have no similar protection provided in the proposed Companies Bill. A company can give a charge and that charge may not be registered and, without having an opportunity to obtain notice of the charge, a person cannot safely deal with the company because there is in the Companies Bill no similar protection setting out that the purchaser can get a good title to the chattel notwithstanding the existence of a bill of sale, unless it is registered. The only relative clause in the Companies Bill is Clause 103 which sets out—

"Every charge created by a company after the fixed date shall, so far as any security on the company’s property or undertaking thereby conferred be void against the liquidator and any creditor of the company unless within 30 days after the date of its creation there are received by the Registrar for registration . . . ."

and the clauses provide to set out the details. A purchaser from a company would not be a creditor, and therefore that clause gives no similar protection to a bona fide purchaser from a company, although he will have no notice of any unregistered bill of sale. Some provision similar to Section 27 of the Bills of Sale Act would need to be introduced into the proposed Companies Bill in order to protect the bona fide purchaser from a company. Clause 105 affords protection respecting any liability on a creditor of a company of a crop, as I have pointed out, a purchaser is not covered. Then again, Section 34 of the Bills of Sale Act relates to the priority of instruments affecting chattels and—

in case two or more bills of sale are executed which are presented for registration respectively as regards the title to or rights in the possession of the chattels: Provided that such prior bill of sale shall not be affected if presented for registration within the time or extended time limited by this Act.

The Bills of Sale Act gives certain time within which bills of sale must be presented for registration. It provides for seven days in case of execution within 30 miles of Perth and 14 days if executed outside that limit. Bills of sale take priority according to the time they are presented for registration. There is no similar clause or provision in the proposed Companies Bill. In those circumstances I could not tell you which bill of sale would take priority. On the other hand, the Bills of Sale Act puts the position clearly and sets out that bills of sale take priority according to their presentation for registration. The bill of sale holder has seven days within which to present his bill of sale for registration if executed within 30 miles of Perth. I might take a bill of sale of the day and I would then have seven days within which to present the document for registration. You, Mr. Chairman, could take a bill of sale from the same company to-morrow and you might present then the document for registration the same day. I may not present my document for seven days. Nevertheless, under the provisions of the Bills of Sale Act, I would not lose my priority if I presented my document for registration within the seven days allowed by the Act. So although you might present your bill of sale earlier, if I presented mine within the time allowed for registration—I would still have seven days within which to present it—I would retain my priority. Thus I would still be protected as long as I presented the document for registration within the seven days. If the proposed Companies Bill is passed with Clauses 104 to 119 included, some similar provision would need to be inserted for that purpose.

Under Section 36 of the Bills of Sale Act, power is provided for a grantee of any bill of sale—that is to say, a mortgagee—to bid for and purchase a chattel that is being offered for sale at auction under the provisions of this Act. No mortgagee can buy in any mortgaged land at his own auction. On the other hand, the Bills of Sale Act does give the grantee of any bill of sale that power to bid for and purchase the chattel in possession. If the clause I have mentioned—Clauses 104 to 119—be included in the new Companies Bill, it is suggested that a similar provision should be included to enable a grantee to bid for and purchase a chattel in the circumstances I have described. Section 36 (a) contains another protective provision and power—

Nothing in Sections 23, 30, 31 or 32 of this Act shall affect the rights of any person making title to any chattels through or under any grantee of a bill of sale in good faith and for valuable consideration, by virtue of any sale or other disposition effected whilst in the possession or apparent possession of the grantor.

Section 22 deals with the effect of non-compliance with the Act or non-registration, and Section 30 provides that a bill of sale subject to a defeasance, condition or devise of estate not expressed in the document will be void as against the liquidator and execution creditor. There are similar sections like that which makes bills of sale void as against those persons. Section 36 (a) protects the interests of the purchaser from the grantee in exercise of his powers of sale under the bill of sale. The title of the purchaser is made effective and any claim would be against the mortgagee who wrongly created his power of sale. It seems possible that similar protection could be provided under the Companies Bill respecting the sale of mortgagees’ chattels which were registered under the companies legislation. Sections 39 to 41 of the Bills of Sale Act gives power to a holder of a crop, or a lessee of land, to give a bill of sale over a growing crop. In the eye of the law a crop forms part of the land; yet this is an enabling provision to permit an owner or lessee of land to give security over a growing crop, notwithstanding that it really forms part of the land. It enables him to sever the crop and look upon it as a different entity from the land, and that is very helpful to farmers who have prior security and that protection is given in the Bill in the case of a company carrying on farming business. It is just as helpful to a company to be able to give a bill of sale over a growing crop as it is to the individual, and I think if the Bills of Sale Act is not to apply to a company as well as individuals, a similar provision should be put in the Companies Bill, otherwise there would be no power for a company to give security over a growing crop. Similarly, with regard to a company carrying on a pastoral business might require to give a bill of sale over its growing wool. Wool is part of the sheep and you cannot give security over a part of the sheep. If you want to give security, you must give the bill of sale over the sheep, and the sheep naturally carries the wool on its back. This provision enables the giving of a bill of sale over growing wool without necessarily giving it over the stock as well. It is a very helpful provision and is largely used by pastoral companies in financing operations. The companies give a bill of sale over the wool without giving the bill of sale over the actual stock. We should have similar power under the Companies Act.

Section 2 of the Bills of Sale Amendment Act, 1906, provides that where a bill of sale is given over after-acquired property, when that property comes into existence, the property and legal interest in such future, or after-acquired property shall pass to the mortgagee under the Bills of Sale Act. Previously, the mortgagee had only an equitable interest in that after-acquired property. The section I have quoted placed him on the same footing as regards chattels in exist­ence at the time the bill of sale was made as the legal owner when the chattels came into existence. No similar provision appears in the Companies Bill and it should be included so as to enable the mortgagee in the Companies Act to become as soon as the after-acquired property comes into existence. The Bills of Sale Act Amendment Act, 1906, contains full machinery for giving notice of intention to register the bill of sale, thus giving the creditors the opportunity to lodge caveats and prevent other creditors obtaining protection as against other creditors. Why should not a similar provision be carried forward into the proposed companies legislation? Why should a company be unable to give a mortgagee of a crop the power of sale over after-acquired property, being the fruit of the earth that growing the world of that fact and giving creditors the power to lodge caveats if they desired? This seems to be to me an excellent provision for the commercial companies legislation for the mortgagee for the grantor. These are amendments which I think are material and should be brought into the proposed companies legislation, that is, if you go ahead with Clauses 105 to 119.
THOMSON: You suggest that those clauses be eliminated?—Yes, but if you proceed with them, you should make provision for all the matters I have referred to.

You consider that the existing legislation provides for them?—Yes, the existing legislation is ample. It has worked well in practice up to the present time. We have case law on a fairly level basis and everyone knows where he stands. The new proposal does not say anything much more, but if you proceed, you make the position more complicated than it is at the present time. There is a serious defect in the suggested legislation with regard to charges and it must be rectified. If we are going ahead with those particular clauses. Clause 119 of the Bill requires that every bill of sale given by a company prior to the commencement of the Act must be registered under the Companies Act within 90 days. That applies not only to bills of sale which would be registered under the Bills of Sale Act but also to bills of sale which were never registered under the Bills of Sale Act. The section also imposes a penalty upon the officials of the company for failure to comply with that section, but the section goes on to say that the failure of the company to comply with the section shall not prejudice any rights which any person in whose favour the charge was created may have thereunder. The position of an unregistered bill of sale has been and is still that the grantee has quite good security against the grantor, unless it is attacked by a third person, a liquidator, an execution creditor, or a person taking bona fide from the grantor without notice. The bill of sale is quite good and is enforceable against the company even though it was never registered. The clause in the Bill says that all bills of sale given previously to the new Act, whether registered or unregistered, be registered under the Companies Act. Bills of Sale Act, registered under the Companies Act within 90 days, but still declares that the rights of any person under that bill of sale will be protected whether or not it is registered. Clause 114 of the Act says that notwithstanding anything to the contrary in any other legislation, "no charge required to be registered under this part of this Act shall require to be filed or registered or be subject to avoidance under the Bills of Sale Act."

I point out that under Clause 119 of the Bill a bill of sale should be registered; but Clause 114 provides that any bill of sale required to be registered shall not be subject to avoidance under the Bills of Sale Act. Hence the position is that an unregistered bill of sale given before the passing of this Bill need not be registered by the grantee in order to give him protection, because it would not be subject to avoidance under the new Act. Clause 105 only avoids bills of sale given after the commencement of the Act and unregistered. The position then is that an unregistered bill of sale holder who has been keeping his bill of sale dark in the looery for officials of the company to register and are liable to a penalty for not registering, but the grantee need not register his bill of sale, which is not subject to avoidance under the Bills of Sale Act. Therefore, he has a good security as against people who take a bill of sale under the Act without notice of the prior bill of sale. They had no opportunity of noticing; the bill of sale had never been registered, but they had to comply with the Act and register their security. Something must be done if it is intended to carry forward those provisions to protect people dealing with companies without knowledge of a prior unregistered bill of sale.

By Mr. RODOLFOREDA: You want to put the position beyond doubt?—Yes.

Would that apply to mining tenements?—Yes. The usual way of supporting debentures is by a charge which is given in favour of trustees, whereby the companies charge all its assets, or certain specific assets, to support the debentures which are issued; but that charge, in its ordinary common law form, cannot be registered at the Titles Office. A mortgage under the Transfer of Land Acts comes in a certain degree. Usually, if there is land under the Transfer of Land Act to be affected, we include a provision in the charge given to support the debenture that the company will execute in favour of the trustee a proper registerable mortgage under the Transfer of Land Act. But there are many debentures in which the charge itself is contained in the debenture, and not in a separate charging instrument. In that case, it is impossible to become a mortgage to protect the debenture holders; because whereas that scheme is adopted every debenture has a separate charge to itself. Each debenture for, say, $100, is indorsed with a charge to secure the money; but the company charged its assets, and then for the debenture holder to take a separate mortgage over the land under the Transfer of Land Act.

By Mr. RODOLFOREDA: Do you agree that, as a basic principle in regard to company law, companies should be treated as far as possible as individuals?—That is a very wide question. Do you mean regarding these particular securities?

You do not think companies should be treated in the same manner as individuals with respect to all their legal activities?—Yes, if possible. I do not see why a company should be treated differently from an individual. After all, a company is a consolidation, as it were, of a number of people into one individual. That is the effect of company incorporation. A company can operate on the position; in one case, it represents many people in one corporate body. There is only one other small point I desire to mention. Banks have always felt difficulty with regard to the registration of power of attorneys of a company, a company's bank account. The banks suggest that a provision might well be inserted in Table A giving power to directors to delegate their authority to operate on banking accounts to officials of the company, which is merely a machinery clause, but time and time again we find that the articles of association of companies do not cover the point. It is therefore necessary to call general meetings of a company to pass special resolutions to amend its articles. This involves Clause 119 an unincorporated bill of sale. By Mr. RODOLFOREDA: Is the provision which you propose?—It would give power to the directors of a company to delegate to the bank. The manager and secretary to operate on the company's banking account. Just what persons the directors would appoint for that purpose would depend entirely upon the directors. The particular persons to be appointed would not be mentioned in Table A.

I thought directors probably had that power already!—I have advised the banks that the directors have, but some other solicitors have advised me, a particular bank for whom they act that the position is doubtful. The way I personally view it is that a company cannot carry on its business except through its directors, and under Table A the directors have power to do everything which a company can do. Any company can therefore, through its directors, delegate authority to operate on its banking account.

By Mr. RODOLFOREDA: You want to put the position beyond doubt?—Yes.

By Hon. H. SEDDON: Would you care to express an opinion upon Table A of the Bill as compared with Table A in the present Act?—I have not examined Table A in the Bill in detail, nor have I compared it with Table A in the existing Act. I take it for granted that the table follows Table A in the Companies Acts of the other States. I should imagine that the framers of the Bill would have improved on Table A in the present Act.

By Hon. G. FRASER: You have no objection to it as it stands?—No. I have just run my eye over it, and have no comments to make on it at all. It seems to contain quite a number of new useful provisions.

By Hon. H. SEDDON: I understand it is a big improvement on Table A in the existing Act, particularly the provisions in the Third Schedule giving certain powers to companies, though I do not know why there is a special recital on the word "limited."
There are other companies referred to in the Act. There is the unlimited company and the guaranteed company. It seems to me that the provisions should apply to all companies.

1705. By Hon. G. Fraser: You are assuming that these powers are applied?—No, I do not think they would be. The Third Schedule is headed “Implied powers of companies limited by shares.” I do not know whether the draftsman had any particular view in confining it to limited companies. In practice, I do not think it is of much consequence. I do not know of any unlimited companies, but the Act gives power for their formation.

1706. By Hon. H. Seddon: Clauses 103 and 290 deal with the case in which a receiver is appointed and with the establishment of prior charges, such as wages. Have you any evidence on that point?—At present, a debenture-holder or a secured creditor, when enforcing his security, could do so without recognising wages and salaries. I have considered these clauses with a view to drawing attention of the banks to the position. Hitherto the position of any secured creditor has been that he could realise his security without recognising wages and salaries, but under this specific clause a debenture-holder whose security is by way of a floating charge is called upon to recognise salaries and wages up to a certain limit fixed by Clause 290. In that way he is penalised as against the creditor who has a specific charge. I do not know whether the committee appreciates the difference between the two. If you take a charge by way of a specific charge, the property is charged now with the payment of that sum, and cannot be dealt with in any way by the company except subject to that charge. Where you have a floating charge, it is, as it were, floating round in the air, and can be crystallised at any time and brought down, and then would apply to the property the company might own for the time being. A floating charge enables a company to deal with its property in the normal way without worrying about the debenture at all, except that at any time the hatchet might fall. When a receiver is appointed, the floating charge becomes a specific charge. It crystallises the charge on the property the company might own for the time being. Clause 103 provides that where there is a debenture by way of a floating charge and it becomes crystallised by the appointment of a receiver, the receiver shall realise the property only provided he takes care of wages up to a certain amount. The amount is fixed in Clause 290. Where the charge was a specific charge from the beginning, a receiver can realise without recognising wages at all. When I read the clause, I considered what was the idea of penalising the debenture-holder whose security is a floating charge as against the man with a specific charge; there is some reason in the provision in that people offering their services naturally expect to be paid out of the assets of the company, and there is no specific charge. In fairness, they should be paid out of the assets which exist. I do not know whether the thought of the original draftsman—apparently this is taken from the English Act—was that a wages man should know the specific charge existing. It seems unfair. I do not know why this has been limited to a floating charge. I think you should be paid whether the charge is floating or specific.

1707. By Hon. A. Thomson: The payment of wages is generally recognised as a first charge, particularly in bankruptcy.—Yes.

1708. By Mr. Rodoreda: To put your idea into effect the Bill will need to be amended?—Yes, I am not now speaking as a representative of the banks. It is my personal opinion I am giving. I do not see why wages should not be paid. It is unfair to a man who has done his work, to allow a creditor to attach the assets. I think the words “secured by a floating charge” should be altered to “secured by a charge.”

1709. That is an important point to be observed if we wish the intention of the Bill to be carried out?—Yes, the words “secured by a floating charge” are used, and the provision applies only in the case of a floating charge. There is another weakness in Clause 103. There is nothing in Clause 290 stipulating that the debts referred to in that clause have priority over claims of holders of debentures under a floating charge. I think that the words “over claims of holders of debentures under any floating charge created by the company” in Subclause 1 of Clause 103 should be excluded because there is nothing in Clause 290 to say that those who have priority over claims of holders of debentures under any floating charge. Clause 103 as drawn has no operation at all.

1800. By Hon. H. Seddon: Is it not intended to include that provision?—Yes, but the draftsman has not done so. Clause 103 is not properly worded. The intention of the draftsman is clear, but he has not carried it out.

1801. By Hon. H. Seddon: The clause as worded will not achieve the objective.—No. All that the draftsman needed to have provided was that where a receiver is enforcing a debenture he must give priority to the debts referred to in Clause 290.

1802. Is there any other provision of the Bill on which you wish to comment?—I came here prepared to give evidence as instructed by the Associated Banks. I understand that certain matters have already been ventilated by members of the Law Society. In the circumstances, I have nothing further to add.

The Committee adjourned.

WEDNESDAY, 20th MARCH, 1911.

Present:
Hon. E. Neilson, M.L.A. (Chairman).
Hon. G. Fraser, M.L.C.
A. J. Rodoreda, Esq., M.L.A.
Hon. H. Seddon, M.L.C.
Hon. A. Thomson, M.L.C.

Evan Staples SAW, Secretary Stock Exchange of Perth, further examined:

1892. By the CHAIRMAN: You have some further evidence to give, Mr. SAW?—Yes. With regard to share hucksters, the Stock Exchange is of the opinion that the law should be amended to guard against all forms of share hawking or share pushing. In my previous evidence I put forward suggested amendments to Clauses 290 to deal with Companies Bill dealing with share hawking. I now desire to amend that evidence, which contained some clerical errors, and to submit in lieu the following:—

Amend Clause 290, as follows:—In the second line of Clause 290, after the words “from place to place” insert the words “whether by appoint-
wise cancel any such certificate. The Registrar shall not grant any such certificate unless he is satisfied that it is necessary and desirable for local reasons or special reasons; nor unless there is first filed with the Registrar a statement verified by statutory declaration containing particulars similar to those required under Subsection (4) of this section in relation to offers in writing for sale of shares. Every person acting under any such certificate shall produce the same or a certificate or copy thereof granted by the Registrar of Companies to any person to whom he is offering shares, and permit such person to inspect such certificate or certified copy thereof."

In the proviso to Subclause (3) of Clause 390, after the words "sale of shares," add the following words: "nor where the shares to which the offer relates are shares which are quoted on or in respect of which permission to deal has been granted by any recognised Stock Exchange in Australia or New Zealand the offer so states and specifies the Stock Exchange." (See Section 356, Sub-section 2a of the English Companies Act.)

Delete Clauses 392-401, vide remarks in memorandum already submitted.

1804. By Hon. A. THOMSON: You think these amendments will tend to tighten up the law?—All forms of share hawking and share pushing should be put down. I think the suggested amendments will tighten up the law in that direction. At present any person can go into the country and sell shares, but under the amendments proposed no one will be able to do so without a certificate from the Registrar of Companies, who would have to be satisfied concerning the bona fides of the individual before issuing such a certificate.

1805. By Hon. H. SEDDON: At your last appearance before this committee, I asked certain questions concerning investment companies and the limitation of borrowing?—Yes. I have here information which I have received from the secretary of the Melbourne Stock Exchange, Mr. G. D. Brown. His letter is dated the 1st March, and reads—

Investment Companies—Limitation on Borrowing,

I acknowledge receipt of your telegram reading—

"Parliamentary select committee inquiring why investment companies limited to 50 per cent. respect borrowing vide Clause 395 Victorian Companies Act is wrong in view of more than 200 investment companies England limits laid down 100 per cent. paid-up share capital in some instances right given temporarily borrow more. Stop please forward full report."

When our Government decided in 1938 to introduce legislation on investment companies, it was based largely on the principles underlying our own listing requirements, which came into force in 1937.

On the matter of borrowing power, the Stock Exchange requirement provided that an investment company's borrowings, if not in excess of its paid-up share capital, were limited to a proportion not exceeding 10 per cent., of the equivalent of the paid-up capital with the short-term borrowings restricted to 25 per cent. of the paid-up capital.

Under the Bill the borrowing power is limited to 50 per cent., with the right to borrow on short terms, so as to enable companies to, say, underwrite an issue for a further 50 per cent.—I would like to see a Bill introduced here along the same lines as the Victorian Act under the provisions of which the borrowing power is limited to a proportion not exceeding 50 per cent. of the equivalent of the paid-up capital with the short-term borrowing restricted to 25 per cent. of the paid-up capital.
By the CHAIRMAN: I believe you have looked into the Victorian system regarding the audit of sharebrokers' accounts—Yes, Victoria has an Act, No. 4510 of 1837, which makes provision for the keeping of certain books of account by members of the Stock Exchange, and for the audit thereof.

By Mr. RODOREDA: Is that a special Act?—Yes.

By the CHAIRMAN: And a new Act?—Yes, it was passed in 1837. It is called the Stock and Sharebrokers Act, 1837, and contains provision to the effect that it would come into operation on a date to be proclaimed in the "Government Gazette." There is no other Act throughout Australia, of which we have any knowledge, relating to the keeping of books of account by members of a Stock Exchange and the audit thereof. I have provided the committee with copies of a memorandum setting out the regulations enforced by the Perth Stock Exchange and regulations regarding accounts and the audit thereof issued by the Stock Exchange of Melbourne. Rule 35 (4) of the Stock Exchange of Perth is as follows:

The committee, whenever in their opinion such action appears warranted, may investigate the accounts and affairs of any member of the Exchange, and may report the result of such investigation to a special general meeting of members of the Exchange. Such investigation shall be carried out and reported on to the committee by the secretary and/or a firm of chartered accountants whom the committee may approve for the purpose. A member whose accounts and affairs are being investigated shall, without delay, produce all books and documents and supply all information as may be in his possession relative to the matter or matters under investigation to the committee or to the secretary or firm of chartered accountants approved by the committee to carry out the investigation.

By the CHAIRMAN: Then the Perth Stock Exchange has an audit on its own account—Yes, if the Exchange committee considers the position warrants the investigating of the accounts of a broker. In Victoria there are regulations regarding monthly trial balances, the half-yearly reconciliation of accounts, accounts and records that must be kept and the audit of members' books.

By Mr. RODOREDA: Are those regulations under the Act?—They are regulations framed by the Stock Exchange of Melbourne but are in conformity with the provisions of the Act.

By the CHAIRMAN: Then they are really domestic regulations of the Melbourne Stock Exchange?—Yes, but they are in conformity with the provisions of the Act. The members of the Perth Stock Exchange have no objection to advance, should the Government see fit to introduce legislation along these lines, but at the present time they feel that such a move would cause brokers here further expense although a very limited amount of business is being transacted here. Further, they feel it will inconvenience them because of the immense amount of work to be done in settling all the securities in order, which will be necessary prior to an audit taking place. I would point out further that at the present time some of the brokers are very short-staffed because so many of their employees have emigrated. Nevertheless, no objection will be raised if the Government sees fit to pass legislation to deal with this phase, although, as I have already said, Victoria is the only State of which we know where there is such an Act. Certainly there is none in either New South Wales or South Australia. However, the regulations regarding accounts and the audit thereof which the Stock Exchange of Melbourne has in force, are as follows:

51. Monthly Trial Balances.—Every member or partnership engaged in share-brokering shall ascertain not later than the fourteenth day of every month, that the books of account are in balance as at the end of the immediately preceding month, and produce a record of the monthly trial balances shall be retained by the member or by the partnership until such time as each succeeding general audit under the Stock and Sharebrokers Act, 1837, shall have been completed.

52. Accounts—Half-Yearly Reconciliation.—Members shall prepare in writing every six months, statements of account, at the end of March and September of each year, of all outstanding transactions (including loans of scrip) between members in order to enable the Stock Exchange committee to look into the Victorian system and the audit thereof. Whether any, and which, of the provisions of legislation along these lines, but at the present time they feel that such a move would cause brokers here further expense although a very limited amount of business is being transacted here. Further, they feel it will inconvenience them because of the immense amount of work to be done in settling all the securities in order, which will be necessary prior to an audit taking place. I would point out further that at the present time some of the brokers are very short-staffed because so many of their employees have emigrated. Nevertheless, no objection will be raised if the Government sees fit to pass legislation to deal with this phase, although, as I have already said, Victoria is the only State of which we know where there is such an Act. Certainly there is none in either New South Wales or South Australia. However, the regulations regarding accounts and the audit thereof which the Stock Exchange of Melbourne has in force, are as follows:

51. Monthly Trial Balances.—Every member or partnership engaged in share-brokering shall ascertain not later than the fourteenth day of every month, that the books of account are in balance as at the end of the immediately preceding month, and produce a record of the monthly trial balances shall be retained by the member or by the partnership until such time as each succeeding general audit under the Stock and Sharebrokers Act, 1837, shall have been completed.

52. Accounts—Half-Yearly Reconciliation.—Members shall prepare in writing every six months, statements of account, at the end of March and September of each year, of all outstanding transactions (including loans of scrip) between members in order to enable the Stock Exchange committee to look into the Victorian system and the audit thereof. Whether any, and which, of the provisions of legislation along these lines, but at the present time they feel that such a move would cause brokers here further expense although a very limited amount of business is being transacted here. Further, they feel it will inconvenience them because of the immense amount of work to be done in settling all the securities in order, which will be necessary prior to an audit taking place. I would point out further that at the present time some of the brokers are very short-staffed because so many of their employees have emigrated. Nevertheless, no objection will be raised if the Government sees fit to pass legislation to deal with this phase, although, as I have already said, Victoria is the only State of which we know where there is such an Act. Certainly there is none in either New South Wales or South Australia. However, the regulations regarding accounts and the audit thereof which the Stock Exchange of Melbourne has in force, are as follows:

51. Monthly Trial Balances.—Every member or partnership engaged in share-brokering shall ascertain not later than the fourteenth day of every month, that the books of account are in balance as at the end of the immediately preceding month, and produce a record of the monthly trial balances shall be retained by the member or by the partnership until such time as each succeeding general audit under the Stock and Sharebrokers Act, 1837, shall have been completed.

52. Accounts—Half-Yearly Reconciliation.—Members shall prepare in writing every six months, statements of account, at the end of March and September of each year, of all outstanding transactions (including loans of scrip) between members in order to enable the Stock Exchange committee to look into the Victorian system and the audit thereof. Whether any, and which, of the provisions of legislation along these lines, but at the present time they feel that such a move would cause brokers here further expense although a very limited amount of business is being transacted here. Further, they feel it will inconvenience them because of the immense amount of work to be done in settling all the securities in order, which will be necessary prior to an audit taking place. I would point out further that at the present time some of the brokers are very short-staffed because so many of their employees have emigrated. Nevertheless, no objection will be raised if the Government sees fit to pass legislation to deal with this phase, although, as I have already said, Victoria is the only State of which we know where there is such an Act. Certainly there is none in either New South Wales or South Australia. However, the regulations regarding accounts and the audit thereof which the Stock Exchange of Melbourne has in force, are as follows:

51. Monthly Trial Balances.—Every member or partnership engaged in share-brokering shall ascertain not later than the fourteenth day of every month, that the books of account are in balance as at the end of the immediately preceding month, and produce a record of the monthly trial balances shall be retained by the member or by the partnership until such time as each succeeding general audit under the Stock and Sharebrokers Act, 1837, shall have been completed.

52. Accounts—Half-Yearly Reconciliation.—Members shall prepare in writing every six months, statements of account, at the end of March and
If so, a complete report must be furnished, showing separately for the member, and for each client (names to be omitted unless requested) the following particulars:

1. Name of company and number of shares oversold;
2. Average price per share at which the sales appear in the accounts;
3. Market price at balance date.

(ii) Whether there are any other contingent liabilities, and, if so, the amount thereof.

(k) Whether there are any other matters or circumstances which in the opinion of the auditor affect the financial position of the member.

(i) Whether any securities carried by the member for the account of any client have been pledged, for a sum in excess of the indebtedness of such client in respect of such securities.

(n) Whether the member was financing another member, or was being financed by another than his bank.

If so, a full report must be furnished of the "financed" securities, stating in relation to each account particulars of securities "financed" and the amount per share represented by the advance. When a "cash" sale has been made conditional on "forward" purchase, or vice versa, similar information must be furnished.

(a) Whether the financial position of the member is such as to enable him to meet all his commitments.

(e) Whether all necessary information has been made available to enable the auditor to furnish the certificate and report.

(p) Whether the member(s) furnished the auditor with statutory declaration(s) of private assets and liabilities for his personal and transmission to the chairman.

55. Audits - Statutory Declarations. - When notified by the committee, a member shall supply to the chairman a statutory declaration, in such form as may be prescribed from time to time by the committee) of his private financial position.

These regulations are comprehensive and I cannot imagine a member of a stock exchange, knowing that all these matters would be inquired into, acting in contravention of them.

1818. By the CHAIRMAN: You could not suggest any addition? — No.

1819. By Hon. H. SEDDON: What is the title of the Act governing this matter? — The Stock and Sharebrokers Act, 1937. It is an Act to make provision with respect to the keeping of certain books and accounts by members of the stock exchanges and examination and audit thereof and for other purposes.

1820. By Hon. A. THOMSON: Is it a Federal Act? — No, Victorian. Under it books, accounts and records are to be kept by the broker and certificates are to be given by the auditors in verification thereof.

1821. By Hon. H. SEDDON: How does that Act compare with the provisions in this Bill dealing with the control of share-dealers? — The Bill provides for the registration of share-dealers with the Registrar of Companies. There is no provision in the Bill for the examination of their accounts or the audit of their accounts.

1822. Do you think it would be advisable to strike out the clauses in the Bill dealing with share dealers and embody them in a Bill similar to the Victorian Act dealing with share-brokers? — The Stock Exchange would like to see the provision with regard to share-dealers struck out; but on the last occasion when I was giving evidence the committee informed me that if the clauses were struck out it would mean that a monopoly would be granted to the Stock Exchange. If that were so — and the Stock Exchange has a monopoly at the present time — the matter could no further be tightened up by the passing of an Act to deal with the keeping by brokers of books of account and their audit.

1925. Similar to the Victorian Act? — Yes. It would cover the position.

1926. Dealing with Regulation 51, monthly trial balances, that is for the members' own information? — Yes.

1927. The trial balances are kept until the audit takes place? — Yes.

1928. With regard to Regulation 52, dealing with the preparation of a six-monthly statement of outstanding transactions, do you think the exchange of these documents between brokers would fully meet the position? — It might indicate an understanding between two brokers, but the other brokers would not be aware of the position? — That is so, but there is a further provision in Regulation 54 dealing with the audit of members' books. This regulation requires the auditor to give a full certificate of the transactions of the member. If the auditor is unable to give that certificate then he must make a complete report showing separately these various transactions.

1929. If the statement between members were made monthly, would not that tend to tighten up the matter of outstanding transactions? — It would tighten it up still further.

1930. If such statements were submitted to the committee of management of the exchange, that would tend to the keeping of a closer watch on members' accounts? — Yes.

1931. In the defalcations in Melbourne in 1937, the trouble appeared to be that a member had got too far in before the other members appreciated his position? — That is just what did happen at that time.

1932. It therefore appears to me that these regulations, while they are a vast improvement on previous ones, do not tighten the position up sufficiently to enable members to get hold of the position in time? — If there were a continuous audit, members, knowing that an auditor was going through the statements each month and making a report, would be more particular with their affairs and keep their accounts in proper order.

1933. The trouble is that the man who is honest copes with the conditions, while the man who is dishonest gets too far in before they can get after him? — Yes. There is another provision stating that information shall be furnished with respect to "whether any appreciable amount of capital was introduced or withdrawn (other than profits earned) within 30 days of the previous balance date or during the month preceding the present balance date." That is a very far-reaching provision.

1934. If that monthly statement were made available to the committee it would enable them to effect a very close check on such a transaction? — Yes.

1935. By the CHAIRMAN: Would that involve very much work for the share-brokers? — Most brokers have an immense number of securities left with them by people for whom they have to collect dividends and pay calls on shares and these are usually kept in deed boxes and lodged at the bank each night and would have to be readily available to people coming in. For an audit inspection it is necessary to list the whole of those things and see that they are absolutely in order, so there is an immense amount of work involved in the keeping of those securities. They are kept in a register.

1936. By Hon. H. SEDDON: If any transactions took place, obviously the scrip register would disclose it? — Yes.

1937. And even if a member himself falsified his scrip register there are other scrip registers which would be an effective check in the event of a monthly return? — Yes.

1938. By the CHAIRMAN: Those huge frauds in the Eastern States went on for years? — Yes. But apparently there was no proper audit or supervision. Members dipped into securities they held and lodged them at the bank as securities for advances. Of course the business of the Stock Exchange of Perth is very limited, and on a much smaller scale than that of the Stock Exchanges in the Eastern States. A good deal of business was transacted here during the last boom,
but since then business has gradually declined. A little is done in regard to mining scrip and also investment, but not much.

1837. By Hon. H. SEDDON: A list of Western Australian companies has been submitted. Has your experience been that those shares are dealt with in Western Australia or on the other Exchanges? Some are dealt with on the other Exchanges, but most of the shares in Western Australian companies are very closely held by people and there are not many transactions in the companies' shares in this State. Those listed are very substantial companies, the investments are good ones and people holding the shares do not desire to sell them.

1838. That is where the Perth Stock Exchange is under a handicap?—Yes.

1839. Were you given a copy of the amendments introduced into the Canadian Companies Act?—Yes.

1840. Would you like to express an opinion on the provisions in that Act?—Mr. Abbott made a statement in regard to a director speculating for his own personal account. The following reference to this matter appears in the Canadian Act:—

Statement by director of personal account.

60A. (1) Every director of a public company shall furnish annually to the secretary, for the information of the shareholders of the company at the annual general meeting thereof, a statement setting forth in detail all shares or other securities of the company bought or sold by him for his personal account, directly or indirectly during the 12 months immediately preceding such annual meeting.

No director to speculate in shares of his company.

(2) No director of a public company shall speculate, for his personal account, directly or indirectly in the shares or other securities of the company of which he is a director.

Penalty for failure to disclose transactions.

(3) Every director of a public company who neglects or fails to make a true and accurate statement of such transactions as required by Subsection 1 of this section, shall be guilty of an offence and liable on summary conviction to a fine not exceeding 1,000 dollars or to six months imprisonment or to both fine and imprisonment.

Penalty for speculating for personal account.

(4) Every director of a public company who shall speculate, for his personal account, directly or indirectly, in the shares or other securities of the company of which he is a director in contravention of Subsection 2 of this section, shall be guilty of an offence andliable on summary conviction to a fine not exceeding 1,000 dollars or to six months imprisonment or to both fine and imprisonment.

That section in the Canadian Companies Act appears adequately to cover the position and to be likely to prevent a director from speculating for his own personal account. The committee considered that a similar provision should be inserted in the Western Australian Companies Bill, we think it would be in the public interest.

1841. How would you define the word 'speculate'?—We presume it refers to a man who buys or sells on the market, using for his own personal purpose that which he has received.

1842. Surely there could be no objection to a director buying or selling shares on the market. I take it the objection is to a man's using information available to him as a director?—There is no objection to a person buying or selling on the market. It is a question of his using information he has received as a director.

1843. Does the word 'speculate' meet the case?—I have not a dictionary to look up the meaning of the word.

1844. As a matter of fact, the word may not have the dictionary meaning. It appears to me that there is a fault in that the word 'speculate' is not defined?—Yes. There is another section (Section 118), 'amounts paid to directors to appear in statements,' that has been dealt with in evidence previously given. We gave evidence that it is dealt with in the 1930 amendments to the South Australian Act.

1845. Will you refer to page 2 of the printed extracts from the Canadian Companies Act? You will find there a definition of 'offer to the public, etc.' How does that definition strike you as compared with the one in our Bill?—I think this is a much fuller definition.

1846. That is how it impressed me?—I think the other provisions have already been dealt with.

1847. By Mr. RODOREDA: Reverting to the provisions in the Canadian Act, that no director of a public company shall speculate, etc., what would you say is the meaning of that?—The object is to prevent a director from using confidential information that he receives about the company and selling or buying shares on the market for his own benefit.

1848. I know what the intention is, but what would you say in the meaning of the provision? Would it mean that a director may not deal in any way in the shares of a company of which he is a director?—I think the object is to prevent such dealings.

1849. He could neither buy nor sell shares in the company of which he was a director?—Unless he made a statement as provided. He would be able to sell shares, but he would have to supply the secretary with a statement of his transactions.

1850. Those two provisions see to be in direct contradiction? One of them certainly does say that no director shall speculate, etc., and the other says he shall furnish a statement setting forth all details of his transactions.

1851. I cannot reconcile them?—We consider that the buying or selling of shares constitutes speculating in shares. A man buys at a low figure and sells at a high figure.

1852. Or vice versa?—Or, if bearing the market, he sells at a high figure and buys at a low figure.

1853. Those two provisions have puzzled me—they appear to be contradictory.

1854. Are there similar provisions in any other of the Australian Acts?—Not that I know of. There is none in the Victorian Act, which is the most up-to-date of all the Australian Acts.

1855. Even if those provisions were embodied in the law, could not they be evaded?—Yes, by putting the shares in somebody else's name. In many instances, shares are held by office clerks and typists on behalf of directors of companies.

1856. Do you think we could pass any law or regulation to prevent directors from dealing in shares? It would be impossible to prevent collusion. A director could go to any person and say he knew something, and the pair could buy or sell shares, and split the profit.

1857. The CHAIRMAN: It would be impossible to legislate against 1,000 dollars or 6 months imprisonment or to both fine and imprisonment.

1858. By Mr. RODOREDA: The outcome would be that the director who did it deliberately would escape and the director who unwittingly did it would be penalised?—Such a provision might drive business of that kind even further underground.

ALEXANDER HENRY MALLOCH, Managing Director Malloch Bros., Ltd., examined:

1859. The WITNESS: I wish to bring before the notice of your committee a matter of considerable importance to the State, and in particular, to the mining industry. I would like to see incorporated in the Companies Bill which you are now considering, provision for the formation of small companies on simpler lines than the present no-liability companies. During the many years that I have been associated with the mining industry, I have found that prospectors and small mine owners have great difficulty in finding finance for working their leases, and especially for the renewal of old leases. The difficulty is to get outside help, one of the reasons being that the small mining ship, and anyone standing in as a backer is liable for the whole of the debts of the partnership. Past severe experiences in this direction militate against a prospec tor being able to get friends or people in the towns or city to help financially. Of course if a mine has reached a stage when there are good developments which will stand a regular no-liability company, it can be floated into a regular no-liability company, but if it is an abandoned lease which has not been worked for, say, 25 years, but the records of which show that it is well worth re-
opening, or if it is a new lease that requires developing with a small amount of capital in the initial stages, it should be possible for them to work on a small scale. These could be called no-liability syndicates, and provide for from five to 25 shareholders. A special form could be provided under which they could be registered with the Department of Mines. The present memorandum and articles of association applying to no-liability companies could be utilised, provided these were altered in a clause or form from the Government Printer at a cost of, say, 2s. 6d. Mr. Gorne Miller, who is considered one of the leading authorities in the city on company law and who is chairman of the Chamber of Commerce in the Sydney Committee, has given me permission to say that he would support this plan.

Our secretary, Mr. Glyde, who has had a lifetime's experience as a public auditor and accountant, is also of the opinion that it would be workable and would provide relief for those who are willing to take a small number of the public interested without anyone being liable for a larger amount than that represented by the shares for which they subscribe. If some form of relief were given in this direction, it would enable a backer to get a direct interest in the working of a gold-mining lease on a basis that would ensure his being in on the ground floor. The money subscribed to for the lease might, later, be gettable in to the working of the mine. In this way it would have a better chance of showing a profit. The result, I am sure, would give a better outlook for the prospects of the mine and would be an encouragement for many more of our abandoned shows to be revived.

One of the troubles in the past has been that leases, on which very little work has been done, have been floated on old production, by company promoters, as no-liability companies. In many cases the vendor and the promoter have each got a good profit, but the capital left for mining and actually working the show has often been inadequate, and operations have come to a standstill because the subscribers did not respond to calls. The mine was actually overloaded from the start. In some plans such as I have suggested were adopted, lesseholders would have a chance to get sufficient capital, at any rate, for preliminary development without bringing in the service of a company promoter. As it is now, they must struggle on with their own meagre resources, or with precarious support from outside friends. The Limited Partnership Act does not provide for the plan I have in mind. There may be a dozen or more shareholders, each with a varying interest, and I would like to see shareholders given scrip so as to facilitate the transfer of the interest if they wish to sell. It might be possible also to arrange for this, as the mines develop, to be negotiated through our Bank of New South Wales, and that might popularise any medium for the public to deal in our mining ventures.

Since the depression period about ten years ago I have come across hundreds of cases in business where men have wanted to work away one of the many thousands of old abandoned leases, but who were debarred from doing so because of want of finance in the form of partners with money or outside backers. From this experience, and also an intimate knowledge of the conditions which I gained of the goldfields before I started business 30 years ago, I feel sure that such men would be greatly helped if they could offer shows on a no-liability basis, to a limited number of people who might be ready to speculate in mining ventures.

I brought this matter before a meeting of the Chamber of Commerce last week, when the following resolution was carried:—

That provision be made in the Companies Bill now before Parliament, to facilitate the formation of mining syndicates, analogous to similar companies at present the no-liability companies, with a view to helping prospectors and small mine owners to get finance, particularly for working old leases, as well as with the responsibilities of the business men would be greater—I do not think that would be so. We could still make our investigations as to the commercial side of the proposition. A man may come to us with a mining proposition and have nothing behind him. We may know that the show in question is an old one but offers good prospects.
they knew that a few others were standing behind him, even if their liability was a limited one. As things are at present, business people are chary about extending help to small mine owners when they know the risk involved. To obviate some of the risk, it would be necessary for a prospective backer to go through many legal formalities. We meet dozens of such cases. It is in order to try and find some way out that I have put forward these suggestions. We are quite content, as a business concern, to carry on as we are doing.

1887. The CHAIRMAN: I have here some comments from the Solicitor General, dated the 24th March, which I will ask the secretary to read.

1888. The SECRETARY read the following statement by the Solicitor General:

1. Mr. Malloch suggests that provision be made in the Bill enabling the incorporation of small mining companies instead of partnerships to run small mining undertakings. His idea is that the business of such small companies shall be carried on as if the concerns were partnerships, the liability of the partners for the debts of the concern being limited.

2. I do not know whether or not Mr. Malloch fully understands the provisions of the Limited Partnerships Act, No. 17 of 1909. Under that Act limited partnerships can be formed in which there must be less than 20 partners, of whom more than one are not responsible for all the debts of the partnership, and in which there may be one or more limited partners whose liability for the debts of the partnership is limited to the amount of their contribution to the capital of the Company.

3. Under that Act, however, in the case of a limited partnership, which is formed to carry on a mining undertaking the partnership must consist of not more than 30 partners.

4. The said Act contains many provisions imposing certain restrictions and limitations upon the limited partners as distinct from the general partners, which Mr. Malloch would probably consider are not suitable for the class of partnership or small company which Mr. Malloch has in mind.

5. Mr. Malloch, however, apparently desires that the small companies which he has in mind shall for all practical purposes still function as a partnership.

6. For that reason, it seems to me not at all to be desirable or expedient to include in the Companies Bill provisions for the incorporation as companies of these associations of persons which Mr. Malloch intends shall virtually have the identity of an ordinary partnership except for a limitation of the liability of the partners in respect of the partnership debts.

7. I would suggest, therefore, that Mr. Malloch's suggestion can more properly and conveniently be incorporated in the Limited Partnerships Act, 1909, and could form the basis of an amendment of that Act.

8. I make the suggestion contained in paragraph 7 hereof because I agree that the provisions in Clauses 42 and 43 of the Bill which relate to proprietary and private companies are not suitable for the concerns which Mr. Malloch has in mind. At the same time I dislike the idea of lumping up the Companies Bill with provisions to make possible the formation of small companies which more properly and correctly can be provided for in a way suitable to Mr. Malloch in an amended Limited Partnerships Act, 1909.

1869. The WITNESS: We know of the limited partnership provisions, but we do not think they would fill the bill at all. For one thing, there would be varying interests. For another thing, I would like to see some issued. I do not see why the no-liability provision could not be used on a limited scale, especially if the memorandum and articles of association were printed. Now one has to go to a lawyer, or get the memorandum and articles typed. If they could be put in book form and sold for, say, half a crown, and accompany the registration which the man desires to make, that would be fairly simple.

1870. By Hon. H. SEDDON: Your idea is that there should be small companies formed, either of a limited or a no-liability character?—Of the no-liability character.

1871. And you suggest that there should be a standard type of memorandum and articles of association, possibly embodying a simple form of Table A, and that these should be printed by the department and used as a basis for such companies?—That is the idea.

1872. What would be about the size of the company you have in mind?—I think small companies are mostly eight or ten people.

1873. I mean as regards capital?—I should say not more than £1,000, from £250 or £500 up to £1,000, to enable the people to get a start and developments, and perhaps eventually float the mine into a bigger company.

1874. I take it that what you would really happen would be that these either would be purely local companies, or would have to be handled by some responsible firm in the city?—Not necessarily. In most towns there is an accountant, and then there are services rendered by city firms who have accountants around the country to make out tax returns and keep people's books.

1875. In most towns the man I have in view would find an accountant who would advise him how to do it. I do not think there would be any difficulties. I think it would be necessary for the man to do it through the city.

1876. There would have to be a secretary or other responsible officer?—Yes. I am thinking of the accountants around the country. They could do the work.

1877. Say the man who do income tax work?—Yes.

1878. I was thinking, however, that £1,000 would not go very far?—No. I know of cases where £50 would have started something that might have meant an independence, but the man just had not got it.

1879. I merely want to get the idea in a little more detail. I take it you would have to limit any question of profit out of flotation, or anything like that. It would simply be a sort of mutual affair?—Yes. It would not be so much that the man would want a profit out of the show in passing it over to the company at the start without having done any work on it, but to get some outside capital to start it so as to make a profit out of the mine.

1880. But the man has to hand over his interest to the company, has he not?—Yes. Sometimes that interest does not represent much outlay. To my thinking, where the man has spent a few hundred pounds, he would put a valuation on his property. The vendor could take so many shares for the estimated value of his interest.

1880. That brings your £2,000 again into the question?—I do not visualize limiting capital to £1,000, but I think £2,000 would answer most of the cases I know of. As an example, a man wrote down to us the other day from Southern Cross. He has been developing a mine for some years. We know the man to be very reliable indeed, and he has a plant on the property, but he is compelled to send his ore right out to Kalgoorlie. He says all the profit is being absorbed by transport and treatment charges. He wrote to know whether we would pass the proceeds all to the friends who would supply capital to provide a plant to treat the sulphides. This is a case where the man would put his asset in at a certain value, but of course the proposition would entail more than a £2,000 company. But his main interest was not to get a profit out of the plant or the mine, but to get started so that he could make a profit in the future. Now that will go, I do not know. We handed the proposal out to a man who was prepared to give it some consideration. We passed the proposal back for the purpose of getting some questions answered. Now the first man was holding back because he wants to get another crushing mill, and this one, and perhaps eventually float the mine into a bigger company. Kalgoorlie. However, I repeat that we know him to be a good man. It is a good show, but at present it is not providing profit for anyone.

1881. What would be the nature of the proposal which that man would assent to?—He is hardly the man I had in mind for small concerns. I think that if he brought the proposition down to the city he could get it assisted for more than I had in mind. It looks a
sound proposition for somebody to take hold of, and not one involving so much risk as the large majority of the propositions I have in mind.

1882. By Hon. A. THOMSON: In effect, what you wish to achieve is that there shall be a limit to a man's financial responsibilities?—Yes.

1883. If he takes a share worth £25, that will be the only limit to which he will be responsible?—Yes, that is what I am at, unless he prefers to carry on as he does with a no-liability company and contribute in calls. It would be optional for him after taking his initial interest.

1884. That would involve the insertion of a special clause in the Bill?—It might. If the shareholder were operating as a no-liability company, paying so much for his shares at the beginning and so much in calls, the company could follow the lines of the ordinary no-liability company.

1885. By the CHAIRMAN: Which would mean that the bearer's liability would be limited?—Yes.

1886. By Mr. WATTS: Why do you want to register them at the Mines Department?—Because I think that would have the effect of making people a little more careful before registering. That would apply particularly if there was anything shady about the business. All particulars would have to be given to the official of the Mines Department. I think the department would take an interest in such registrations and be watchful of the interests of shareholders.

1887. Do not you think it would be better for registration to be effected at the Companies Office, with a certificate from the Mines Department that in its opinion the concern was suitable?—Yes, it could be done that way.

1888. You said that a limited partnership would be unsuitable and one reason you gave was that scrip could not be issued. Did you mean that scrip should be transferable to anyone to whom the bearer cared to sell?—I think it should be.

1889. Then is it a case neither the private nor the proprietary company would be of any use, as Mr. WATTS suggests, because their power to transfer shares to the public is limited?—I am not familiar with all the details of that proposal, but I think it would be desirable for shares to be transferable as they might become valuable after a while.

1890. What you really have in mind is a sort of junior no-liability company?—That is about what I mean. The suggestion has been made that such concerns should be called no-liability syndicates so as to distinguish them from no-liability companies.

1891. By Hon. H. SEDDON: That type of concern was fairly common on the goldfields in the early days?—Yes, there was a lot of backing done in those times.

1892. The local storekeeper might be relieved to a certain extent for he would know what his commitments amounted to, whereas at present he may go into a concern he thinks worth while and find himself loaded with a considerable amount of bad debts?—Yes, but the storekeeper might be instrumental in getting in a few shareholders.

1893. He does that now in that he allows a certain amount of credit?—Yes, but he might get outside backers. We have in mind a position in which we would be able to pass a man on to our friends with a view to their taking a few shares if we do not dare to do that now. When I say "we", there are dozens of other concerns in a position similar to our own, and they would be interested in doing the same thing.

1894. By the CHAIRMAN: As far as the small storekeeper is concerned, their liability is limited, whereas the responsibility of the individual owners of the show would be greater?—But claims can be taken before courts and in any event the assets would still be there.

1895. But the assets would be secured under hire-purchase or other agreements. That would apply to the machinery, and in that event there would be only the indebtedness outstanding. In those circumstances the mine would be worth nothing?—The same thing applies to the farmers. The merchants supply machinery to the farmers under hire-purchase agreements, and that machinery is protected against the creditors, yet consider what a vast amount of credit has been granted to the farmers. The storekeepers give credit to assist in the development of a concern that they think is promising and then, when difficulties arise and adversity is experienced, trouble follows. If the show succeeds, well and good. If not, it has to go to the wall.

1896. In many instances the storekeeper has been the real prospector in the back country with which he was associated going into a concern that looked like a good thing and putting up quite a lot of money. Suddenly it commenced to sink and our surveyor was the man they decided to sue for the debts that were owing. It was a very painful business.

1897. That was because everyone was responsible, collectively and severally?—Yes.

1898. Have you in mind a sample form of articles and memorandum of association that you could submit to the committee?—We might consider doing so. Mr. Miller came to see me with a keen desire to help. We might confer and work something of the sort you suggest.

1899. By Mr. RODOREDA: I think your suggestion is worthy of serious consideration. The difficulty will be to give it practical application. What would be basic difference between your proposal and the present no-liability provisions? In other words, what is your objection to these no-liability provisions?—My objection is that the individual really requires to have a developed show, or something that can be presented to the public in an attractive form before being justified in incurring the expense now involved in floating the concern through the usual company promoter. He would have to go to a lawyer and spend a lot of expense in putting the concern on the market.

1900. Then the question of preliminary expenses represents your main objection?—Yes. Mostly a man has to wait until something is done in those times when one knows that the proposition is worth while taking in hand. He has to see in it a profit for himself as well as profit for the vendor. The average case I have in mind is the man, of whom there are very many with whom we come in contact, who has to get a little capital to commence work.

1901. Under present conditions, the bulk of the money raised goes in preliminary expenses—A great deal of it.

1902. We want to limit that sort of thing if we can?—There is no doubt about that. When adversity comes, people will not pay their calls unless they can see some return for their money. Everything is all right when things look rosy. When the mine is going through a period of development, nothing much can be expected by way of return, and should a war come the shareholders drop out. Most of those interested these days are clerks and people in positions and, in times of adversity, they do not pay calls, and the company drops out.

1903. You desire the committee to devise some means of making partnership provisions, without the disadvantages attaching to a partnership?—Yes.

1904. Whether in this Companies Bill or in some other measure does not matter—No. It might be necessary to introduce a special Bill. That would not be asking too much in view of the importance of the industry.

1905. Mr. RODOREDA: I agree with you.
1907. By the CHAIRMAN: We are not sitting to consider the passing of special Acts; we are dealing with the Bill before us. But Parliament is dealing with the whole question.

1908. By Hon. A. THOMSON: Have you an actual workable scheme in your own mind?—No more than I have detailed in the first page of my statement.

1909. Your desire is to help the small man to develop his mine?—Yes. When discussing the matter with Mr. Miller yesterday, he said he thought it could be done for £2, if printed forms were used.

1910. By the CHAIRMAN: Would that give the necessary protection to the public?—Yes. Our secretary, Mr. Glyde, is of the opinion that a form, similar to a hire-purchase agreement form, could be used. Hire-purchase agreements secure large sums of money in a simple way; everything works out equitably in the interests of both sides.

1911. If a person could buy an agreement form for 2s. 6d., that would be very cheap and would probably cause more people to consider the exploitation of the public?—I meant that 2s. 6d. would be the cost of the memorandum and articles of association.

1912. Then a company could be started for 2s. 6d.?—It would mean that you could secure the necessary form to register the company. You could get the memorandum and articles of association, which could go with the agreement. I estimate the fee under the Act would be about £2 for a small company. I would like the committee to understand that I am quite satisfied to allow the present conditions to remain as far as my business is concerned. I am giving this evidence as the result of what we have gone through for the benefit of the industry.

1913. On the other hand, we as a committee, must be careful what we do, because we are here for the protection of the public. I naturally am anxious to develop the goldmining industry, as I am representing a goldmining district—I realise that you are just as keen as I am to do so, I want you to understand that I am a machinery merchant and that therefore my evidence is open to grave suspicion.

HENRY CHARLES HOLTON JIRBY, further examined:

1914. The WITNESS: I wish to submit the following supplementary statement on behalf of the Accountancy and Secretarial Institutes:-

When I previously gave evidence before the committee on behalf of the Accountancy and Secretarial Institutes, I expressed the view that it was undesirable to seek to compel the use of a standardised form of balance sheet, such as is provided in the Bill for all companies other than banking companies.

I indicated that it would be preferable to eliminate the proposed form entirely, and to make such provisions in the Bill as to the general form of balance sheet and as to specific items to be shown therein as are necessary to protect the public.

I was asked by the committee to comment on the provisions of that description already existing in the Bill, and to indicate whether, in my opinion, they were adequate.

The form and contents of balance sheets are questions which have been given much attention in recent years by the accountancy profession in England, America and in Australia. It is generally agreed that there should be an adequate disclosure of information, but opinions differ widely as to form and contents and every authority is opposed to a standardised form, because it is felt that it is not practicable to draft a form which will meet all the varying requirements of modern business.

The English and New South Wales Acts make no provision for a standard form nor do they include even an optional form as was originally given in the Victorian Act. I understand, however, that a recent amendment has eliminated from the Victorian Act even the optional form, and all three Acts now protect the position by making such general requirements in the Act itself as are deemed necessary.

Considerable press publicity was given to the question in Victoria some years ago, following the publication in the August, 1935, issue of the Accountant, "London, of the accounts of the Myer Emporium. The criticism gave rise to much comment and the Melbourne "Herald" in reporting a special interview with Mr. A. A. Fitzgerald, President of the Commonwealth Institute of Accountants, published the following:

"In some instances," Mr. Fitzgerald said, "it may be that the balance sheets are so signally made obscure, but this is certainly not the principal cause of the obvious deficiencies. Balance sheet draughtsmanship is a matter which calls for careful thought in adapting general principles to specific circumstances. The principles are well known. All that is needed in most instances is greater care in applying them or, as ‘The Accountant’ says it, a ‘refinement of draughtsmanship.’" He put a certain amount of blame, however, on the specification of a standard form of account in the Victorian Companies Act, a form which was "hopelessly out of date" and bristling with faults.

"Unfortunately," said Mr. Fitzgerald, "there is a tendency to follow the form rather than apply it, hopelessly in spite of its defects." He hoped that in the new Companies Act (then under consideration) the attempt to standardise balance sheets would be dropped—to be replaced by more stringent provision as to general form—thus opening the way to an improvement along the lines of the English developments. These views were later endorsed by Mr. W. V, Nixon, president of the Joint Council of Accountancy bodies in Victoria, and Chairman of the State Council of the Institute of Chartered Accountants in Australia.

The "new" Act referred to by Mr. Fitzgerald was the present Victorian Act, which did not make standardisation of balance sheets compulsory but did include an optional form.

It would seem that whereas an optional form is given, however inadequate this may be, there may be a tendency for such form to be followed in some instances for which it is quite unsuitable. It seems desirable, therefore, to eliminate the form entirely from the Bill and work on the lines of the English, New South Wales and Victorian measures.

The Bill as at present drafted contains the following clauses relating to matters which must be disclosed in a balance sheet:-

Clause 65. Commission on shares or debentures.

Clause 67. (2) Loans to assist employees to purchase shares.

Clause 69. (3) (a) Discount on shares.

Clause 101. (3) Redeemed debentures available for reissue.

Clause 149. (1) Summary of share capital and provision for distinguishing between fixed and floating assets, and statement of basis of valuation of fixed assets.

(2) Form of balance sheet.

(3) (a) Preliminary expenses.

(b) Expenses in connection with capital issues.

(c) Goodwill patents and trade marks.

(4) Liabilities secured other than by operation of law.

Note: With the elimination of subclause (2) Clause 149 is identical with Clause 124 of the English Act.

Clauses 150 and 151. Dealing with the accounts of subsidiary companies.

Clause 153. Loans to directors and officers.

Clauses 154 and 156. Auditor's certificate.

(The evidence previously given suggested important alterations to this clause with a view to making clear the distinction between the auditor's certificate and his report.)
In addition to the above provisions, I think it would be desirable to adopt the requirements of the Victorian Companies Act, making it necessary to disclose on the balance sheet—

(a) Particulars of any case where an option exists over unissued shares of the company, including the number of shares under option, the price of issue and the date of the expiration of the option.

(b) The amount of any arrears of preference dividend.

It is felt that with the above provisions in the Act, the position will be adequately protected.

The Victorian Act also provides that the balance sheet shall disclose the basis of valuation of floating assets but while this would, if practicable, give desirable information to shareholders, strict compliance with such a provision is rarely possible particularly in the case of stock and book debts, and probably for that reason the other Acts do not contain a similar requirement.

The general principle on which stock is valued is cost or market price, whichever is the lower, but it would not be practicable to make a hard and fast provision to that effect.

The basis of valuation of the bulk of the stock is usually as stated, but such factors as over-age, obsolete stock, slow selling lines, excess holdings, etc., have to be considered, which, in view of the probable delay in realisation, it would be unwise to value at their nominal market worth. In these cases the value can be nothing more than an estimate, to which no convenient definition can be given.

In the case of book debts also the balance sheet value must obviously be an estimate based on the probability of collection. All that the company's officers and the auditor can do is to see that such provision is made for bad and doubtful debts as the condition of the accounts and past experience appear to warrant.

On the valuation placed on stocks and book debts depends very largely the results shown by a company from its trading operations, and such valuations are, therefore, of the utmost importance from the shareholders' point of view.

It will be obvious, however, that the valuations cannot be shown as statements of absolute fact but they must necessarily be based largely on estimates and on opinions. All that legislation can do effectively is to suggest that the position is to ensure that as far as possible the auditors responsible to comment on such valuations are people capable of expressing a trained and informed opinion.

It was the need for an informed trained opinion that mould, whether we were a regular banker, apply general knowledge of trade conditions in the industry.

1917. Would the auditor, in preparing such documents as are now under discussion in the affairs of a large company, check each debt separately or would he judge from the headings expressed by the managing directors of the company?—The debts would be examined carefully. That is an essential feature of an audit—an examination of the book debts.

1918. Do you think there is a tendency to rather too much orthodoxy in the auditing of company's books? Part of the purpose of an audit is to detect irregularities by the company's employees?—Yes, and prevent them.

1919. If the same formula is always followed, is it not possible that an employee might get to know the methods by which that formula could be circumvented?—That does occur, and it is only as a result of audit experience over many years that the present systems of audit have been built up. Loopholes have been found by clever and unscrupulous people and steps have been taken to block them. You have the same experience in the field of taxation. You think you are covering everything, but from time to time amendments have to be introduced to protect avenues where a leakage has been discovered.

1920. Then it really is not desirable to work too closely to the formula in these matters? There are certain specific checks that have to be carried out in every audit to ensure an efficient audit, but it does not necessarily follow that the auditor must study the company's accounts and reports separately or special circumstances that would give rise to special risks, the onus is on the auditor to make additional checks in that direction.

1921. Do not you think that might be advanced as another reason why this standardisation of methods might occur?—I do not know that the form of balance sheet is linked up closely with the actual audit. After all, the balance sheet is only a means of presenting to shareholders a summary of the company's affairs.

1922. By Hon. G. FRASER: By laying down a set schedule you think that a certain amount of safeguard would be afforded?—No, I think it is undesirable to lay down a standard form of balance sheet.

1923. By Mr. WATTS: I was trying to arrive at the underlying reasons for your view that it would be better to follow the English Act and omit from the measure a form of balance sheet?—I can appreciate the point you are making, but I do not think it has any bearing on the audit question; I think it is more a form of presentation. If you compel a company to present a statement of its affairs in a standardised form, you might be in and probably would be in, led to believing that the information which it would be desirable to indicate and which could be indicated if the company was not compelled to adopt that form.

1924. Turn now to the valuation of stock. I have always felt that an auditor is in a hopeless position. He is accustomed to taking the figures given him by the manager of a company and possibly the manager could give figures that were substantially overestimated. What action could be taken to avoid anything of that kind, which would have quite a big effect on the position of the company?—The position is very difficult. That is one of the most unsatisfactory features of audits generally. About all we can do is to apply certain general checks. Obviously we cannot check the stock, but we can check the basis on which the stock has been valued and the company's costing system and thus determine whether it is working on a safe valuation basis. We can check the quantity of stock in relation to turn-over with the directors whether there is obsolete stock and that sort of thing, but for the actual accuracy of the stock sheets, we have to depend largely upon the certificates of the manager of the concern.

1925. Have you any idea what proportion of auditors regularly undertake the checkings to which you have referred?—I should say those checkings are general. They are more or less standard features of an audit.

1926. By Mr. RODOREDA: You have to accept the manager's figures mainly for quantities only?—We do not check the valuations of the extensions. We check a percentage of the prices and extensions and the additions of the stock sheets are always checked.
The auditor's report is made available, as an auditor cannot have been made to meet this requirement. If the auditor feels there has been excessive valuation, he will regard it as his duty to see that this information goes to the shareholders.

Would it not be better to omit the schedule and to file it by something along those lines? I think that if a good index were provided for the measure, it would overcome the difficulty.

Do you consider that some action is required? Under no circumstances, that is why I suggested previously that the provision of an index would be very desirable.

Mr. RODODEND: There would not be much opportunity for a firm to put it over an auditor in the matter of over-valued stock?—It could be done.

On a large scale?—It has been done on a large scale.

Mr. G. FRASER: I take it that the auditor would have his own idea of prices and, if he was asked to check them?—If he were dubious, he would go into the matter fully. In the average case, however, there is nothing to arouse suspicion on the part of the auditor unless the usual checks. If the result of these appears to be satisfactory, the rest is accepted as being correct. Obviously an auditor cannot check everything.

Mr. THOMSON: Was not something discovered in connection with a company in New South Wales?—All kinds of jokes have been worked.

The CHAIRMAN: The cost of the stock could easily be checked; the quantity would be the difficult part from the auditor's point of view?—The question is not so easy as it may appear. You have continuing purchases at varying prices. Are you to work on the basis of first in first out, or last in first out, or on an average cost? There are all kinds of complications and it is not quite the simple matter it appears to be. Actually the term "cost or market if lower" is merely a convenient way of describing a rather involved principle.

But you have the means of costing more than you have of the quantities?—Quite so.

Mr. H. SEDDON: In view of what you have said do you think that the percentage which was adopted in valuing book debts should be stated?—There is not always a percentage taken.

Or the method by which depreciation of debts is considered?—I do not know that you can set a method exactly. The general procedure is to go through the book debts and assess what is the estimated value of each and reserve or write off the difference between that value and the amount owing. There might be a different principle of valuation in regard to each one.

Do you classify the good and the bad?—It is more usual to make a fixed writing-off against each debt.

Would it not be a better guide for the shareholders if you could say just what basis had been adopted?—It would be extremely difficult to define any basis. It would be very difficult to put all the information in the balance sheet.

If the auditor's report is made available, as well as the balance sheet, a lot of information would be disclosed that would not otherwise be available?—You probably would not get that type of information.

It would be very vital to the shareholders of a state that think so. If an auditor has any doubt about the value of the stock, he mentions the fact then. If he feels that the stock has been conservatively valued, he will probably say nothing about the usual basis of the valuation.

Is the report always circulated? Is it not only the balance sheet that is circulated?—The balance sheet, but, as I say, where an auditor feels there has been excessive valuation, he will regard it as his duty to see that that information goes to the shareholders at the meeting. He cannot conscientiously sign a balance sheet with a stock value which he feels is overstated without specifically saying so.

Mr. WATTS: Is it customary to report your opinion to the shareholders and also to furnish a confidential report, the one on the balance sheet?—The procedure varies so much that you can say there is no custom attaching to it. There is a lot of information that the auditor has used in that report upon which should be confidential to the directors; but there are other things which it would be quite proper to bring before the shareholders.

This Bill appears to provide that all such documents and auditors' reports and balance sheet must be filed at the Companies Office and they should be available to any person whose the case passes into law. Is it not likely that there will be a considerable extension of the confidential reports presented to the directors?—There is not the least doubt about it. We gave evidence on that point before.

Do you not consider that an extension of the confidential reports would be desirable?—It depends on what they contain.

But to go any further than you are going now?—It would be undesirable to force a state of affairs where a question is likely to be raised whether such and such an item should go in the directors' report or in the shareholders' report. It should be left as widely as possible to the auditor to do his job.

This question is likely to arise if we make it possible for the shareholders to see the confidential information?—There is no doubt about it; it must arise. I have read the new provision in the Canadian Act dealing with the question of action to be taken where serious impairment of capital is discovered, and see no objection to it.

Mr. THOMSON: Would it be of advantage?—It throws a further responsibility on the officer of the company to see that the shareholders are informed upon matters about which they should probably know.

Suppose one report is made for circulation to the shareholders and a confidential report is made for the directors. The one would then be thrown upon the directors to make recommendations, which might be unfavourable to the company?—Any impairment to the capital would be obvious from the balance sheet at the end of the year. This presupposes that something might happen during the year concerning which the shareholders should have been made aware. I see no objection to the Canadian amendment.

Mr. H. SEDDON: Have you anything further to say?—There are a few small items in connection with liquidation proceedings concerning which we would like to make an addition to our evidence. Clause 205 deals with circumstances under which a company may be wound up by order of the court. We feel it is rather drastic to allow a company to go into liquidation under the conditions set out in paragraph (ii). Such provisions might be deleted. Penalties are provided and these should adequately protect the position.

Mr. WATTS: You contend it directs the court to wind up a company because it has failed to do a certain thing, whereas under paragraph (vi) the court would still be able to wind it up. You think this may be giving the court the impression that it ought to wind up the company because it has failed to hold an statutory meeting?—Exactly. The provisions might be applied in that way, but I scarcely think so.

The court would not be deprived of any power if that provision were left out?—No.

Will you proceed?—The next item deals with Subclause (1) of Clause 218, report of liquidator. This imposes rather a heavy burden on the Liquidator. We feel that the work involved might be less if the liquidator was in all instances, and suggest that after "shall" in line 7, the words "if ordered by the court" be inserted. If the court has no reason to believe there have been improper practices in the affairs of a company it can instruct the liquidator to make a report. Failing that, it might be taken that the liquidator should make an exhaustive examination into the affairs of the company to ascertain the causes of failure. A tremendous amount of work would be involved that would be of practically no value. We do not think this should be compulsory in all instances, unless ordered by the court.
1965. By Hon. H. SEDDON: Is that not intended by way of a preliminary statement to the Court?—The Bill says that the liquidator shall make a report to the Court as to the causes of failure. That would necessitate an exhaustive investigation into the company's affairs, and if it is a mere case of over-trading the work would be useless. Only in cases where there was a suspicion of improper practice would such a report have any effect, and then only with a view to the prosecution of the offenders.

1955. A great deal more information will under this Bill be furnished with regard to the incorporation of a company. Here is an item that will be of considerable value in enabling people to judge whether a company is in a sound condition to invest in—This deals with the period after the company is wound up.

1955. A certain number of companies fall each year. If the cause of failure was set out, the office of registered companies would be in possession of valuable information that would be a guide to investors—I hardly think that is likely. Every company has its own special set of circumstances. Failure on account of inadequate capital in the case of one company does not necessarily mean that every other company of the same type would fall for the same reason, because they might not have over traded to the same extent.

1958. Many companies fail because of insufficient capital—Because over trading. Where would the investigations lead to? Another company with the same capital and doing the same type of business might be a success because of different trading methods. People make wrong conclusions from such reports. In connection with Sub-clause (6) of Clause 319, we ask what is the necessity for the notice. The appointment is made by the Court and should automatically come under the notice of the Registrar. Liquidators are required to do so many things that if anything can be eliminated from what they have to do, it should be cut out.

1968. By the CHAIRMAN: It is provided in most other Acts, including that of the United Kingdom. Will you now take Clause 223?—Yes.

Clause 223. Exercise and control of liquidator's powers: We recommend that where there is conflict between the creditors' wishes and those of the contributories, the creditors' wishes should prevail.

The clause now provides that where the instructions of creditors or contributories meetings conflict with those of the committee of inspection the former shall prevail, but it does not say what is to happen when the creditors' wishes conflict with those of the contributories, which is always likely. We suggest that in such a case the creditors' directions should be paramount.

Clause 239. Power to appoint special manager: Where the liquidator carries on a business and retains the old staff, including the manager, or appoints a new manager, would such manager be deemed a "special manager" for the purposes of this clause?—If so, we consider it unnecessary to secure court approval as is provided. The liquidator should have power to employ staff of this nature.

The clause as it stands provides that a "special manager" shall be appointed by the Court, and salary and security required fixed by the Court. We are not certain whether the term "special manager" would include a manager appointed under such conditions.

1969. By Hon. H. SEDDON: How about striking out the word "special"?—In that case the clause should be altered, because we do not feel that it is necessary to approach the Court to have an appointment of that kind made. It seems to be unnecessary.

By Mr. WATTS: You consider that it might prevent you from appointing an ordinary business manager unless you go to the Court?—Yes. We do not see the need for that provision.

Clause 232—Notice of resolution to wind up voluntarily: We consider notice should also be given in the "West Australian." The clause limits the notice to the "Government Gazette." We see no reason for the change. The "West Australian" probably has more advertising value than the "Government Gazette."
1971. By the CHAIRMAN: It would not tend to prolong the liquidation—No; generally speaking, a
liquidator is anxious to close up the concern. The longer it drags on, the less use it is to him from the
point of view of remuneration. Then with regard to Subclause (3) of Clause 307, you will see that this pro-
vides that if a liquidator fails to comply with the re-
quirements of Clause 307, he shall be liable to a penalty,
which is set out. We suggest the insertion in the second
line of the subclause after "section," of the following words:—"and fails to make good the default within
28 days after the service on him of a notice requiring
him to do so."  

1972. Do not you think the adoption of such a pro-
vision would mean that we were making the law too
lenient and that we may not secure the compliance with
the provisions of the legislation that is so necessary?—
I do not think so, because you always have protection
in and after the liquidation of a company. That seems to be the out-
look underlying the provisions requiring the delivery
of the returns, namely, that a liquidator will misuse his
position. I think that attitude is quite wrong.  

1974. By the Chairman: I do not think that is the
proper assumption because we must make provision
to meet the case of the liquidator who may take advan-
tage of his position.—But in doing that, is it fair to
punish the remainder?  

1975. By Mr. Watts: As the court appoints the
liquidator, the court has power to remove him, and it
can hardly be assumed that the court will appoint any-
one who has previously offended. So all these restric-
tive provisions seem to say to the man who is honest,
"We expect you to be crooked."—That is all they do.
Should the court make a mistake, and a liquidator who
behaves himself, there are other remedies against the
latter. The mere filing of accounts will not stop a man
from being crooked if he wishes to be crooked. The
filing of accounts in court merely discloses what has
happened to money that the liquidator admits having
received, but does not compel him to do anything be-

doing that. In those circumstances, the provision gets
used, but does not serve the purpose.  

1976. By the Chairman: I think we should have
every precaution possible and that is the aim of the Bill
—But in this respect it affords no protection.  

1977. By Mr. Watts: The result is that it makes
individuals resentful without serving any good pur-
pose?—It certainly does that.

By the Chairman: You have put in three
statements and I would suggest that you read them;
we can discuss the first statement after you have read
it. The statements are separate because I have author-
ity to make the first one. The others I am making in
my personal capacity as director. My first reads:—
I am Chairman of the Co-operative Federation
of Western Australia, I desire to put in a copy of
the constitution of the Federation and a copy of
the standard memorandum and articles of associa-
tion prepared for the use of co-operative companies
registering under the existing co-operative provisions
of the Companies Act. The Federation consists
of 78 members. This is enclosed in the following:—

The Westralian Farmers, Ltd.,
Producers' Markets, Ltd., a large marketing com-
pany.
South-West Co-operative Dairy Farmers, Ltd.,
and Great Southern Co-operative Butter Co,
Ltd., large dairying companies each control-
ing several butter factories.
Mt. Barker Co-operative Co., Ltd., conducting a
general merchandise business, a coal store, a
fruit packing shed and a general store.

Associated with our movement, but not members of the Federation are—
Co-operative Bulk Handling, Limited.

Wheat Pool of Western Australia.

Collie Industrial Society.

Of the members of the Federation 37 are local
co-operative companies conducting general agency
and stockkeeping businesses outside the metropoli-
tan area, mainly in agricultural districts; six are
conducting general agency businesses with little or
no stockkeeping business; 28 are small co-operative
agencies conducting agency business only.

Of the 76 members of the Federation 73 are regis-
tered under the existing Companies Act and three
under the Co-operative and Provident Societies Act,
1905. The funds of the local co-operative com-
panies (capital and reserves) total £299,642. The
total funds of other co-operative enterprises, includ-
ing Co-operative Bulk Handling, Ltd., and Wheat
Pool of Western Australia, are £799,176. The total
number of producers interested in one or more of
the various co-operative organisations is estimated
at about 10,000, exclusive of those interested in
the assets of the Wheat Pool of Western Australia
and Co-operative Bulk Handling, Ltd.

This must be an estimate, as we have no means of ascertain-
ing which of the share-holders are share-holders in
more than one of the companies.

My Council has been recently advised by its
solicitors that under the amending Companies Bill
existing co-operative companies remain registered
as such, but that no new company using the word
"co-operative" in its name or professing co-operative
ideas may register under any Act. Until this
advice reached us there did not appear to be any
need for our organisation to give evidence before
your committee. This is by way of explanation of our
laziness in preparing this evidence.

My Council desires to give evidence for the pur-
purposes of showing that the co-operative organisations
in Western Australia are of sufficient importance to
warrant the provision of legislative machinery for
their conduct, and to ask that a separate co-opera-
tive company Act be placed on the Statute Book
providing for registration, under different sections,
of—

(a) Co-operative companies.
(b) All of those organisations provided for under
the existing Co-operative and Provident
Societies' Act, and
(c) Registration of such bodies as the Co-opera-
tive Federation of Western Australia.

For the reason explained above, my Council has
had no opportunity of consulting the members of
the Federation in respect to cooperative legislation.
In the circumstances we can only ask at this stage
that the Committee give consideration to the gen-
eral claim made for legislative recognition of the
movement.

That is the evidence I have been authorised to give.
We called a hurried meeting of the members of the
council of the Federation, some of whom are distant
in the country, and was brought in a good case, our
Committee could recommend that con-
consideration be given to it, and details could be supplied
should Parliament or the Government decide to give us
an Act.

1979. By the Chairman: We would require all
the detail possible to be given to the select commit
because we shall be having the Bill redrafted for sub-
mission to Parliament in accordance with the select
committee's recommendations. It would be impossible
to have it redrafted after being submitted to Parlia-
ment because we would never get the Bill through?—
None of the members of the Federation has raised any
queries with regard to the existing legislation, and pre-
sumably we can therefore assume if Parliament intends
to give us an Act, it will include all those provisions
which have been removed from the existing legislation.

1980. You have not gone into the question of the
legislation you desire?—Yes. The 1929 amendment of
the Companies Act provided all those things which our
Federation desired. I understand our solicitors have sought to give us assurance that those persons have been registered from the statute-book and no provision has been made for their inclusion elsewhere.

1981. Was not some anomaly created by the 1929 amendments? Not that I am aware of. A solicitor has told us that some of the provisions appear to be ultra vires some other Act, but we have registered under them and our work has gone on smoothly ever since. In a separate memorandum containing a personal evidence—I think quite sure that my council at its next meeting will approve of the statement—I have set out our objections and the type of help that we think we should have.

1982. By Hon, H. SIDDON: Do I understand you approve of the 1939 Act?—Yes.

1983. Was not that Act restrictive in its application in so far as it created a monopoly for all existing co-operative companies? We do not understand so.

A great number of companies have been registered since the Act was passed. I think that most of them have been those in existence at the time have altered their articles and complied with the provisions of that Act. Most of the 29 small companies referred to are new companies which have been registered since, as well as some others, under the provisions of that Act. We understand there was no monopoly at all.

1984. A suggestion has been made that possibly more efficient legislation could be achieved by an amendment of the 1929 Act governing co-operative companies, as that part of the Bill should be eliminated. A great deal of thought was given to the position. When most of the co-operative companies were registered, a choice had to be made between the Companies Act and the Act. We refer to, Acting on the advice of our solicitor, it was considered, on account of the type of business we desired to carry on, that the Co-operative and Provident Societies Act was not sufficient. It was based solely on the consumer societies of the well known consumers’ co-operative societies which trade largely, in fact almost exclusively, on a cash basis. Our solicitors insisted that we would cramp ourselves, restrict ourselves if we were to use the Act which we now work under. What we now ask is that Parliament should allow us to work under that, Co-operative Act, its scope should be widened to permit the type of organisation we want to be carried on under it.

1985. Would that be more desirable from your angle than the perpetuation of the conditions of the 1929 Act?—Yes. We asked for a co-operative Act at that time. The Government did not desire to give it us, but allowed a private member in an amendment to the existing Companies Act, giving us those co-operative provisions.

1986. By Mr. WATTS: I gather that the companies whose articles have been carried on quite successfully under the law as it stands at present, that is, the Companies Act Amendment Act, 1929. Yet I understand from you that the provisions of Part VI of this Bill, if put into operation, will prevent that. Will you explain how that will come about?—Our solicitors have warned us that under the Bill our companies will remain registered, but no new company using the word “co-operative” or professing co-operative may register under this or any other measure.

1987. You are referring to the provisions of Clause 193, which are already embodied in the Companies Act of this State, and I cannot see how that will increase your difficulty. If the 1929 Act has operated satisfactorily, and Clause 193 merely repeats the former section, some explanation of what new difficulty arises?—The only difference is that we have never been stopped. We did not have that advice with respect to the old Act, but we have had it with respect to the new Act that any new company will be eligible to be registered under this Act or any other measure.

1988. That does affect the issue?—It states that no company shall be registered by a name which contains the word “co-operative.” We have been advised also that some existing companies prohibit any company after the passing of the measure being registered under the existing Co-operative and Provident Societies Act, Mr. Forbes, of Moset, Parker and Parker, gave us that opinion.

1989. What you really desire is to revert to the position where the co-operative companies had special legislation enabling them to register and carry on on a unique basis and not be governed by the Companies Act, whereas the new Bill, which is such, at all events, I think it was passed, is such that no new company will be eligible to be registered under the measure, the co-operative companies at present registered should have some other place found for them. We do not want to have new companies registered merely because they were registered at the time this measure came into force, while all existing organisations have to seek the cover of some other Act.

1990. The provisions of the amending Act of 1929 always struck me as having created some sort of monopoly in favour of these co-operative companies. That existed when the Act was passed, but that was not your intention?—No, decidedly not.

1991. You desired that co-operative companies, which were prepared to regulate themselves on a purely co-operative basis, should be allowed to register at any time and in any number?—Exactly. We read Clause 10 to mean that all those co-operative companies that remained registered under the new measure will become merely public companies and they could, by resolution of their shareholders, remove the whole of the co-operative provisions from their articles. We consider that that would be most undesirable. Experience shows that in other parts of the world, particularly in New Zealand, professing co-operative companies, since there was no Act to prohibit their doing, in a number of instances because owned by co-operative societies, excited their voting power and removed them from among co-operative organisations and turned them into proprietary concerns. It was in the hope of avoiding a similar happening of a similar nature here, we desire to prevent very successful local co-operative companies from deciding to wind up and distribute the reserves. People who, for a number of reasons, have lived and traded under co-operative principles should not have the power to convert themselves into a proprietary company when they might become immensely profitable to do so and divide up on a share basis any which have been acquired under co-operative principles.

1992. By the CHAIRMAN: You want to deny co-operative companies the privilege of converting into private, proprietary concerns, to be registered under the Companies Act?

1993. By Mr. WATTS: Have you still a limitation such as was contained in the Co-operative and Provident Societies Act, 1903, that no member of a society shall have or claim any interest in the shares of a society exceeding £200?—No, we have not that provision because, according to our articles and the statute under which we work, we have to make provision for co-operative companies trading other than for cash. Being conscious of retaining the bonus principle of distribution without having to pay out cash, we have provided that bonuses may be distributed in the form of debentures, bonus shares or cash. If we had the restriction you refer to, a member would reach the maximum number of shares and would no longer be eligible to share in the bonuses. To protect companies from developing any proprietary leanings, we limit the dividends to such an extent that nobody desires share-holding other than for the purposes of membership and as a means of securing bonuses which cannot be paid to him in cash. It was for that reason that we asked Parliament to prohibit the distribution of any dividends exceeding three points per cent. above the fixed Commonwealth Bank deposit rate, for two years. Parliament refused to give us that and to-day we have five points, so that the maximum dividend any co-operative company can pay is 5 per cent. plus the ruling rate—I think at the moment 4-70 per cent.—so that 7 per cent. is the absolute maximum anyone can secure. Most companies, however, are paying dividends of from 2 to 4 per cent.

1994. By Hon. H. SIDDON: What is the effect of that?—The effect is that share-holding is looked upon as membership and not as a means of earning dividends. We desire that our trading people shall get full advantage of their trade with a company and look for bonuses rather than dividends.

1994A. Has it worked that way?—Entirely.

1994B. We have had statements submitted to us that there has been established a domination by persons who have large shareholdings to the detriment of the small shareholders—I do not think that is so in any co-operative organisation associated with us. I do not think the statement is correct and I hope the committee
will examine it. We know of only one instance where a company has asked for some means of getting out of its difficulty because it has more capital than it desires. That company does assist, wherever a supporter desires to take shares, to find shares for him. That is the York Co-operative Company and it is the only one that we know of that has experienced that difficulty and it has asked us to find means by which it can get over the difficulty.

19940. By the CHAIRMAN: I will ask the secretary to read to you a letter we have received with regard to the South-West Co-operative Dairy Farmers, Ltd., of Bunbury. The South-West Dairy Farmers Company is a real thing under the Co-operative Act. The maximum dividend it can pay will never encourage people to buy shares.

The secretary read the following letter:

Lake Clifton
via Waroona,
26th February, 1941.
The Hon. the Minister for Justice,
Chairman Joint Select Committee on Companies Bill,
Parliament Buildings,
Perth.

Sir,

As a shareholder in the South-West Co-operative Dairy Farmers, Ltd., of Bunbury, I wish to bring to the notice of your Committee a practice being followed by this concern, regarding re-purchase of shares and distribution of profits, which is anything but straightforward; in fact, I have no hesitation in describing the practice as dishonest and suggest your Committee provide regulations to prevent such dishonesty which at present is carried out openly and no doubt considered good business by those benefitting from it.

As a co-operative concern, this company in its articles has made provision for the following:

1. To restrict the transfer of shares of the Company as transfers can only be made to persons approved by the directors, that is, no transfers would be permitted by the directors except to farmers supplying or who would undertake to supply their cream to the factory.

2. To restrict the yearly dividends to about 15s. and 10s. per cent.

In regard to item 1 above, the result is that there is no free market for the company's shares, and when a farmer sells his farm, or ceases dairying or for any other reason desires to dispose of his shares, he has to do so at a loss, in spite of the fact that the company earns good profits and has reserves amounting to more than the paid up capital.

While the directors have power to repurchase shares for the company and, they are to be found in certain of the directors, reap enormous profit in the shares they purchased for 15s. and this at the expense of the farmer who was forced to sell his shares.

The profits made by a company belong by right to the present day shareholders and not to previous shareholders. It is unfair to make small transfers to reserves when necessary, should be paid out to the shareholders instead of being accumulated for speculators as is the case at present.

By this method a few shareholders have made large profits, and I suggest legislation should be passed to put a stop to this practice.

I suggest the following:

(A) When a co-operative company restricts the sales of its shares and acquires authority by its articles to deal in the purchase and resale of its own shares, the company should pay, when repurchasing shares, the book value of such shares as certified by the auditors according to the last balance sheet issued.

(B) That transfers to reserves accounts should be limited according to a scale approximately as follows:

To 10 per cent. on the paid up capital until the reserve account reaches to 50 per cent. of the paid up capital.

To 5 per cent. on the paid up capital when the reserve account amounts to between 50 per cent. and 75 per cent. of the paid up capital.

To 2½ per cent. on the paid up capital when the reserve account amounts to between 75 per cent. and 100 per cent. of the paid up capital.

To 1 per cent. on the paid up capital when the reserve account amounts to over 100 per cent. of the paid up capital.

Any profits remaining after providing for reserves, where made according to the above scale, and not paid out to the shareholders should be subject to a special severe tax, sufficiently severe to act as a deterrent to the practise of accumulating dividends for the purpose of declaring bonus shares.

Bonuses referred to above are of course, actual profits, as shown by the balance of the profit and loss account and must not be compared with the butter fat bonus paid by the butter manufacturing companies to their suppliers. The butter fat bonus is fully a deferred payment, in effect, of butter fat and does not represent any profit at all.

I am, Sir,

Yours obediently,

J. A. THOMPSON.

1995. The WISDOM: I should say that that is full of faults and incorrect statements. Under no legislation that company cannot possibly pay bonus shares other than a bonus on the trading done. It is true that co-operative companies try to build up reserves, and if any moneys are earned outside sufficient to pay the maximum dividend, which I think in their case would be 7 per cent.—I do not think they have paid that for many years—the balance can only be distributed, not in relation to share capital at all but in relation to trading done between the cream suppliers and the company. I should say your correspondent is a joint stock company person and not a co-operative at all, because no share in a co-operative company, whose dividends are limited to a maximum of 7 per cent., would ever be worth more than its face value, particularly as most of the co-operative companies pay a dividend lower than 7 per cent. Even if this company were paying 7 per cent., no matter what the reserves were, the face value of the shares would never be more than 75 per cent. of their share value, and the share holder in the British co-operative organisation and who are perfectly satisfied with the constitution of the company and the way it is run. I hope that anything so demagogic as that statement is not be allowed to pass without co-operators being given a chance to explain the position. I am sure there is an explanation. I do not think such things could be done under the existing legislation.
1906. As we did not know the position, we desired to have your comments upon the letter—that gentleman said that reserves should be attached to the share capital, and that the investment under the 1929 Act, the company should be enabled to repurchase its own shares up to one-fifth of its paid-up capital, that is a proviso is generally admitted as a convenience to those who desire to leave the district. People do not desire to part with their capital if they can help it; their desire is to help that man who comes from one district to another. We do not wish to force a man to put up fresh capital so that he may become a member of a company trading in his own area. This proviso was made so that we can take back first shares, and give the man the means to purchase shares in the co-operative organisation in the new district.

1997. By Mr. WATTS: In the new district he can get the bonus on his trading, whereas if he could not have disposed of his first shares he would have been obliged to do business with the first-named company—Or else double his capital investment for the same co-operative service.

1998. By the CHAIRMAN: Would not the increase in the reserves improve the equity?—No. The law will not allow you in the case of any distribution of reserves or any liquidation when the capital is wound up the use any of the money to pay anything on the share capital basis. The money must all be distributed on a trading basis.

1999. By Hon. H. SEDDON: You do not think it would be advantageous to limit the share holding in a co-operative company?—No. We have instances of owners who have done the whole of their business through the local co-operative company and have thus acquired a considerable holding of bonus shares, a holding that would have exceeded what would have been considered right under a reorganized co-operative Act, and that is based on the requirements of a cash trading company. Such people have been denied the actual cash, but have been given shares which, since the dividends have been halved, have given them really a lower bonus than would have been the case if the bonus had been distributed in cash. That is an enforced reinvestment of his bonus, paying him only a low dividend rate. We think it would be a mistake to force a company to pay cash to the man who has acquired his maximum share holding, or to deny him a share in the bonus distribution.

2000. Is there a maximum holding that a member can acquire by purchase?—No.

2001. Do you not think there ought to be a maximum?—No. Anyone who likes to put money into a co-operative company with a possibility of securing an average dividend of 4 or 5 per cent., is welcome to do so. No matter how many shares a man has, he has only one vote. It may be said that the man who holds a number of shares has been victimized. He is the man who is suffering to-day, not the small holder. The majority of people who are now members of local co-operative companies have maximum share holdings of from five to ten shares. They decide that the company shall pay a dividend of only 1 or 2 per cent., in many instances. The man who has received a bonus distribution has its actual value reduced by reason of the majority of the share-holders deciding that he shall earn only a maximum of, say, 1 or 2 per cent., on his investment.

2002. So that the voting does not depend upon the number of shares a man holds?—No. The principle is that of one man, one vote. That is a very strong rule in co-operative organisations.

2003. By the CHAIRMAN: And it would apply to the man who had 1,000 shares?—Yes, he is in the hands of the small share-holders. If he is keen enough on his local interests, he has a considerable sum of money for the use of his fellows, we say, "Good luck to him; he cannot do any harm with it, and he cannot get control of the company."—No. By Hon. H. SEDDON: I understand that bonus shares carry the same rate of dividend as do ordinary shares?—They may be called bonus shares, but our legal advisers say there is no difference other than in name. They are shares, just as are any other shares.

2004. Take the man who purchases ten shares in a co-operative company and is drawing a dividend of 2 per cent. In course of time he acquires by way of bonus shares a further ten. He would then be drawing the equivalent of 4 per cent. on his original shares. Yet the company has doubled the money with which to do that. Had it not been for that money, the company would have had to pay 7 per cent. on a loan from the bank.

2005. In course of time it would be possible for him to obtain a handsome return for his original investment?—No. The second investment is an investment of similar amount, whereas he has doubled his investment and so his income will be doubled.

2006. But he will get the benefit of the money?—If he drew out the money and put it into the savings bank at 3 per cent., he would be 50 per cent. better off.

2007. If the man had been a limited shareholder generally, the issue of bonus shares would tend to give him a handsome return—Everything is based on the trading that is done with the company. All his bonus shares are based on his trading.

2008. How are the bonus shares issued?—They are issued on the trading a man does. If he does one-tenth of the gross trading of the company, he gets one-tenth of the bonus shares. He cannot get them out of his capital investment, but he earns them out of the business he does with the company.

2009. So that bonus shares are not issued in accordance with the number of shares a man holds?—No, they are issued on the business transacted. They are in no relation to the capital of the company.

2010. By Mr. WATTS: They represent a discount on the amount of trading done with the company?—Yes. Because rural companies cannot afford to pay cash bonuses, they adopt this system of saying to a man, "You have earned a bonus but we cannot afford to pay you in cash. We want you to obtain the advantage of it, but we are forcibly borrowing the money from you at the rate of dividend we propose to set ourselves for the year's operations of the company.

2011. By the CHAIRMAN: Will you now proceed with your statement?—I will read the statement which is as follows:—

In my capacity as a director of a co-operative enterprise, I desire to submit the following memorandum broadly setting out the principles of our co-operative movement—Co-operative organisations of the pattern of those operating in W.A. with rigorous policies of expansion and development, require a wide scope in the objectives specified in the Act providing for registration, such as is allowed to companies registering under a Companies Act.

The relations of a co-operative organisation to its share-holders or members, however, is entirely from those which exist between an ordinary limited company and its shareholders. Whatever may be the kind of concern, there is no question of any pay on the one hand and a co-operative on the other, this radical difference of purpose exists. As an illustration we may take a single activity, that of street-testing, so as to make the comparison on a simple basis.

Share-holding in a joint stock company is formed by a number of people who look upon their share subscription as an investment in a company. They arrange to draw dividends. In all probability they are not customers of the business. The co-operative organisation, on the other hand, is formed by people on the mutual plan similar to some of our big life assurance societies, who aim to be both share-holders and customers, and to transact business mutually between themselves. This aim is not wholly realised in co-operative practice because there is usually a proportion of customers who for one reason or another do not become share-holders.

Co-operatives in New South Wales have been working in the main principles of the Rochdale Pioneers, established at Rochdale in 1844, which have proved very successful and productive in Great Britain and many other parts of the world. It is hoped that the principles should be understood clearly, because they explain why a form of registration differing from that under company and property law may be necessary for co-operatives in order that they may use the word "co-operative" in their name in an honest way.
1. Disposal of Profits.—One of the basic principles of true co-operative operation is that net profits should be distributed to shareholders in due proportion to the trading support they have given to the enterprise. A record of their separate transactions is kept, and this is used as the basis for distribution. This applies also to the liquidation of a co-operative. If there is a sufficient net realisation at the close of business, capital is returned to shareholders in proportion to the amounts they have subscribed, and if there is a surplus remaining, it is distributed in the proportions recorded in the statements of transactions.

2. Interest on Capital.—As a co-operative business must have some capital to make a start, and will probably require to increase the amount as business expands, it is unlikely to obtain necessary capital without some remuneration paid to those who provide it; hence the need for payment of interest or dividend on paid-up capital. Long co-operative experience has proved that the best safeguard is to have a democratic basis of voting, and it is a co-operative principle to provide for one shareholder one vote.

These three principles were enacted in the 1920 co-operative amendment to the Companies Act, and it was made obligatory that they should be safeguarded in the articles of any company before it could use the word "co-operative" in its name.

The Co-operative and Provident Societies Act, 1908, did not contain these stipulations. This is because it was merely a copy of a similar English Act, and it is only recently that the British Parliament has passed amending legislation which prescribes conditions that must be observed by societies or organisations before being permitted to use the word "co-operative" in their names.

The scope permitted to co-operative business concerns should not be more restricted than is allowed to companies under company law. Co-operative business organisations in Western Australia have been vigorous and enterprising, and have made their way on a basis of voluntary self-help on a mutual basis. In the majority of instances they have brought great benefits to shareholders in the shape of an expanding measure of direct service and in effecting savings for them as members. Their further opportunities for expansion in numbers and activities should be protected and encouraged in a sympathetic way.

If the Government decides that the needs of co-operatives in W.A. can be met in a more effectual way by separate legislation, it would be an advantage for them to continue to be registered with the name of "Company, Ltd.," as this would obviate a considerable amount of expense in altering signs, business documents, and audits, etc. No harm would be done in allowing co-operatives to style themselves "society" if they so wished, as this would cover the case of societies existing under that name now and other new ones that would adopt the alternative name in the future.

The legislation should embody, as a minimum, the provisions of the 1920 amendment of the Companies Act, 1908, in regard to—
(a) Basis for distribution of net surplus;
(b) limitation of interest on paid-up capital;
(c) proportionate voting of net surplus;
(d) distribution of proceeds at liquidation, in accordance with recognised co-operative principles.

There should be a clause making observance of these principles obligatory before a business co-operative is permitted to use the word "co-operative" in its name.

There is no good reason for restricting a co-operative in its rights and scope for investment of funds to the other extent than is imposed on ordinary companies.

Any provision requiring the lodging of financial returns and other particulars should be liberal enough to allow of the returns being submitted within a certain time after the audited balance sheet has been forwarded to the board of directors, or alternatively, within a specified period after the close of the co-operative’s financial year. This flexibility is necessary because it is important that co-operative audits should be conducted under supervision and by a qualified and competent auditor. As many of the co-operatives are in large and important businesses this competent and qualified scrutiny is ensured with some regard to economy by a spread of audit work throughout.

There are existing successful industrial co-operatives at Collie, Gwalla and Leonora, and the time may not be far distant when others will be organised in the larger centres of industrial population.

They should have a reasonable opportunity of being registered and carrying on business in the same way as is now done by the three mentioned.

These are just some comments which, without authority, I desired to put in for the guidance of this committee in making its recommendations regarding the legislation we ask for.

2013. By the CHAIRMAN: You think that the 1929 Act is quite satisfactory?—Yes, if it is not ultra vires some other Act. We are concerned, since we have heard recently—and this was news to me—

2014. What do you mean by "some other Act"?—We are told that some of these provisions, particularly the one authorising the company to purchase up to 5 per cent. of its reserves in its own shares, are considered to be ultra vires another Act. I was surprised to hear to-day from a member of the Committee that under the existing legislation no new companies should have been registered. We never heard of that, although it was suggested. Someone told us that the Parliamentary Draft Department would consider these provisions. In the main these provisions are what we asked for and have proved satisfactory to us; that is, provided that they are law and not something to be attached.

2015. By Hon. H. SEDDON: In the last paragraph but two of your statement you refer to the limitation imposed by the 1908 Act?—We fear that this might be suggested, "You have a Co-operative and Provident Societies Act, and why wasn’t it just to say that our legal advisers strongly urged us, rather than register under that Act, to register under the ordinary companies law, and have our own private conditions in our articles, which would make us a co-operative, but registered as such. Our legal advisers say that our scope would be seriously limited if we attempted to use the Co-operative and Provident Societies Act, especially for a company with large operations.

2016. There is in that Act, I understand, a section which prohibits a building society or a co-operative society from investing funds outside its own organisation?—That restriction, and other restrictions, influenced our solicitors in advising us to register at the time under the Companies Act rather than under the Co-operative and Provident Societies Act.

2017. Referring to your paragraph dealing with lodgings of financial returns and other particulars, you say that works out with regard to the requirements of the income tax authorities? We have got over these difficulties, I understand. Most of these companies use a single auditor, and the whole of the auditors’ reports come to the Federal Council for perusal and for making recommendations to the member companies supporting the recommendations of the auditors, the auditors, the income tax authorities were approached. At present the spread is sufficient to allow us to carry the work through, although it would be less hindered were we in the future to make more satisfactory provision for the shareholders with the Taxation Department. What we are trying to guard against is any provision finding a place in our legislation which will allow only a very short space of time between the closing of the books and the annual meeting and the audited report and balance sheets being presented.
2018. There is objection taken to a provision in the Income Tax Act on account of the congestion of work that arises—Yes.

2019. By Mr. WATTS: I think you said earlier that you understood that a co-operative company was permitted to re-purchase to the extent of one-fifth of its reserves—Yes, to purchase its own shares to the amount of one-fifth of its reserves.

2020. In the Bill there is a provision that says, "But shares so purchased and not sold or disposed of shall not exceed one-twentieth part of the paid-up capital?"—Wrong. They used their reserves to purchase up to one-twentieth of their paid-up capital. I would like to correct my earlier statement; my memory was at fault.

2021. Have you a uniform date for the closing of business each year?—No. We have tried to spread the dates. I am not quite sure what the position is. I think the Taxation Department will not allow the companies to change. The department will allow the companies to have any date but not to change the date. We found that a month of our companies' accounts expires, but the department would not agree to that course.

Therefore there is a little crowding at certain times of the year.

2022. So it would not do to provide that the lodging of financial returns should be required at any specified period of the year? Suppose we had a special Act, the applicable provision would require to be for so many days after the closing of the company's financial year, allowing each company to have a liberty date, where desired?—Yes. That is very desirable or the legislation would break down the whole of our audit system.

2023. By the CHAIRMAN: Do not you think it would be better to have uniformity of system?—We propose to have uniformity of audit. We have auditors who have had experience of successful and unsuccessful companies, and they become experts in advising the directors. If that advantage were taken away from the companies, they would have to procure the services of some local auditors who had had no experience elsewhere.

2024. By Mr. WATTS: And you argue that the operations of co-operative companies are sufficiently different from the ordinary type to warrant a particular type of auditor?—Yes, we say so most distinctly. We go further and arrange that our auditors, much more so in connection with ordinary commercial undertakings, act as financial advisers as well as auditors. They accept responsibilities accordingly, and, of the central organisation, the Western Farmer's Ltd., pays a proportion of the fees of the auditors to encourage this organised plan of auditing.

2025. By the CHAIRMAN: Is there any other matter to which you desire to refer?—Yes. I have prepared the following remarks regarding the obligations of co-operative companies to supply information to share-holders:

From time to time the Council of the Federation has received inquiries from member companies regarding the company's obligations to supply information to share-holders particularly in respect to ordinary unsecured inspection of the trading ledger. In all cases coming under our notice the inquiring shareholders desired information concerning amounts owing to the company by member clients.

The Council has been advised by two leading solicitors that under Section 42 of the Companies Act, 1893, if a ledger can be described as a bank of accounts, the shareholder is within his rights in demanding inspection, and that directors and auditors (who are directors) shall incur a liability of a fine not exceeding £50 in the case of a refusal to allow such inspection. The consolidating Bill, in Clause 147, gives the shareholder the same rights, and the fee is increased to a maximum of £100.

It is suggested that the legislation does not intend that members should be given the right to pry into the business affairs as between the company and its clients, and that the departure from the wording of the corresponding clause in the English Act is unintentional.

The English Companies Act, 1893, provides in Section 80—

The directors shall from time to time determine whether and to what extent and at what times such and places and under what rules or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

My Council is of the opinion that the section of the English Act provides all the protection necessary for a share-holder in a joint stock company, and the limitation of rights of inspection contained therein is particularly desirable in the case of a co-operative company trading with its own share-holders.

So serious was this matter to us that we advised these people, without knowledge of the time at that there was a heavy fine involved, to bluff out of it and refuse the information. The position is that any share-holder in a country town could, under the present legislation, and under the proposed Bill, exercise the right to go to the company in which he was interested and find out from the ledgers of the company what any member of the concern owed, and it would be difficult for him to be a share-holder from making improper use of the information.

In those circumstances, if ordinary traders were to inform the people that business done with their companies would be found there, because businesses transacted with the co-operative companies would be open to the general public, the interests of the co-operative companies would suffer. We hope that the joint committee will appreciate that, apparently, Australian legislation goes a great deal further than in England, particularly with regard to the right of an individual to examine the position of fellow members by a perusal of the trailing accounts of a company of which he is a member.

2026. By Hon. G. FRASER: You referred just now to the information being available to the "general public"—Yes, I should have said to the general shareholders. In many country towns the great majority of the residents are share-holders. They are not merely farmers but share-holders in the local co-operative company. The share-holders even include employees, and it would be particularly objectionable to have a man who had a right to examine the ledgers. In addition, there are members who are railway and other employees in country townships.

2027. As at Collie, for instance?—Yes. At Collie a large number of the residents are members of their local co-operative organisation. I think it would be very harmful to that concern if the shareholders could exercise this particular right to a more or less, without publishing the information, spread stories around as to what various people owed according to the accounts in the ledgers.

2028. By Mr. WATTS: There are seasons in the year when a man in a country district might owe a company a very substantial sum which, in the normal course of business, would be paid at the proper time, after harvest; whereas a "sticky-beak" might inspect the books just before the account was paid and publicise the fact that the man owed the company a large sum of money.

Yes. One particular instance which came under our notice was where a man had been refused credit in the local company and then demanded to see what the other members' credit was and what amounts they owed. That created a serious position, as one can readily imagine it would in a small country community.

2029-38. By Hon. H. SEDDON: Have you had any information as to how the clause in the English Act, which you quoted has operated?—In England?

2039. Yes.—No. We were informed by some solicitors that he was aware of conditions of operations being different and we therefore tried to find out what the difference was. We sent for a copy of the English Act, which I have with me.

2040. While I appreciate your objective, it appears to me that the clause which you read, approached from another angle, might be dangerous?—Members still
have the right to inspect all the books and papers. That.
I am given to understand, is a statutory right which
cannot be denied. All that we desire to restrict, in
the case of a company doing business with its own share-
holders, is the right of a share-holder to scrutinise the
accounts of fellow-share-holders.

2041. I quite agree. The provision is to the effect
that the directors shall determine to what extent, and
at what times and places and under what conditions or
regulations, the books of the company shall be open
to inspection?—But there is an exception, “except as
conferred by statute.” We have been advised that
regardless of what directors might want to do, there
are some things which the share-holder has the right
to inspect. I think the share-holder should have the
right to inspect the company’s book in respect of all
the matters in which he, as a member, is interested
in the company’s general trading, but not specifically
with regard to individual share-holders who might also
be traders with the company. It was explained to us
that the Companies Act was designed for a number of
people as one body to trade with other people, and not
to trade with themselves. The difficulty has crept in
by virtue of the fact that all co-operative companies
almost exclusively trade with their own members. That
position was not envisaged when the Companies Act was
passed.

2042. Your desire is to prevent a member of a com-
pany from ascertaining the personal relationships be-
tween the company and other members?—Yes.

2043. By Mr. RODOREDA: It is difficult to deal with
co-operative companies under this Bill?—Yes.
That is why we ask that such companies should be
governed by a separate Act.

2044. By Hon. H. SEDDON: In effect, your evi-
dence amounts to this, that in the opinion of your co-
operative organisations it would be best for them to
have a separate co-operative companies Act; your de-
sire is that they should be taken out of the Co-operative
Companies Act, 1903, and that the provisions of that
Act, together with the provisions of the 1909 Act, should
be embodied in a separate measure?—Yes, but we have
suggested that such an Act should not interfere with
the rights and preserves of societies and that the Act
should be in two parts, one making provision for all
those concerns which to-day are registered under the
Co-operative and Provident Societies Act, and another
part for these companies at present registered under
the Companies Act.

2045. Such companies being purely co-operative?—
Yes.

2046. By the CHAIRMAN: Your object is to pick
the best out of the 1909 and 1909 Acts and put it in
our own Bill?—Not quite. There should be two parts
in the one Act, but I do not know whether that is pos-
sible.

2047. By Mr. WATTS: There are three societies
operating under the Provident Societies Act
of 1909. I take it they comply with the provisions of
that Act, and will continue to do so?—Yes.

2048. We would have no difficulty about them; we
shall leave them to carry on under the 1909 Act. Is
that your idea?—Yes, but there are a large number of
organisations that are registered under that Act, apart
from the three that are registered with our Federation.

2049. If dealing with the three existing societies
registered with your Federation. As far as you are con-
cerned, you do not wish to bring them under a general
Act?—No.

2050. Both they and any others not registered
with your Federation should be allowed to continue under
the law they have been working under?—Yes.

2051. Your desire is that no more co-operative soci-
eties should be registered under the 1903 Act?—If
there is to be a separate Act, I should say yes, because
people who have been brought up in England all lean
towards the co-operative society as formed under Eng-
lish law. I should say that if consumers’ co-operatives
are to start in Western Australia—and there is consider-
able movement now in that direction—it will be desired
to register them under an Act similar to the Act in
England to which the people are accustomed. They
might object to a Companies Act and to calling such
societies companies.

2052. Such societies would have limitations as to
share-holdings and would be subject to the other provi-
sions contained in the 1903 Act?—That does not matter
so far as concerns a consumers’ co-operative society,
because such societies do not require to borrow money
largely.

2053. It matters very seriously as far as your co-
operative companies are concerned?—Yes. May I put
it this way? We prefer an Act of our own. If the
Government will not give us such an Act, we prefer to
be governed by an Act embodying the provisions apply-
ing to co-operative and provident societies, rather than
that we should be governed by a part of the Companies
Act.

The Committee adjourned.

Thursday, 27th March, 1941.

Present:
A. V. A. Abbott, Esq., M.L.A.
Hon. C. Craig, M.L.C.
Hon. G. Fraser, M.L.C.

REGINALD GOYNE MILLER, Chartered Accountant,

2054. The WITNESS: On this occasion I am giving
my evidence on my own behalf and not on behalf of
the Institutes of Accountants. I wish to give evidence on
a proposal made by Mr. A. H. Malloch, in connection
with the formation of small companies to carry on the
business of prospecting and mining. I understand Mr.
Malloch’s first proposal was that the Companies Bill
might be amended to provide for the formation of such
small companies in a very simple manner without
the provisions of the present Bill, without amend-
ment. My proposal is that a standard form of memo-
randum and articles of association should be drawn by
the Crown Law Department and that this should be
printed by the Government and made available at the
offices of the Mining Registrar. If this were done, small
companies could be formed by the interested parties
merely filing in the blanks and lodging the forms,
together with the necessary fees, at the offices of the
Registrar of Companies.

To illustrate what I mean, I have copied from
the memorandum and articles of association of a mining
company of which I am the secretary, and now send
this to you. I should like you to understand that I do
not propose that this particular form should be adopted,
but suggest that one should be drawn in a somewhat
similar manner by the Crown Law Department.
I am somewhat diffident about making this proposal, because the drawing of a memorandum and articles of association for a company is the work of a solicitor. However, printed forms are available for bills of sale, hire purchase agreements, leases, wills, etc., and therefore it appears to me that the form suggested might be printed in a similar manner. This proposal would not take away from solicitors their legitimate work, as it would provide for the formation of companies which would not be formed except in the manner proposed. The following is a form of memorandum and articles of association, although, as I have said, I do not propose that this particular form should be adopted:—

WESTERN AUSTRALIA.
The Companies Act, 1941.
MEMORANDUM OF ASSOCIATION
of
..................... Mining Syndicate.
No Liability.
1. The name of the Company is
..................... Mining Syndicate, No Liability.
2. The objects for which the company is established are for mining purposes within the meaning of the Companies Act, 1941, that is to say, for the purpose of obtaining metal or mineral by any mode whereby soil, earth, rock, or stone may be disturbed or smelted, refined, crushed, or otherwise dealt with and without prejudice to or limitation of any such objects or purposes aforesaid:

(a) To carry on by any means whatsoever, mining, smelting, and refining operations of every description in or upon any lands or earth in the State of Western Australia or elsewhere.
(b) To prospect, explore, open, and work claims or mines and raise, dig, quarry for gold, silver, minerals, ores, diamonds, precious stones, coal, earth, and other substances.
(c) To apply for and accept prospecting areas, reward claims, mining leases, minerals leases and mining concessions of every description authorized by the Mining Act, 1904, and to comply with the indoor and other conditions mentioned in the said Act or the regulations made thereunder.
(d) To employ and pay mining experts and other persons, and to organize, equip and dispatch expeditions for prospecting, exploring, reporting on, surveying, working, developing lands and mining concessions, whether the same are the property of the company or otherwise.
(e) To purchase, take on lease or otherwise acquire (whether by license, concession, grant, or not) any lands, mines, mining rights or privileges.
(f) To carry on any other business of a similar nature, or any business which may in the opinion of the directors be conveniently carried on by this company.
(g) To pay all costs, charges and expenses incurred or sustained in or about the promotion and establishment of the company, or which the company shall consider to be preliminary, including therein the cost of advertising commissions for underwriting, brokerage, printing and stationery and expenses attendant upon the formation of agencies and local boards.
(h) Upon any issue of shares, debentures or other securities of the company, to employ brokers, commission agents and underwriters, and to provide for the remuneration of such persons for their services by payment in cash or by the issue of shares, debentures or other securities of the company, or by the granting of options to take the same or in any other manner allowed by law.
(i) To purchase or otherwise acquire all or any part of the business, property and liabilities of any company, society, partnership or person formed for all or any part of the purposes within the objects of this company, and to conduct and carry on or liquidate and wind up any such business.
(j) To purchase, take on lease, or otherwise acquire for the purposes of the company, any estates, lands, buildings, easements or other interests in real estate, and to sell, let or lease, or otherwise dispose or grant rights over any real property belonging to the company.
(k) To purchase or otherwise acquire, erect, maintain, own, run, and conduct any buildings, offices, workshops, mills, plant, machinery and other things found necessary or convenient for the purpose of the company.
(l) To let on lease or on hire the whole or any part of the real and personal property of the company on such terms as the company shall determine.
(m) To own or guarantee the issue of, or the payment of interests on the shares, debentures, debenture stock or other securities or obligations of any company or association, and to pay or provide for brokerage, commission and underwriting, in respect of any such issue.
(a) To draw, accept and make and to indorse, discount and negotiate bills of exchange and promissory notes, and other negotiable instruments.
(b) To borrow or raise money by the issue of debentures, debenture stock (perpetual or terminable), bonds, mortgages, or any other securities founded or based upon all or any of the property and rights of the company, including its uncalled capital, or without any such security and upon such terms as to priority or otherwise as the company may think fit.
(p) To enter into and carry into effect any arrangement for joint working in business or for sharing of profits, or for amalgamation, with any other company, or any partnership or person carrying on business within the objects of this company.
(q) To sell, dispose of, or transfer the business, property and undertaking of the company or any part thereof for any consideration which the company may see fit to accept, including cash or shares in any company or both.
(r) To accept stock or shares in, or the debentures, mortgage debentures or other securities of any other company in payment of, or as payment for any services rendered or for any sale made to, debt owing, from any such company.
(s) Generally to do all such other things as any appear to the company or the directors to be incidental or conducive to the attainment of the above objects or any of them.
3. The members take no liability.
4. The capital of the company is
..................... divided into ..................... shares of one pound (£1) each.

Whether all or part of that is suitable, I am not saying. I merely put it forward as a suggestion.

WESTERN AUSTRALIA.
The Companies Act, 1941.
ARTICLES OF ASSOCIATION
of
..................... Mining Syndicate.
No Liability.
1. The name of the company is
..................... Mining Syndicate, No Liability.
2. The capital of the company is
..................... divided into ..................... shares of £1 (one pound) each.
3. The regulations contained in Table B of the Companies Act, 1941, shall apply to the company.
4. The registered office of the company shall be situated at
..................... or at such other place as the directors shall from time to time appoint.
We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Dated this day of 19__.

<table>
<thead>
<tr>
<th>Names, Addresses, and Description of Subscribers</th>
<th>No. of Shares taken</th>
<th>Signature</th>
<th>Witness</th>
</tr>
</thead>
</table>

2055. By Hon. L. CRAIG: You submit this memorandum merely as a guide in order that we might take from it whatever is desired—Yes, or you might add to it.

2056. You do not suggest that this should be the memorandum—No, it is not my job to do that.

2057. By Mr. WATTS: You consider that all that is necessary can be done under the Companies Act as now proposed, you wish to make it easier for these small people to register as a liability companies under the Companies Act by providing a recognised form of memorandum at a low cost?—That is so.

2058. You do not go so far as Mr. Malloch went, he gave me the impression that he wanted some special part of the companies law, or, alternatively, some amendment to the Mining Act or other legislation, to enable these mining syndicates to be registered by a process other than the Companies Act?—No, I do not think that is necessary. I consider that Mr. Malloch's idea is an excellent one. I was on the goldfields, in the mining business, for 12 years as a mine official. I know what Mr. Malloch wants and there is need for something of the kind, but I think provision can be made under the present Bill. The only objection is the cost. The proposal I have made will reduce the cost to a minimum, and the matter will be simplified so that any man who has prospecting show or a small mine that is worth while may form a small company and thus obtain backing from people whose liability will be limited or who will be subject to no further liability.

2059. It will be simple enough from the point of view of registering the company, but it will not simplify the procedure afterwards—That is so. In partnerships, which are allowed now and which are carried on rather extensively, though with a good deal of risk to the backers, it is necessary to observe certain formalities. The formalities necessary under the Act would not be very great for a small company; they would not amount to much in addition to what is necessary at present. Any man who backs a small mining show now is entitled to have reports and balance sheets periodically. That is only affording him ordinary business protection. It should be done, but it is not done in many instances. Anything that will encourage the supplying of such reports will be to the advantage of the industry. Once that is done, a good deal more work will be involved to comply with the provisions of the Act.

2060. By Hon. G. FRASER: You think that Mr. Malloch was mainly concerned about the expenses entailed in the formation of a company?—Yes.

2061. And not about the expenses after the company had been formed?—That is so. He put the suggestion before the Chamber of Commerce and I know exactly what he wants. He contends that if a man has a mine that is worth while, he cannot develop it without getting capital, and he cannot get capital as a syndicate because backers know that they have to accept full liability without any limit. Thus the only method of finding capital is to get a promoter to form a company and he would demand a big rake-off for his services. Mr. Malloch wants to prevent that rake-off so that the whole of the capital provided will be used to develop the mine. He wants to simplify the procedure, render the bringing in of a promoter unnecessary and obviate the need for paying the promoter a large sum of money or a rake-off in shares for floating the company.

2062. By the CHAIRMAN: The committee is anxious to do what is possible for prospectors, but I am afraid that if we allow the registration of liability companies to be effected as easily as Mr. Malloch suggests, the public may be further exploited, and the small businessman seriously affected. The businessman is really the prospector on the goldfields. Without the storekeeper, for instance, the prospector could not carry on. Under Mr. Malloch's proposal, the machinery merchants will have some security, whereas the small businessman will not receive the same protection. It is not the function of this committee to protect one section of the community against another, but to protect the public generally from exploitation. By the introduction of the method suggested by the chairman, we have to be sure that we are not opening avenues for the exploitation of the public. The scheme you have put up, Mr. Miller, is in many respects different from that advanced by Mr. Malloch. It will afford more protection to the public, for instance. Mr. Malloch's idea was that shareholders should be liable for the full face value of the shares they take up. You have introduced a different phase, and have no doubt discussed the matter with him?—I have, and with Mr. Glyde. They both agreed that this was a good way to carry out what they wanted. Mr. Malloch's idea was a good one, but he does not know how to carry it out. If he had told me what he intended he would have been able to carry out his idea.

2063. The matter would receive the same publicity as if it were handled by a solicitor—Companies can now be formed without publicity except for the notice in the paper to the effect that they have been registered. That would be the case in future. A company would not escape any publicity that could not be escaped without this proposal.

2064. By Mr. WATTS: What about the prospectus?—It might be necessary to print a simple form of prospectus.

2065. If the public is invited to come in, the prospectus will be of interest to it. That is the basis of the contract to take shares, and the prospective investor has as to the outlook for the company, up to a point. If we dispensed with that—that would be a necessary simplification. It is not necessary to give you that information, or to do what Mr. Malloch would, in fact, do. It might conceivably do damage to the company. Mr. Malloch has in mind?—Under the Bill a prospectus is necessary. A simple form might be devised, to cover the agreement between the prospector and the shareholders, and deal with other matters of the kind.

2066. You cannot have standard agreements and standard prospectuses?—I am not suggesting a standard agreement.

2067. If we are going to have this simplification, the memorandum alone will not solve the problem?—Mr. Malloch's idea is a good one, and I have been trying to find a way by which to carry it out. It may be necessary to print a simple form of prospectus. All the prospectus has to do is to give you the outline of business is carried on or more or less the same lines. It should not be necessary very considerably to vary prospectuses one from the other. A standard form would, generally speaking, fill the bill.

2068. By the CHAIRMAN: It would be necessary to have some prospectus?—Under the Bill that is necessary.

2069. By Mr. BODORDBA: What would be the cost of incorporating such a company?—According to the Schedule at the back of the Bill, the fee payable for the registration of a company whose nominal capital does not exceed £2,000 would be £2.

2070. Nothing would be saved there under the proposal?—No one could object to paying £2.

2071. Your proposal could be carried out under the present Act?—Yes, except that under the Act there is
of costs, The Bill under our procedure which follows:—

therefore usually wish to go and go for taxing solicitors' costs above £10 have to be said yesterday that he would still have to

the Bill for a no-liability company. The Act provides that the manager is responsible for the

while it is really what the people to go to the

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the Bill for a no-liability company. The Act provides that the manager is responsible for the

the Bill for a no-liability company. The Act provides that the manager is responsible for the

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .

the committee to me, and some other.

the committee to me, and the committee to me, and an agreement. . .
solicitor's bill of costs is always taxed as a matter of course by the Master of the Court when he is passing such executor's or administrator's accounts in order to be sure that the beneficiaries are not prejudiced by the payment of excessive costs to the solicitor.

It seems to me that the same principal can be properly applied to who holds the executor's costs in connection with the winding-up of companies for the protection of creditors and shareholders of the company.

Query 3. Clause 31. The Hon. Minister desires a provision (to be inserted in the Bill making the clause retrospective in so far as the word "State" is contained in the names of either foreign or local companies, and particularly local companies. Will you please draft an amendment?

Proposed amendment: Insert in Clause 31 of the Bill after Subclause (2) a new subclause to stand as Subclause (3) as follows:

(3) (a) Where a company has, prior to the commencement of this section, been registered under the repealed Acts by a name which includes therein any of the words (other than the word "State") mentioned in Subsection (3) of this section, nothing in this section shall prevent the continuance of the registration of such company by such name after the commencement of this section.

(b) Where a company has, prior to the commencement of this section, been registered under the repealed Acts by a name which includes therein the word "State," the registration of such company shall cease and be cancelled by the Registrar after the expiration of three calendar months from the date of the commencement of this Act, unless in the meantime—

(i) the Governor shall, on the application of the company, by order published in the "Government Gazette," consent to the continuance of the registration of the company by the name aforesaid; or

(ii) the company shall, by special resolution and with the approval of the Registrar signed in writing, have changed its name by the exclusion therefrom of the said word "State," and the registration thereof of another word or other words which are not prohibited by this section.

(c) Where a company changes its name in accordance with the provisions of Subparagraph (3) of Paragraph (b) of this subsection, it shall be deemed to have been authorized so to do by Subsection (1) of Section 33 of this Act and thereafter Subsections (3), (4), (5), and (6) of the said Section 33, shall with such adaptations as may be necessary, apply and have effect in relation to the change of its name by the company as aforesaid.

2092. Suppose a company were to change its name by inserting one letter, for instance, and instead of using "State"spell the word "Statey" or "Staitc," do you think it would be possible for the firm to trade under such a designation? There would be no legal objection to that because the word spell as you suggest is not a prohibited word.

2093. By Mr. WATTS: And "Statey" may be the name of a man?—Of course.

2094. BY THE CHAIRMAN: I thought the position might be overcome by that means. In fact, it has been suggested by someone that he could easily get over the difficulty by spelling the name differently, although it would be pronounced similarly—Yes. The whole virtue of the name "State," from a publicity point of view, is the effect it produces at sight, not by sound. If a sign is put up with the words "State Furnishing Company," the word "State" has a certain connotation, whereas if the word appeared as "Staitc," it would leave quite a different impression. In the latter instance no one would infer that the firm had any connection with the State of Western Australia. The next matter to which I desire to make reference is to the new provision suggested by Sir John Kirwan for insertion in the Bill. You will recollect that Sir John was concerned about single shareholders in a company being prejudiced by making provision in the Bill for an appeal to the court by the aggrieved minority shareholders. Sir John Kirwan suggests that the Bill be amended by inserting new provisions which will enable an appeal to be brought to the court by shareholders in a company who in the aggregate hold a minority of the shares in the company against a decision of a single shareholder. Where a majority of the shares in the company, fixing for himself a salary as managing director which, in the opinion of the aggrieved minority shareholders, is exorbitant and so prejudicial to the interests of such minority shareholders. An attempt to deal with this matter was made in a Bill to amend the Companies Act, 1893, which was introduced in Parliament in 1893 but which was not passed. In principle there cannot be any objection to the proposal as a measure to prevent, on the part of a single majority shareholder, what can be proved to be a dishonest or improper act designed to benefit the said majority shareholder at the expense, or to the disadvantage, of the minority shareholders; and any such provision in the Act, provided it will be practicable and effective in its operation, is certainly desirable. In this respect it can be accepted as a fact that the cases which the suggested provision is intended to cover will be—

(a) few and exceptional; and

(b) occur only in relation to small companies in which the number of shares allotted is not great and the number of shareholders is comparatively small.

These factors do not necessarily stand as reasons against the proposed legislation, but may have some effect upon the operational efficacy of such legislation. On the other hand, they may enhance the justification for such legislation. I understand that the new provision should be on the lines of the proposed new section set forth in Clause 3 of the Bill which was introduced in 1932. That Clause 3 purported to insert in the Companies Act, 1893, after Section 46, a new section, Section 46A, which read as follows:

(1) Notwithstanding anything contained in the memorandum or articles of association of a company, the remuneration of the directors shall from time to time be determined by the company in general meeting.

(2) The powers of the company in general meeting under this section shall extend to increasing, diminishing, or otherwise altering for the future the remuneration of a director herebefore fixed or determined, whether by the company in general meeting or otherwise.

(3) For the purposes of this section the remuneration of a director shall be deemed to include any salary, commission, payment, or reward (however fixed or determined) receivable by him from the company for services rendered or performed, or to be rendered or performed, by him as a manager or managing director, or in any capacity whatsoever.

(4) When any determination of the company under this section has been passed or arrived at by means of a quorum given by or on behalf of any director concerned, then any members of the company, not being less than two in number, may appeal against such determination to the court, and the court may affirm, reverse, or vary the determination as shall be just and reasonable.

(5) For the purposes of this section a vote shall be deemed to be given on behalf of a director, if it is given in respect of or by virtue of any shares held in trust for or on account of the director, or held by such director, or by the wife, husband, or any child of such director, or which have been directly or indirectly acquired by the holder from such director gratuitously or for a nominal consideration.

(6) Appeals may be brought and conducted under this section within the time and in manner provided by rules of court, and, subject to any contrary provision in the rules, shall be heard and determined.
in chambers, and the costs thereof and incidental thereto shall be in the discretion of the court.

(7) This section shall have effect notwithstanding the terms of any agreement herefore or hereafter made.

The only criticism which I have to offer upon that proposed section is that, whilst it confers upon the court power to hear and determine appeals by aggrieved minority shareholders, it does not prescribe or lay down any basis upon which the court can form its judgment and give its decision upon such an appeal. In my view, a merit of formulating such a basis, which will be practically unanswerable, if not considerable difficulty, and unless such a satisfactory basis can be formulated it seems to be reasonably certain that the court being to all intents and purposes left in the air, will refrain from instituting a basis for the company although in effect that decision has been made by one majority shareholder for his own advantage. Bearing this in mind, I purposely refrained from including any such provision in the present Bill when drafting the same, but arraigned that the matter of such provision be submitted to the Select Committee in the hope and with the expectation that the committee would uphold the obtaining of those of opinion and suggestions from witnesses, in addition to those of Sir John Kirwan, who have a practical knowledge and experience of company law and company administration, which would probably be helpful in the formulation of the necessary basis aforesaid. It cannot be denied that the question whether a particular rate of remuneration is fair and reasonable can only be decided on the basis of the relevant conditions and circumstances, and those circumstances and conditions will inevitably be many and varied and in practically every case a decision as to the fairness and reasonableness of a particular rate of remuneration can be arrived at only by a process of comparison. For example, some of the circumstances and conditions which may be relevant to the determination of what is a fair and reasonable rate of salary, but which also may be conflicting, include the following:

(a) The rate of remuneration may be required to be based upon the exceptional ability of the person to receive it.
(b) The rate may be regulated by a standard rate established by custom, award, or other premises.
(c) The rate may be affected by the amount of the revenue out of which the remuneration is to be paid.
(d) The rate may be affected by the length of the period during which the remuneration will be payable.
(e) The rate may be affected by the volume of the work required to be rendered by the person receiving the remuneration.
(f) The rate may be affected by the important nature of the work required to be performed by the person receiving the remuneration.
(g) The rate may be affected by the nature and extent of the responsibility to be assumed by the person receiving the remuneration.
(h) The rate may be affected by the demands of the person to be appointed, and in turn those demands may be made unassailable by reason of the fact that the person making the demand is the only person able or competent to accept the appointment.

It will be realised that in the light of the above variety of possible bases it may not, as a general rule, be safe or proper to rely on a basis upon which officers by other concerns as establishing a fair and reasonable basis of fixing the rate of remuneration in a particular concern. Thus, because a number of companies and undertakings pay their managing directors only £3,000 a year, it does not necessarily follow that another particular company cannot reasonably and fairly pay its managing director £5,000 a year. It may be that in the latter case the particular person appointed as managing director, by reason of his exceptional ability or special suitability for the position, is entitled to a higher rate of salary, and that a refusal by such person to occupy the position would mean disaster to or failure of the company. It seems to me, therefore, that in order to ensure that the Court will seriously deal with the appeal proposed to be given to aggrieved minority shareholders and have the material essential to a proper consideration of the appeal available to them, some further provision must be inserted in the proposed new section which will operate as a basis upon which the court can consider its judgment and arrive at its decision. In the absence of any better suggestion by persons more competent than I to formulate the necessary basis, I suggest as an additional provision which might be inserted in the proposed new section aforesaid, a sub-section at the end thereof on the lines of Section 67 of the Industrial Arbitration Act, 1912-1935, for the consideration of the select committee as follows:

(8) (a) In the hearing and determination of every appeal under this section the court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform its mind on the matter in such a way as it thinks just.

(b) In determining an appeal under this section the court shall not be restricted to the specific claims made or grounds or objections submitted or to the subject matter of such claims, grounds or objections aforesaid.

I know that the said Section 67 of the Industrial Arbitration Act, 1912-1935, was not intended to be an open invitation to the judges of the Supreme Court because they are generally opposed to any practice which permits any evidence, regardless of its relevance or materiality, to be led in any cause, and yet by the terms of the section as amended and in effect to me that if they are to hear the proposed appeals and give decisions, it is essential, apart from any other kind of evidence, that there shall be given an unlimited range for the obtaining of information concerning all the material factors essential to a proper consideration of the appeal. The proposed new clause, with whatever additional provisions restored or indicated by me, the Select Committee may approve of, should be inserted in the Companies Bill after Clause 174.

2093. By Mr. WATTS: The amendment proposed in 1932, which you read, throws open for determination of remuneration an appeal to the court so long as there are two or more shareholders dissatisfied.—That is so.

2094. The basis of the discussion was the suggestion that it should only be in cases where a majority shareholder can impose his will on the minority. Do you not think it would be better if the power was limited to cases of that type?—That of course is purely a matter of policy; but I would say that if you are going to give an appeal to minority shareholders, I can see no reason in principle why it should not be possible in the particular case of the single majority shareholder. It may quite reasonably arise that a similar appeal should be given in other cases, and there shall be given an unlimited range for the obtaining of information concerning all the material factors essential to a proper consideration of the appeal. The proposed new clause, with whatever additional provisions restored or indicated by me, the Select Committee may approve of, should be inserted in the Companies Bill after Clause 174.

2095. Would it not be desirable to place a minimum holding on the applicant—two or more shareholders holding more than one-fifth of the capital of the company?—There again I am not prepared to answer your question: it is a matter of policy. You will probably have a far more valuable view of that question than I.

2096. You do know of people who would be likely to bring frivolous or vexatious applications. It would be desirable to prevent that?—Yes, if it is possible without imposing any arbitrary or rigid conditions. It might easily happen that one shareholder or two shareholders with less than that minimum might have a perfectly good case.

2097. Then it would not be reasonable to withdraw the new section in such a way as to order the applicant to pay the costs of the proceedings if his application were proved to be frivolous?—Yes, that would be a good provision.

2098. The determination of the remuneration is often made in general meeting. Would it not be advisable to require the applicant to have voted against it at that meeting so that there would not be the possibility of supporting it at the meeting and objecting to it afterwards?—Perhaps that would be good too.
2101. By Hon. L. CRAIG: Would it not be possible to leave it to the court to decide whether the remunerations of the directors is reasonable or unreasonable? Would not the court have sufficient guides? That is my whole point, that you cannot leave the court in the air. It is all right for someone to put up the contention that the salary is unreasonable or unreasonable or unreasonable, but the court can only arrive at a decision on evidence and on material facts and circumstances. As have stated earlier in my statement, it cannot be a safe deduction to assume that because three brewery companies are paying their managing directors £5,000 a year, a fourth brewery company cannot properly pay its managing director £2,000 a year.

2102. That would not be to the detriment of the company? It is a matter of evidence. It may easily arise that certain evidence which might be useful to the court in forming its judgment would not be admissible. For instance, ordinarily it would be admissible evidence to say that the managing directors of three other breweries are receiving £3,000 a year, and the court would say, 'What has that to do with this case?' You have to give the court the widest possible range, and freedom from the rules of evidence in gathering the information that will be necessary to enable it to give an intelligent decision. Generally I do not very much like applying Section 67 of the Industrial Arbitration Act to this matter, but I have considered this from all angles, and I have to confess to myself that I think nothing in the nature of that section will have to be given to the judges in this instance if they are going to be put into a position which will enable them and require them seriously to consider an appeal of this sort. It is only human nature for anybody lacking the necessary material upon which to form a judgment to refrain from forming any judgment at all, and I think that in this class of appeal one essential will be that the judge must have the widest scope possible and possess the material which will enable him to form his own judgment, intelligently and rationally, on the question before him.

2103. Such cases are very rare, are they not? Yes, I think so.

2104. By the CHAIRMAN: They are rare, but there are a few. There are two or three in the city and some on the goldfields. I have prefixed this statement by the fact that they will be few and exceptional and confined to small companies. I think you can accept that.

2105. By Mr. WATTS: The court having come to a decision on this matter, would that decision last more than the one year or one interval between general meetings?—That would rest entirely on the order which the judge made. A judge may allow an appeal and ask that the salary be reduced, say, from £6,000 to £2,000 for the next year with liberty to apply.

2106. That would be the only way, because the affairs of the company might quadruple in size—Yes, I think the court would almost invariably safeguard its order in some way. I pass now to the third, extravagant matter and submit the following commentary in relation to letters written by Mr. A. H. Malloch dated 9th January, 1941, and the 27th February, 1941:

1. Mr. Malloch suggests that provision be made in the Bill enabling the incorporation of small mining companies instead of partnerships to run small mining undertakings. His idea is that the business of such small companies should be carried on as if the companies were partnerships, the liability of the partners for the debts of the company being limited.

2. I do not know whether or not Mr. Malloch fully understands the provisions of the Limited Partnerships Act, No. 17 of 1909. Under that Act limited partnerships can be formed in which there must be one or more general partners who are liable for all the debts of the partnership, and in which there may be one or more limited partners whose liability for the debts of the partnership is limited to the amount of their contribution to the capital of the partnership.

3. Under that Act, however, in the case of a limited partnership, which is formed to carry on a mining undertaking, the partnership must consist of not more than 50 partners.

4. The said Act contains many provisions imposing certain restrictions and limitations upon the limited partners as distinguished from the general partners. Mr. Malloch would probably consider these are not suitable for the class of partnership or small company which he has in mind.

5. Mr. Malloch, however, apparently desires that the small companies which have to be incorporated under the Companies Bill provisions for the incorporation as companies of those associations of persons which Mr. Malloch intends shall virtually have the identity of an ordinary partnership except for a limitation of the liability of the partners in respect of the partnership debts.

6. I would suggest, therefore, that Mr. Malloch's suggestion can more properly and correctly be incorporated in the Limited Partnerships Act, 1909, and could form the basis of an amendment of that Act.

7. I make the suggestion contained in paragraph 7 hereof because the present provisions in Clauses 42 and 43 of the Bill relate to proprietary and private companies and are not suitable for the concerns which Mr. Malloch has in mind. At the same time I like the Companies Bill with provisions to make possible the formation of small companies which more properly and correctly can be provided for in a way suitable to Mr. Malloch in an amended Limited Partnerships Act, 1909.

I had the opportunity of listening to Mr. Miller propounding his suggestions as an aid to Mr. Malloch's scheme, but it seems to me that the essence of that scheme is that the company shall, in effect, for all practicable purposes, be and remain a partnership, but with the liability of the partners definitely limited. If he could have that, I feel sure that he would be disposed to consider extending the Companies Bill with provisions to make possible the formation of small companies more properly and correctly to be provided for in a way suitable to Mr. Malloch in an amended Limited Partnerships Act, 1909.
all other partnerships, the number is limited to 20. That provision could be amended to make the limitation for partnerships to carry on mining business 10, 20, 30 or 40 as desired, and special provision could be made for the limited partners, whose liability would be limited by the amount they had contributed, having to some extent a right to participate in the executive management of the administrative policy. That is all a matter of policy. Personally, I think Mr. Malloch's object could more advantageously to himself and his partners be achieved by amending the Limited Partnerships Act rather than endeavoring to incorporate in the Companies Bill some special provisions that will only make the general administration of the companies law in mining matters more involved and confusing than it is now. If this was done in relation to mining companies, there would probably be a considerable amount of discrimination, and you might be faced with the position that one of the small companies under Mr. Malloch's scheme would be registered as a company under the Companies Act, with all the implications he is seeking; if they have any substance or virtue, and a year or two after there might be special resolutions to increase the capital and alter the objects to bring the concern into line with the larger companies, which would be outside the field of Mr. Malloch's partnership. As a matter of policy it would be most undesirable to make provision in the Companies Bill for the small undertakings Mr. Malloch has in mind, but it might be desirable as a matter of policy to make special provision for small partnerships as partnerships, not as companies, in the Limited Partnerships Act.

2107. By the CHAIRMAN: Mr. Malloch said that one object was to enable the shares to be put on the market. Under a partnership that could not be done. He felt the benefits of a company without the obligations.

2108. By Hon. L. CRAIG: I think Mr. Malloch really wants a small company or partnership to have power to get more capital than it is felt could be obtained if the contributors were not liable for the debts of the partnership. You say that is provided for under the Limited Partnerships Act—Yes.

2109. That could be done to-day? There could be a partnership consisting of six or seven people?—Yes, any number up to 20.

2110. I am sure that Mr. Malloch did not contemplate more than 20. Six or eight of the partners could be active and the rest sleeping—that is so.

2111. And you say that is provided for under the Limited Partnerships Act—Yes.

2112. Then no alteration whatever is necessary—No, but an amendment would be necessary if it was desired that the sleeping partners should have a more active part in the management and administration of the concern.

2113. By Mr. WATTS: Mr. Malloch wanted two things, first that those people be able to take an active part in the concern, which the Limited Partnerships Act prevents, and also to transfer their interest in the concern; that would necessitate an amendment of the Limited Partnerships Act—That is so. That is where I recommend that the matter be dealt with, not under the Companies Act. An amendment of the Limited Partnerships Act could not by any stretch of imagination create any confusion, but if you make provision in the Companies Act for concerns of this sort, which are only infant mining companies, you will be creating a distinction that might lead to court confusion.

2114. By Hon. L. CRAIG: Partners would still be able to sell their shares—Yes.

2115. By the CHAIRMAN: We should endeavour to make some provision because I feel that it would help to open up what need only a small amount of capital—I have been offered opportunities to join syndicates but would not do so because I was not prepared to accept total liability.

2116. By Mr. RODOREDA: Are onerous returns required under the Limited Partnerships Act as under the Companies Act? Certain returns are required under the Limited Partnerships Act but nothing like those required under the Companies Act.

2117. It would not be necessary to employ a qualified accountant to look after the business of one of these small concerns?—It would not be necessary, but in any concern whose accountancy records are important, those responsible would be extremely foolish if they did not have a competent man to look after the accounts. The furnishing of returns to the Registrar, however, is a comparatively small matter as compared with the returns required under the Companies Act.

2118. It seems to me there would be no compulsory for one of the small concerns to have registered auditors?—No.

2119. It might be advisable to have registered auditors but it would not be compulsory.—That is so.

2120. By the CHAIRMAN: Will you proceed with your statement?—In my statement I deal only with those clauses concerning bills of exchange, but I can be prepared to discuss other matters.

Clause 3: There is no legal objection to the suggestions made by the Law Society, Registrar of Companies, and the Stock Exchange for the amendment of the definitions of "mining purposes," "court," "registrar," and "public company." Indeed it is perhaps desirable to amend the definitions, "mining purposes" and "public company" in the manner suggested, but it is not strictly essential that the definition of "court" be extended to include the Master of the Court when exercising his jurisdiction under Rules of Court, as suggested by the Registrar of Companies. I do not recommend the adoption of the definition of "private company" appearing in the South Australian Act of 1930, as I am of opinion that such a definition is unnecessary.

2121. By Mr. WATTS: I take it that your reference to "manager" has to be read in conjunction with your first statement this morning—that is so.

2122. By Hon. L. CRAIG: Would there be any difficulty in proving in court that the manager was the chief executive officer?—Ordinarily that question would be determined by the articles of memorandum of the company.

2123. Suppose that was not clearly set out?—Then there might be some difficulty, if you attempt in defining "manager" to do more than I have suggested, the company might be landed into still greater difficulty.

2124. Clause 13: I agree with Mr. Boyson that his suggestion for the amendment of this clause is desirable for administrative purposes. His suggestion would enable the registrar to refuse registration because any signature was under 21 years of age.

2125. By Hon. L. CRAIG: What I had in mind was that any person under 21 should be prohibited from subscribing to the memorandum—I think that is already provided for in Clause 28. The Registrar suggests in connection with Clause 13 that we should incorporate the inclusion in the memorandum of additional information, which at present is not required. He also suggested that the memorandum should set out whether or not any of the shareholders were under 21 years of age. That would enable him more efficiently to exercise his power under Clause 26, namely, to refuse any signature by a person under 21. It is a permissive power.

2126. Clause 14: I agree with Mr. Goyne Millay that the bank account of the no-liability company should be opened in the name of some person as trustee of the company. As Mr. Miller pointed out, the company would not be in existence of the time the deposit was required to be made.

2127. Clause 17: There is no legal objection to the suggestion by Mr. Boyson that the Registrar be enabled to require production of the power of attorney and evidence that it is unrevoked. It is desirable to clarify the position as regards agents' powers.

2128. Clause 19: Time and expense would not be saved by using a special resolution and affidavit that all interests had been notified, and ray 26 should be given, as the Subclause (c) referred to relates only to creditors who have objected. I think Mr. Miller was rather misconceived the purposes of Clauses 25 and 26, which deals with alterations in the objects of the company. There is a necessity, of course, to have the proposal authorized by special resolution filed, but the court is required, or is empowered, to satisfy itself—as a matter of fact, it will be obliged to satisfy itself before it affirms any such proposal—that all interested
parties, that is creditors who have claims against the company, are not going to be prejudicially affected, and the same in the case of some shareholders. The court can provide by way for the preparation of lists of creditors or shareholders who may have objections which they are entitled to raise. As Clause 19 stands now, it is in relation to those people who the court has decided are entitled to make objections that the court requires evidence as to their consent or satisfaction of their claims before the court will affirm the decision. Where Mr. Miller suggests filing the resolution and giving this 'day's notice, and then proceeding, that really has nothing to do with the object and intention of Clause 19. What he suggests is something that would happen first: which Clause 19 requires is something that happens afterwards. You will notice that Mr. Miller is referring to 'may bring to light certain people who have objection to the settlement of the company and I think the court affirms the proposal it shall be satisfied that those people who have objected have had their objections removed.

Clause 22: This clause is merely a re-enactment of Section 18 of the present Act. I do not know how it has operated in the past.

2316. By Hon. G. Fraser: You do not know of any objection to it?—I cannot say.

Clause 24: I do not agree with the contention of Mr. Forbes that this clause requires amending in order to conform to Clause 141. Clause 24 applies "Subject to this Act," and thus applies subject to Clause 141. That clause will have to be read consistently with all other relevant sections of the measure. Personally I do not see any need for amending Clause 24.

Clause 23, Subclause (2): There is no legal objection to the suggestion of Mr. Goyne Miller that the statutory declaration of a private company or public company be accepted. The question is merely a matter of policy. There is no legal objection to it. I do not know how many members of this committee view the position that is growing with the non-legal bodies which are gradually carrying out more and more legal work that previously was confined to the ambit of solicitors. This is just another tendency. We all know that public accountants and solicitors are dealing with preparation of memorandum and articles of association of companies, which formerly was done by solicitors. If that practice is to continue, I see no reason why public accountants and others should not be permitted to make the necessary statutory declarations.

Clause 30: I agree that the right of inspection should be subject to payment of the prescribed fee. Mr. Rayson suggested that this should be subject to payment of a fee, and I quite agree with that.

2187. By Mr. Watt: Clause 30 provides that any person may inspect documents kept by the Registrar. Do the words 'documents kept by the Registrar' in that clause include all the various returns and other documents that are required, by later clauses, to be filed with the Registrar from time to time? In the definition clause, No. 3, the word "document" includes summaries, returns, and other legal process, and registers. In my understanding of the matter I would say the clause would cover inspection of everything which is required by the Act to be kept in the Registrar's Office; that would be returns filed by the company and all manner of things that a company is bound to do.

2185. It has been suggested to me that it would be an impossible position if the public generally, say a person having no interest whatever in the company, should be at liberty to inspect some of these documents, whose scope is going to be so greatly increased by later provisions of the Bill. It has been suggested to me that this should be limited to shareholders and creditors of the company. How do you view that?—Of course it is not a matter of law, but purely a matter of policy. Anybody can go and inspect a bill of sale or any certificate of title to find out what private individuals' dealings have been in relation to it. There is no restriction. The object, of course, is to give facilities to the public to obtain knowledge of matters which may be of concern to them. I do not assume that people who are not creditors or shareholders would go to examine the records or returns in the Registrar's office merely out of idle curiosity. They would be doing it for a purpose, and have nothing to suggest, so far, that the contents of these documents shall be confidential, that any more than a mortgage given by me to you is confidential, because anybody can go to the Titles Office and turn up the mortgage and read every word of it. There is no question of that being an objectionable practice.

2189. The Bill contemplates private and proprietary companies which do not, and cannot, force their notices to the public, and therefore are in no sense public companies, which represent the only type we have had before. In these cases more particularly it has been suggested that this should refer to shareholders and creditors. That may be desirable in practice. I would not like to express an opinion myself because I have had no close association in that capacity with the occupancy of my present office, with the administration of company law, to enable me to express an opinion whether it has acted beneficially or to the detriment of companies of the public. A legal practitioner who has had that experience would be in a far better position to express an opinion on such matters than I am. If I see a principle being followed and I feel it is a principle that could be applied generally, I am prepared to say so, but I would not like to be dogmatic on a proposition such as you put to me now. With regard to Clause 31, which deals with the prohibition upon the use of certain words in the names of certain companies, I have embodied my comments in the following statement:

Proposed Amendment of Clause 31 (6).

The suggestion of the Registrar of Companies that Clause 31 be made similar to the recent amendment of the Registration of Firms Act cannot be fairly or reasonably accepted. Firms as such are not legal entities and the partners still retain their individual identities. Consequently all contracts and other legal instruments must be executed by the partners in their individual names. Therefore when the amendment of the Registration of Firms Act was made retroactive so far as the use of the words "partnerships" and "Commonwealth" in firm names is concerned, the creation of legal entities was not involved in the necessity to change the firm name.

In the case of companies, however, as a company, as a corporate body, has a distinct legal entity which is identified by its corporate name. All contracts and their legal instruments are executed in the name of the company by affixing its common seal, and if it be made necessary under the present Clause 31 of the Bill to change the corporate name of companies already in existence, such change of name will give rise to a number of complications which will create legal difficulties and inconvenience. Thus when drafting Clause 31, I deliberately refrained from giving that clause any retrospective operation, and intended that the clause shall apply, not to existing companies but only to companies which are incorporated after the new Companies Act comes into operation.

Subclause (6) of Clause 31 is included in Clause 31 so as to make the clause apply also to foreign companies, but was intended to apply only to foreign companies which seek registration under the new Companies Act.

According to the present drafting of such Clause 31, however, that Subclause (6) has a retrospective operation in relation to existing foreign companies which Clause 31 as drafted does not apply to. In this respect, therefore, Subclause (6) creates an anomaly which must be rectified, and I suggest that Subclause (6) of Clause 31 be amended to read as follows:

(6) (In this section the word 'company' does not apply to a company which at the commencement of this Act had already been registered under a foreign company which has not been repealed or to a company to which at the commencement of this Act the Act had not been repealed.)
2130. By Hon. A. THOMSON: There are some private companies trading in Western Australia under names which include the word "limited"! to their names, will they be able to carry on? I refer to concerns such as the State Furnishing Company—they are only partnership, and the liability is restricted by the Registration of Firms Act as amended last session. If those firms include the words "State" or "Commonwealth" in their names, they must now exclude them unless they obtain from the department to retain them. They may not continue the use of the old firm names since the amending Act came into operation, except with the approval of the Governor. As regards words or other words in firm names, which are prohibited now, such firms are not prevented from using their names; but if a partnership seeks to become a limited liability company, it will have to make certain as a new company seeking incorporation and registration, and the provisions of the new Companies Bill, if it is passed and becomes an Act, will prevent it from continuing to use the name of its old firm, together with "limited," or "Commonwealth," or other prohibited words in their names.

Clause 32: This deals with the power given to the Attorney General in certain cases relating to certain classes of associations which are registered, to dispense with the use of the word "limited." There is no legal objection to the suggestion made by Mr. Goyne Miller that Section 34 of the New South Wales Act be added. The words in Section 34 are not substituted for the word "Governor" appearing in the amendment proposed by Mr. Goyne Miller. However, the question is one of policy for the committee to determine. The idea underlying the corresponding section in the New South Wales Act is to put a limitation on the number of companies or associations which can be registered as companies and to avoid the use of the word "limited" in their names where they have substantially similar objects. In his evidence Mr. Goyne Miller gave the committee an illustration; he mentioned a Chamber of Commerce, which would be a class of body which might come within this category. It would be registered as a company, but without the use of the word "limited" in its name. It would be registered by a special licence granted by the Attorney General. Mr. Miller wants to make the provision in this clause, which will more or less place a duty on the Attorney General not to grant a licence unless it is asked for. The object of this amendment is to keep the company from using the word "limited" in its title, which represents a company like the Attorney General has suggested that in Subclause (4), where Clause 5 of the Bill is mentioned, Clause 134 also should be quoted—I agree. It is an inadvertent omission. With regard to Clause 35, I agree that Subclause (1) should be amended by inserting in the first line thereof, after the word "certificate," the words "or a copy thereof."

Clause 37: This is uniform with Section 33 of the South Australian Act. Other Acts support the amendment suggested by Messrs. Valentine and Shoy, which represents a matter of policy. As it stands, Clause 37 gives the right to every person to apply for and obtain from a company a copy of its memorandum and articles of association or any other document. Three witnesses have suggested that this should be amended so as to limit the right to members of a company. In our opinion, that amendment is not required; and in the absence of contrary evidence, I should have been inclined to amend Clause 37 of the Bill into conformity with the South Australian section. The South Australian Act is a very good supporting Act. Clause 38.

2132. By the CHAIRMAN: It seems to be excessive—I think so, unless you alter the previous clause. Any person can go to the Registrar's office to get the information, instead of worrying the company for it. The members should probably have the right to get that information from the company.
objection to it. The Chamber of Commerce has suggested that for the words "public accountants" the words "acountants who shall be auditors under this Act" shall be substituted. I agree with that suggestion which brings the provision more into conformity with the Act. The same suggestion was made by Mr. Merry. The use of the word "accountants" in the first line of Part C is the result of typographical error, and the word should be "parts." Regarding Mr. Merry's proposed amendment to paragraph (1) of Part C by the addition of the words "and has in fact so commenced business," there is no legal objection. It is a matter of policy concerning which I do not propose to express an opinion.

Clause 56: This deals with the power to issue abridged advertisements. A suggestion was made that in an abridged advertisement of a prospectus there should be included the names of the secretary and solicitors, or proposed secretary and proposed solicitors. It is perhaps desirable to insert the words "secretary and solicitors or proposed secretary and proposed solicitors," and there is no legal objection. The suggestion by Mr. Merry concerning Sub-clause (iii) is again purely a matter of policy. Personally I think that perhaps it would be desirable.

2131. By Mr. WATTS: Clause 56 says that the advertisement must state that the requirements of the Act have not been fully complied with, and that the advertisement is an abridgment of the full prospectus, etc. Why should it be necessary for the advertisement to state that the requirements have not been complied with when it makes plain that the advertisement is only an abridgment of the original prospectus and states when the full prospectus can be obtained? — Perhaps it is only a matter of abundant caution.

2132. Can you see anything to be gained, from the point of view of the companies or the public, by a statement in the Press that the requirements have not been complied with? Is it not liable to lead the public to conclude there is something wrong with the concern? It might. On the other hand, there might be a belief in the minds of some investors that the advertisement contains all the information which is contained in the prospectus.

2133. But the next requirement says that it does not and tells where a person can get the full prospectus. — There may be no particular virtue in it. I see no particular necessity for it, as long as it is made clear in an adequate way to the public that they are not complied with. Is it not liable to lead to the public to conclude there is something wrong with the concern? It might. On the other hand, there might be a belief in the minds of some investors that the advertisement contains all the information which is contained in the prospectus.

2134. The next requirement says that it does not and tells where a person can get the full prospectus. — There may be no particular virtue in it. I see no particular necessity for it, as long as it is made clear in an adequate way to the public that they are not complied with. Is it not liable to lead to the public to conclude there is something wrong with the concern? It might. On the other hand, there might be a belief in the minds of some investors that the advertisement contains all the information which is contained in the prospectus.

2135. By Mr. WATTS: Clause 56 says that the advertisement must state that the requirements of the Act have not been fully complied with, and that the advertisement is an abridgment of the full prospectus, etc. Why should it be necessary for the advertisement to state that the requirements have not been complied with when it makes plain that the advertisement is only an abridgment of the original prospectus and states when the full prospectus can be obtained? — Perhaps it is only a matter of abundant caution.

2136. Can you see anything to be gained, from the point of view of the companies or the public, by a statement in the Press that the requirements have not been complied with? Is it not liable to lead the public to conclude there is something wrong with the concern? It might. On the other hand, there might be a belief in the minds of some investors that the advertisement contains all the information which is contained in the prospectus.

2137. By Mr. WATTS: Clause 56 says that the advertisement must state that the requirements of the Act have not been fully complied with, and that the advertisement is an abridgment of the full prospectus, etc. Why should it be necessary for the advertisement to state that the requirements have not been complied with when it makes plain that the advertisement is only an abridgment of the original prospectus and states when the full prospectus can be obtained? — Perhaps it is only a matter of abundant caution.

2138. Can you see anything to be gained, from the point of view of the companies or the public, by a statement in the Press that the requirements have not been complied with? Is it not liable to lead the public to conclude there is something wrong with the concern? It might. On the other hand, there might be a belief in the minds of some investors that the advertisement contains all the information which is contained in the prospectus.

2139. Assuming that that is so, would not Mr. Merry's point be differently viewed if it might not be so? I shall not tie myself down, because I have not considered that aspect. It is news to me that any company employs as an officer of the company accountants or auditors. Ordinarily a company has accountants and solicitors, but my idea of the functions of an auditor of a company or other concern is to check the work of the company's servants in relation to its accounts. I know there are big concerns that virtually employ a solicitor, pay him a large retainer, and more or less dole him from engaging in private practice. Perhaps it would be that he would still not be an officer of the company. If an auditor is going to enter into an arrangement that will make him an officer of the company, the amendment might arise in relation to his work as an auditor and his liability for what he does.

2140. I think you will find there are such people in larger concerns and they are quite likely to exist in this country. They are employed by the principal staff and are subject, something like the Auditor General, to dismissal in certain circumstances, but they are totally and continually employed in auditing the company's affairs? — If there is a possibility of such circumstances existing and it is advisable to make special provision to meet them, I would not raise any objection.

Clause 61: The suggestion is for an extension of time. An amendment to this effect has been provided in the South Australian Act of 1939 under which the times prescribed are extended by an officer of the company. I think the suggestion is in the minds of some investors that the advertisement contains all the information which is contained in the prospectus.

2141. That is, to strike out the words "no-liability company." — Yes. Rogers: Clause 61 provides certain suggestions. So far as I can see, there is no legal objection to them. They represent a question of policy. I except the suggestion that this clause is inconsistent with Clause 40. If I disagree with that, there are no legal objections. If I disagree with that, there are no legal objections.

2142. By Mr. RODOREDA: You recommend an amendment to Clause 40? — Mrs. Forbes suggested that Clause 40 be deleted. I have already expressed my disagreement with him on that point, because the clause can be read consistently with other clauses of the Bill and must be read in conjunction with them.

2143. By Hon. H. SEDDON: A hardship might be imposed upon a purchaser of shares owing to the fact that, if the contract was not filed, he would not be protected. — There is a possibility that, if the contract was not filed, the holder of the shares will be deemed to have
purchased them for cash, whereas, in fact, he probably has done so. That is done in the notices which he had in mind and which justifies the compulsory filing of the contracts.

2144. Then there could be no danger?—That is so. I mention the stamp duty, which affects the revenue, but there is also the other aspect. The compulsory filing of these contracts would protect people who acquire shares for consideration other than cash.

2150. The Registrar. Then you would be protecting the revenue as well as the public—Yes.

Clause 64, Subclause (2): It was suggested that the Registrar should have discretion in relation to exacting penalties, and that he should be able to say whether or not he would prosecute for an alleged infringement of the clause. There is no necessity to put that into Subclause (2). The Registrar is expected to administer the Act reasonably and justly. In a case where a breach has been committed innocently or inadvertently, no one would expect him to prosecute. He would prosecute when he knew that the infringement had been deliberately, recklessly or carelessly committed. In such cases power should not be left to the Registrar to say whether or not he would institute a prosecution. The penalty is specified, but no one would expect the Registrar to prosecute in certain cases where such prosecution would amount to prosecution. Some years ago a man committed an offence against the water supply by-law, he was a nurseryman and had about 1,000 trees and dahlias coming on. Had he been unable to water them adequately, the whole of his garden, which was his livelihood, would have been ruined. I was asked whether the Water Supply authorities were bound to prosecute the man because of the infringement of the by-laws. In that instance I was of opinion that to prosecute would be greatly unfair and wrong, so long as the man only used the water from a hire or rent. There is no objection to that, and I agree with it.

Clause 77 and 78: Whether or not these clauses should be deleted is a matter of policy, but I doubt the wisdom of deleting the provisions. The clauses deal with the matter of a limited company having directors with unlimited liability. Clause 78 is consequent on Clause 77, which provides that where directors with limited liability can, by a special resolution, provide that some of the directors shall have unlimited liability. There has been a suggestion that the witnesses that those two provisions should be cut out, because they are barely ever availed of and serve no useful purpose. Whether they should be deleted or not is purely a matter of policy. If the clause as a whole is not made consistent with Clause 77, it may be that the clauses, anyhow, have been in the Western Australian law, and appears in all the other Acts, and possibly it can serve a useful purpose in some way or other. If that is so, I think personally that it might be left in. It is there to be availed of if it is of any advantage to do so. The suggestion is that sometimes it would be preferable to have the shareholders and directors with unlimited liability as shareholder rather than have him assume a liability merely as a guarantor. But whether that be so or not, I am not prepared to say. I do not know.

2153. By Mr. WATTS: Supposing that Clause 77 continues law, is it not liable to place a person who has had no notice of the fact that he has been appointed with unlimited liability in a peculiar position?—I think there is no necessity to take it out of its present position, where it is in an appropriate place—returns as to allotment and so on.

Clause 69: The questions raised by the witnesses are matters of policy. I do not propose to express any opinion. However, there is a recommendation to incorporate in the section an amendment similar to that of Section 64 of the South Australian Australian proposal to extend the provisions to no-liability companies. I recommend the incorporation of an amendment similar to Section 64 of the South Australian Act.

Clause 74: I agree that the notice referred to in Sub-clause (1) should be inserted by the company. This refers to increase of share capital. The suggestion is that the notice referred to in Sub-clause (1) of Clause 74, a notice to be given to 'every person to whom a notice in this section is given,' shall be inserted by the company. There is no objection to that, and I agree with it.

Clause 77 and 78: Whether or not these clauses should be deleted is a matter of policy, but I doubt the wisdom of deleting the provisions. The clauses deal with the matter of a limited company having directors with unlimited liability. Clause 78 is consequent on Clause 77, which provides that where directors with limited liability can, by a special resolution, provide that some of the directors shall have unlimited liability. There has been a suggestion that the witnesses that those two provisions should be cut out, because they are barely ever availed of and serve no useful purpose. Whether they should be deleted or not is purely a matter of policy. If the clause as a whole is not made consistent with Clause 77, it may be that the clauses, anyhow, have been in the Western Australian law, and appears in all the other Acts, and possibly it can serve a useful purpose in some way or other. If that is so, I think personally that it might be left in. It is there to be availed of if it is of any advantage to do so. The suggestion is that sometimes it would be preferable to have the shareholders and directors with unlimited liability as shareholder rather than have him assume a liability merely as a guarantor. But whether that be so or not, I am not prepared to say. I do not know.

2153. By Mr. WATTS: Supposing that Clause 77 continues law, is it not liable to place a person who has had no notice of the fact that he has been appointed with unlimited liability in a peculiar position?—I think there is no necessity to take it out of its present position, where it is in an appropriate place—returns as to allotment and so on.

Clause 69: The questions raised by the witnesses are matters of policy. I do not propose to express any opinion. However, there is a recommendation to incorporate in the section an amendment similar to that of Section 64 of the South Australian Australian proposal to extend the provisions to no-liability companies. I recommend the incorporation of an amendment similar to Section 64 of the South Australian Act.

Clause 74: I agree that the notice referred to in Sub-clause (1) should be inserted by the company. This refers to increase of share capital. The suggestion is that the notice referred to in Sub-clause (1) of Clause 74, a notice to be given to 'every person to whom a notice in this section is given,' shall be inserted by the company. There is no objection to that, and I agree with it.

Clause 77 and 78: Whether or not these clauses should be deleted is a matter of policy, but I doubt the wisdom of deleting the provisions. The clauses deal with the matter of a limited company having directors with unlimited liability. Clause 78 is consequent on Clause 77, which provides that where directors with limited liability can, by a special resolution, provide that some of the directors shall have unlimited liability. There has been a suggestion that the witnesses that those two provisions should be cut out, because they are barely ever availed of and serve no useful purpose. Whether they should be deleted or not is purely a matter of policy. If the clause as a whole is not made consistent with Clause 77, it may be that the clauses, anyhow, have been in the Western Australian law, and appears in all the other Acts, and possibly it can serve a useful purpose in some way or other. If that is so, I think personally that it might be left in. It is there to be availed of if it is of any advantage to do so. The suggestion is that sometimes it would be preferable to have the shareholders and directors with unlimited liability as shareholder rather than have him assume a liability merely as a guarantor. But whether that be so or not, I am not prepared to say. I do not know.
Clause 119: This relates to the right of debenture-holders to inspect the register of debenture-holders and to have copies of true deeds, etc. A suggestion has been made that Subclause 5 should be amended. The subclause reads—

If inspection is refused, or a copy is refused or not forwarded, the company and every officer thereof who is in default shall be liable on conviction to a fine not exceeding five pounds.

The suggestion is that after the word "forwarded" in the second line of the subclause, the words "within a reasonable time after such request" be inserted. That amendment, it seems to me, could fairly be made, and I agree with the suggestion.

Clause 102: This deals with the payments of certain debts out of assets subject to floating charges in priority to claims under the charge. Both Mr. Forbes and Mr. Harbord—the latter gave his personal opinion only—expressed the view that this provision was unreasonable and should be deleted, as the priority of wages set out in Clause 290 only existed in regard to debenture-holders. This was done by a floating charge and did not apply to other securities such as bills of sale and mortgages of land. Mr. Forbes said that because Clause 290 does not provide that wages and salaries shall have priority over the debenture-holder, Clause 103 as at present drawn is meaningless. The answer to that is that there is no legal question involved in considering the contention by those witnesses that the clause is unreasonable. The matter is purely one of policy, but I would point out that as there are similar provisions in other State Acts, there does not appear to be any great justification for the suggested amendment. As for Mr. Forbes's suggestion, the difficulty he mentioned can be met by making provision in Clause 290 setting out that salaries and wages shall have priority over the debenture-holder. That witness claimed that the clause was meaningless because it did not make such priority payments definitely prior to payments over the debenture-holders. As I say, that can be rectified. I think it was intended that under Clause 290 wages and so on should have priority over other claims although that is not actually stated in so many words. If that alteration is made in Clause 290, then Mr. Forbes's objection to Clause 103 as it stands will be removed.

2108. By the CHAIRMAN: In my opinion, wages and salaries should have priority—I think it is intended that they should, but Clause 290 does not expressly say so. That could be rectified by making it clear that wages and salaries shall have priority.

Clauses 104 to 119: I propose to deal with these clauses en bloc, on the lines of a memorandum that I put in by way of an appendix. I shall read the memorandum—

These clauses, which deal with the filing of mortgages and charges in the office of the Registrar of Companies, are new in the company laws and are inspired from the South Australian Act. At the present time, mortgages of land given by companies are registerable under the Transfer of Land Act, 1890, the Land Act, 1835-1890, or the Mining Act, 1904, as the case may require, and it is not intended that Clauses 104 to 119 of the Bill shall alter the practice, although at present by an oversight mortgages or charges under the Land Act and the Mining Act are not excluded from the said clauses. Bills of sale, debentures, and other securities over personal property given by companies are at present registerable under the Bills of Sale Act.

Clauses 104 to 119 of the Bill, however, provide that dealings under the Bills of Sale Act or any other securities shall be registered under the Companies Act in the Registrar's office and not under the Bills of Sale Act. Whether this change shall take place is purely a matter of policy, and may be decided after due consideration of any legal questions. It will not make any extra work as far as companies or grantees of such securities are concerned, and is not likely to create any substantial increase of staff or expense so far as the Registrar's office is concerned.

The material question involved is whether or not the proposed new system of registration will benefit the companies and, if so, to what extent. Many merchants and others have expressed their views that registration of all charges given by companies in the Registrar's office where all other returns, balance sheets, etc., of companies will be filed, will simplify very considerably the matter of searches for information concerning the financial affairs or companies. Furthermore, incorporation of the Companies Act and the Bills of Sale Act within the Companies Act is either good or bad, to the detriment of the commercial community generally. I have expressed my views, because I do not agree with the proposals contained in these clauses, and the difficulty Mr. Labor mentioned can be avoided.

I suggest that hire-purchase agreements be included in the definition of "charges" so as to bring them within Clauses 104 to 119 again involves merely a matter of policy.

Hire-purchase agreements are not legally "charges" in the ordinary sense because they are not "securities," but at the present time they are registerable under the Bills of Sale Act not as securities, but as other "charges" (interest of the owner of the chattel) hired against the doctrine of "apparent possession." Since the idea of the proposed change is to bring into the one registration office as far as possible as much information concerning a company's financial affairs as can be obtained, it would seem that in favourable consideration might be given to including in the definition of charge in Clause 104, hire-purchase agreements, under which chattels are held in possession by companies, if Clauses 104 to 119 are to be left in the Bill.

2169. By Hon. G. ERASER: You have suggested that we should obtain information on this subject from the commercial community as a whole. My impression of the evidence is that the representatives of the commercial community in general have not given the matter due consideration in that case I would suggest that the Select Committee give very serious consideration to such views, because, actually it is the commercial section of the community that will be affected. It does not matter to the companies themselves where they register the documents, whether in the Registrar's Office or in the Bills of Sale Office. But we must study the convenience of those who must make the necessary searches to obtain the information which they require concerning a company's affairs. At present, searches must be made in four different departments. For instance, one must go to the Titles Office to search for mortgages of land under the Transfer of Land Act; to the Lands Office for mortgages on and dealings with land still under the Land Act; and to the Mines Department for mortgages on or dealings with goldmining leases. Then it is necessary to go to the Bills of Sale Office to search for bills of sale, debentures, and so on. If the change were adopted, then instead of having to go to the Bills of Sale Office they would get their information in the Registrar's Office, which would reduce the number of pieces by one at least.

2190. The general impression of the committee is that the commercial community does not desire the alteration. Your attitude then would be to delete the relevant clauses under the Land Act and the Mining Act, or to delete the corresponding provisions under the Companies Act and the Bills of Sale Act, or to simplify and avoid the alteration. If, generally speaking, these people who are likely to be affected approve of the present system and disapprove of the change, Clauses 104 to 119 should be deleted.
2161. By Hon. H. SEDDON: You point out in your notes that the commercial people would desire to know what changes were there registered against the company. Would the objective be achieved if the Bill were amended to provide that the memorandum of charges was lodged at the Companies Office?—That would be an unnecessary duplication, I think, and would increase the expense in relation to the registration because while the Registrar will register for some purposes, at present, if they have to register or file a memorandum in the Registrar’s Office as well, there would be a double charge. I do not know that your suggestion going to be of any particular benefit to the commercial community because I think in most cases the solicitors or legal advisors would be rather prone to go to the memorandum in the Registrar’s Office, and that would be the original document in the Bills of Sale Office, rather than look at a memorandum in the Registrar’s Office which may or may not be an exact copy of the original document.

2162. I am looking at it from the standpoint of the investor, who is anxious to know as much as he can about the company, and so any memorandum, say at the Companies Office, might perhaps really give him the information he requires?—It may be beneficial to that extent, but that is another consideration, for instance, a man would obtain from his inquiries at the Registrar’s Office a direct lead as to whether or not a company had issued a bill of sale or debenture, and then if he wished to carry the search further he could go to the Bills of Sale Office.

2163. I could understand that for a bank or other similar institution it would be necessary to have a legal search, but from the standpoint of members of the general public I take it that the objective would be gained if a simple memorandum as to what charges existed were lodged at the Companies Office?—Probably so. You could substitute one clause for the lot, enabling provision in relation to all charges—we would, of course, then require to have a definition of ‘charges’—given by companies, and in addition to any other registration that may be required by law, provide that a memorandum of the charges should be filed in the Companies Office.

2164. Would it involve much work on the company?—I should not say very much because the company would have its copy for memorandum purposes prepared at the same time as the document itself. For instance, take dealings in regard to land under the Transfer of Land Act. There is provision for the registration of a memorial in the Deeds Registry Office. That memorial, or the main part of it, is a copy of the original instrument, with certain introductory matter which indicates that it is a memorial, and the memorial is actually registered in the office by Mr. ABBOUD. In any event, none of these provisions would apply to a foreign company?

2165. Mr. SEDDON: In any event, none of these provisions would apply to a foreign company?—In what way do you mean?

2166. A person who has a foreign company would not be able to get that information unless it covered property in Western Australia—Clause 118 deals with that. It provides that the Act shall extend the charges on property in this State which are created, and the charges on property in this State which is acquired by a company after the commencement of the Act.

2167. That applies to Western Australia only—It would not apply to a property outside.

2168. Say that an investor received deceptive information as a result of a memorandum in the Companies Office respecting a foreign company?—The position would be the same regarding the Bills of Sale Office.

2169. Of course every company in the Commonwealth has to keep a record of charges at its registered office?—Yes.

2170. So that if an investor wants correct information, the proper thing is to inquire at the Companies Office?—Yes.

2171. By Hon. H. SEDDON: Whatever objection there was to foreign companies would apply to Western Australian companies?—It would apply to companies incorporated in the State.

2172. The difficulty then would be overcome if a company refused to divulge information?—It would because there would be a public office at which the information could be obtained.

2173. By Mr. WATTs: Suppose Clauses 104 to 119 remain in the Bill, a bill of sale given by a company before the passing of the new Act will have to be renewed. Would it be renewed by registration in the Bills of Sale Office or by registration in the Deeds Registry Office of the Registrar of Companies?—There is the transitional provision I think in Clause 119 that it shall be done by registration of a document in the Bills of Sale Office.

2174. So the intention of the Bill is to take the bills of sale and charges existing before coming into operation of the Act out of the Bills of Sale Act immediately after the Act comes into operation?—Yes, or within the prescribed period. That is necessarily consequential if Clauses 104 to 118 are going to remain in the Bill. You could not have some charges still registered under the Bills of Sale Act and others in the Registrar’s Office. So we make provision for transitional provisions dealing with the matter of the transfer of those bills of sale out of the Bills of Sale Office register into the Registrar’s office.

2175. You have not expressed any opinion on the objection raised by Mr. Forbes that possibly the court would hold that none of the provisions of the Bills of Sale Act would be applicable?—Mr. Forbes that unless Clause 114 was amended the position might arise that a bill of sale registered in the Registrar’s office would not be subject to the provisions of the Bills of Sale Act. That obstacle would be overcome by an amendment of the clause to make it clear that with regard to the matter of actual registration the provisions of the Bills of Sale Act shall apply to all charges whether held by companies or others. My attention has been called to the fact that there are a few minor suggestions with regard to Clauses 104 to 110, assuming those clauses are to remain in the Bill. As regards Clause 105, it has been suggested that it should be amended to exclude Land and Mining Acts dealings from the necessity for registration in the Registrar’s office. I think that is of minor importance. Concerning Clause 106, Mr. Boylson suggested an increase in the penalty. There is no legal objection to that. It is purely a matter of policy. With regard to Clause 112, apparently an amendment has been made in the corresponding section (Section 107) of the South Australian Act and I agree that for the sake of uniformity that amendment might be imported into Clause 112 of the Bill. The suggestion has been made that the word ‘division’ should be substituted for the word ‘part’ in Clause 114. That is, an objection to that. Mr. Boylson contended that the time limit prescribed in Clause 119 should be increased to six months and I agree with Mr. Boylson. I think that with regard to Subclause (b) of Clause 119 it should be provided that the company should not be deemed to have complied with the provisions of the Act until the notice has been published. That is a matter of policy. If Mr. Boylson thinks that is advisable, I see no objection to it.

Clause 121: Mr. Jackson suggested that a proviso should be inserted in Clause 121 safeguarding the position of company secretaries acting on the date on which the Act comes into operation. This clause makes it obligatory on companies to appoint secretaries, and goes on to provide that the Governor may make regulations prescribing the qualifications to be held by persons before they shall be eligible for such appointment. I do not think there is any necessity for the Governor to appoint a company’s proviso, because unless the clause is made retrospective in its operation it would hardly affect people already appointed as secretaries. But it is considered that there might be a danger of the illusory appointment of existing secretaries, an alteration could be made.

2176. By the CHAIRMAN: I think they should be protected—I think they are but if you want to make it clear beyond doubt, a proviso could be added. There would be no objection by the same rule there may be secretaries already appointed to some companies who are hopelessly unqualified for the position and who hold there as a matter of form. Their continuance in office would be perpetuated by virtue of the proviso which would keep them there. After all, it is only a matter of what is written in the regulations. There is no legal objection to it. As the clause stands, I do not think it would have a retrospective effect and be
likely to bring about the dismissal of secretaries already appointed. But if there is a possibility of that happening, by all means insert a proviso to protect them.

2177. By means of regulations you could differen-
tiate between spectacular services it is desirable to retain and otherwise. — By regulation it could be provided that from and after such a date a person occupying such an office should have certain qualifications and in that way existing secretaries would be protected. If the proviso is inserted in the Act, it will become definite and rigid and existing secretaries, however unqualified they might be, would be free from dismissal by reason of the protection afforded them through the proviso.

2178. By Mr. ABBOTT: Do you think there ought to be any limitation on secretaries of purely private companies? — Perhaps not in those cases. Steadily there is no great danger to the community in general because private companies are not companies in which the public generally can get a share interest.

2179. You see no objection to excluding private companies from the operation of Clause 129? — From the legal standpoint I see no objection. As a matter of policy, there might be other opinions.

2180. You are fairly well experienced in these mat-
ters? — I do not claim to have had experience of the administration of companies. In any event it would seem reasonable to exclude secretaries of private companies from the operation of the clause.

2181. By Hon. G. FRASER: And of proprietary
companies, or merely private companies? — I would be inclined to limit the exclusion to proprietary companies.

2182. By Mr. WATTS: When people have been law-
fully employed to positions and their constitution has been passed making it possible that their employment has become unlawful, it is customary to safeguard the interests of those persons. Undoubtedly, that applies particularly to the Veterinary Surgeons Act, which gives protection to persons who over a period have been exercising the profession of veterinary surgeon. They are exempt from the conditions preliminary to regis-
tration. Such safeguards have been incorporated in various Acts of Parliament.

2183. By Mr. BODHIDEA: You suggested that if we made provision in the Bill to protect secretaries already employed, they would have statutory protection and could not be dispensed with. Yet you suggested that we protect them by regulation, applying the legis-
lation to these persons as secretaries on and after a certain date. Would not the effect be the same? — It would be. The whole object of the proviso would be to ensure that even though a man appointed and acting as a secretary of a company when the measure comes into operation has not the prescribed qualifications, the con-
tinuance of his employment as secretary would be lawful. If the clause stands as printed without that proviso, it would be quite possible for the Governor, when making regulations prescribing qualifications for secretaries, to include a provision that those regulations would not apply to persons engaged as secretaries prior to the commencement of the regulations.

2184. Well, the effect would be the same? — It would be.

2185. Then why not have it in the Act? — When provi-
sion is made by regulations, they can be altered. But if included in the measure, an amending Act

2186. By Hon. G. FRASER: There would be less security for present secretaries if provision was not made in the Act? — That is so. Clause 129 deals with the secretaries of a company. Mr. Boyson sug-
gested that if the office or place is the registered office of the company, the words "registered office" should also be prominently displayed. There is no objection to that. The Chairman of Companies suggested that in Subclauses (1) (a), (2), (3) and (4), after the word "advertisements," the following words be added: "otherwise than ordinances so provide." I think it would limit the application. These are matters of policy on which I do not express any view beyond saying there is no legal objection to the amendments being made.

Clause 123: This clause deals with the restriction on the commencement of business. I agree with Mr. Boyson that the certificate and its consequent effects as now provided in Subclause (3) would be too far-reaching and that it should be amended as he suggested. The suggestion made by the Chamber of Commerce in the Bill is that the amendment of the same clause is merely a question of policy on which I do not propose to offer any opinion.

Clause 128 deals with the power to close the register. Mr. Miller proposed enlarging the period during which it may be kept closed. There is no legal objection to that if it is desirable as a matter of policy. Clause 130 relates to the entry of trusts and trustees. By the amending Act of 1914 an amendment has been made to the corresponding section in the South Australian Act giving further protection to companies in relation to shares held subject to trusts. The amendment does not cover certain legal questions, and for that reason, as well as for the sake of uniformity, the South Australian amendment should be imported into Clause 130.

2187. By Mr. WATTS: Is that the power to ignore trusts when dealing with shares? — The South Australian amendment added a paragraph to Section 125, cor-
responding with Clause 130 of our Bill, to the effect that a company shall not be bound to see to the execution of any trust to which any shares of the company may be subject. Prime facie it deals with matters which would be covered by the clause as at present.

Clauses 134 and 135: It is perhaps desirable to an-
tio the liability of a liquidator or receiver to make an annual return when the company is in liquidation or in the hands of a receiver. All the suggestions for the amendment of these clauses relate to matters of policy. For the sake of uniformity, I recommend that Clause 135 be amended similarly to the recent amend-
ment of S.A. Section 130.

2188. One of the amendments suggested could hardly be regarded as a matter of policy. I refer to the strik-
ing out of certain words? — That would enlarge the scope of the paragraph.

2189. What is intended by the words "property of the company"? — To a legal practitioner these words would have a fairly clear connotation, but I am not so sorrT about the meaning to the layman. Property has a wide connotation in law, so that it is all-embracing in relation to anything in the nature of tangible property in which an individual could have a proprietary in-
terest. The term "property" has been extended to include a number of matters which at first glance would not seem to be tangible things in which a person could have a proprietary interest. I would say that to a lawyer these words would have a fairly understandable appli-
cation, but possibly not so in the case of the layman. You think it would be undesirable to go further than the Bill goes at present? — It is wise to keep to the limitation already set out. The term "property" has a wide meaning, and it is undesirable to make anything in the clause that will render it impracticable in some respects.

2190. By Mr. ABBOTT: The term "property" does not include the benefit of an contract of service. — As a general rule, no, but there may be circumstances in which that would be so.

Clause 138: This relates to the convening of an ex-
traordinary general meeting. I recommend the incor-
poration of the South Australian amendment of Section 133. From the point of view of uniformity it may be desirable to make that amendment to the Bill.

Clause 139 deals with provisions in as meetings. Mr. Miller's suggestion is that the word "originally" in the first line should be deleted. The answer to that is that paragraph (1) is identical with the corresponding paragraphs in the Acts of the Eastern States as well as in the Imperial Act. It seems to me that there is a reason for the retention of that word. Until it is made clear what the word means, there is no objection. I think it would be undesirable to make the alteration. I cannot find that the word has been deleted from any of the Acts to which I have referred. I do not think there is some special reason for its inclusion. I can offer no explanation for its presence.

2191. By Hon. G. FRASER: Perhaps the Eastern States follow the same principle as the Imperial Act.

2192. By Mr. ABBOTT: Is there any objection to that word being used? — I see no objection to it. I would not like it taken out until I knew the reason for
2194. By the CHAIRMAN: Then it does not seem to 
matter whether it is taken out or left in?—I would 
not say that. We are not in the position to say whether 
or not it should be inserted.

2195. By Mr. RODOREDA: This provision would 
not apply to a company if it had altered its 
original share capital, but Mr. Miller thought it should 
apply in all cases if it were a matter of general opinion whether 
there is justification or not for making the alteration. 
It has no legal implication.

2196. But it has a practical implication?—In 
practice the Act in its general principles would apply to any 
company who are more conversant with the administration of this clause would be the ones qualified to express an opinion concerning it.

Clause 141: As an extraordinary resolution is 
provided for in all the other Acts, I do not agree that the 
provisions should be deleted. Here again the answer 
is that all the various Acts still make provision for the 
extraordinary resolution in addition to the special 
resolution, and that it is for those who are actually 
dealing in the administration of company law to say whether 
it is advisable to dispense with the extraordinary 
resolution altogether. The matter is one of policy, 
and I do not propose to offer any suggestion.

2197. By Mr. WATTS: I think they thought it would 
be necessary, because there is such a close resemblance 
between the definition of "extraordinary resolution" and "special resolution." I think one requires 14 days' notice and the other different notice?—It is purely a matter of opinion. All I can say is that my 
instructions were—and to a very large extent I consider it 
 desirable—that there shall be as far as possible 
uniformity between the company laws of the different 
Australian States. That is laying down a general principle 
having of course a general application; but we realise that it might be necessary to depart from that general principle in order to meet circumstances or conditions peculiar to this State which would warrant a modification of or some departure from the general principle.

As the matter stands at the present moment, all the 
various Australian Acts and the Imperial Act make provision for the extraordinary resolution and the special resolution. Upon that ground only I do not 
agree with the suggestion to cut out the provision relating 
to the extraordinary resolution. But if there are 
reasons expressed by other witnesses which appear to be 
sound and to justify the deletion of the provision for 
extraordinary resolution, then I have no opposition to 
that. I think, when I say all the laws of the State and 
the Imperial Parliament do make the provision for both, 
and that a query might be raised as to why we are doing 
away with it while all the other States are retaining it. That may be a perfectly good reason for retaining the 
extraordinary resolution provision. On the other hand, it 
may be a reason which is not comparable to the reason 
that I may put up by other witnesses.

2198. Hon. A. THOMSON: Mr. Forbes said this was inconsistent with Clause 24.

2199. By Mr. WATTS: Apparently, in regard to the 
matter of notice, power is given to pass a special 
resolution upon notice in accordance with the manner 
prescribed in the articles. Here we have a special 
resolution in Clause 141 upon 14 days' notice, I admit, 
of course, that in Clause 141 the words "save and except elsewhere in this Act provided" are inserted. 
Surely it is not desirable to have a distinction between 
the two resolutions even in those circumstances?— 
Clause 24, as I pointed out previously, has to be read 
as subject to other relevant provisions in the measure, 
and as Clause 24 stands I do not see any provision as 
to the period of notice, for instance, of a meeting to 
move a special resolution.

2200. Except as may be prescribed by the 
articles!—I think it is to be subject to the provisions 
of the measure. Then Clause 141 defines what is 
an extraordinary resolution and what is a special 
resolution, so that it takes it that any articles which were consistent with Clause 141 would be to that extent ultra vires or invalid. Compliance would be necessary with the 
requirements of Clause 141 in order to ensure that the 
resolution carried is a special resolution or an extra-
ordinary resolution, as the case may be.

2201. You would say in regard to the special 
resolution that the articles would have to prescribe 14 or more 
days?—Yes. The notice is to be not less than 14 days 
for a special resolution—that is the minimum—and the 
articles might provide for 21 days. To that extent they 
would be all right. But they could not prescribe less than 
14 days and have a valid resolution.

2202. By Mr. ABBOTT: Would the definition of 
"extraordinary resolution" be better inserted in Clause 
3 of the Bill?—As a general rule it is better to do that; 
in other cases it is better to provide for extraordinary 
resolution in that part of the Act to which it particularly 
relates. For instance, take by way of illustration the 
Industrial Arbitration Act. That Act in its general 
principles provides for all the various States, but it is the Act, 
not to public servants. Then for a particular 
purpose Part IX.A was introduced a few years ago into 
that Act, enabling Government servants to go to the 
court in the matter of leaving fixation of their salaries 
and classifications and so on. When including that 
Part IX.A in the Industrial Arbitration Act, I de-
liberately retained in that part a section containing defi-
nitions rather than bring those definitions into the front 
part of the Act, because for all practical purposes the 
definitions are not required except only under Part IX.A. 
Therefore it is desirable to have that kind of a section. 
By the same rule it may in this Bill be desirable to 
bring the definitions in close apposition to the clauses 
in which they are more likely to be referred than bring them in at the beginning. As a matter of 
fact, when I originally drafted the Bill, in my first 
draft I did bring those definitions into Clause 3; but 
subsequently I brought them back into the present 
clause. This follows the South Australian Act.

2203. Or, say, the Imperial Act?—Yes, the Imperial 
Act too.

2204. It follows the form used?—Yes, because 
Clause 141 corresponds to Section 117 of the Imperial 
Act, which would not be an interpretation section.

2205. By Mr. RODOREDA: This discussion suggests 
that it would be desirable to have a really good index 
prepared for this measure?—Definitely.

2206. By Mr. ABBOTT: If we follow closely the 
Imperial Act, it will always serve as a text-book which will 
afford us a good index?—Yes, definitely. Clause 
145 deals with the keeping of minutes of proceedings of 
meetings and of directors' meetings. There has been a 
suggestion that minutes may be kept under the looseleaf 
system. There is no objection to that. I think it has 
been provided for in South Australia by an amend-
ment to their Companies Act, that amendment having 
been passed in 1899. That provision might quite well be adopted here.

2207. When it is a matter of conforming to the 
South Australian Act or the Imperial Act, if there is 
no good reason for preferring one or the other, it 
would be preferable to follow the English Act?—I think 
you will find that in rare instances, if indeed in any 
instance, has the South Australian Act departed from 
what is in the Imperial Act. In making a comparison 
I found that the South Australian Act was a very faith-
ful copy of the Imperial statute. Some provisions have 
been imported into the South Australian Act, which 
provisions do not appear in the Imperial Act, but where 
they have taken the Imperial Act as a guide, they have 
accepted the provisions practically without alteration.

2208. I merely wish to ask you whether, from a 
legal point of view, you thought the course I suggested 
was advisable?—I do. The Imperial Act took over five 
years in the framing by a Royal Commission, the mem-
bers of which went into the issue very thoroughly, bas-
ing the company laws on various inferences that they 
would naturally deal with in a comprehensive way. All 
the States and probably a vast proportion of the 
Crown colonies and Dominions have used that Act as a 
precedent. Personally, I think it wise to adhere to 
it as far as possible, developments, and local condi-
tions make that course desirable. By doing so you 
have one foundation for the law and all legal decisions 
are based on it accordingly. As I say, I do not think 
there is any objection to the looseleaf system. 
Mr. Govey Miller suggested that the confirmation of minutes 
at any time subsequently should be acceptable. As 
the clause stands now, they must be confirmed at the next 
meeting.
2200. By Hon. L. CRAIG: Is it not desirable that the confirmation of the minutes of a general meeting shall be done by the directors at the next succeeding meeting?—Personally I think so.

2210. Otherwise the memory may fail as to what occurred at a meeting held 12 months earlier—Yes, that is definitely so. Of course where the practice is followed of circulating copies of the minutes to members of the committee or the board of directors within a day or so of the general meeting, so that they may be assured directly afterwards that a correct record of the proceedings at the meeting has been made, it may not be so important or necessary to have the minutes confirmed at the next meeting. Unless some such system is adopted, it is highly desirable that the confirmation should take place at the next meeting.

2211. I think it should be done at the next meeting because otherwise, in one of the motions that may be moved and discussed that may take place at a meeting attended by 60 or 70 men, difficulty may be experienced in remembering all that transpired. After the long interval they may have no idea of what actually took place. On the other hand, if the minutes have to be confirmed at the next meeting of the directors they will have particulars of the proceedings well in mind. The clause says that the minutes shall be confirmed at the next meeting.

2212. By Mr. WATTES: But that means at the next general meeting?—No; Subclause (1) says that “every company shall cause minutes of all proceedings of general meetings and of all proceedings of meetings of directors and of committees of directors or managers, to be forthwith entered into books kept for that purpose.” That means that both general meetings and directors’ meetings are concerned.

2213. But the minutes of a general meeting would be confirmed at the next general meeting, which, in most instances, would be 12 months later?—Yes.

2214. Mr. Craig suggests that those minutes should be confirmed by the directors at their next directors’ meeting?—Quite so. But the confirmation of minutes of a meeting of a body can only be done at a later meeting of that body.

2215. By Hon. L. CRAIG: Quite so, but in companies with which I am associated the directors at their subsequent meeting, which would be within 14 days of the interval, consider the minutes of the general meeting and initial them as being correct—I see no objection to including a provision in Clause 145 to enable the initialling of minutes by directors at their next succeeding directors’ meeting. That would make it compulsory, whereas now it is merely optional.

2216. By the CHAIRMAN: There is a provision in the South Australian Act regarding this matter and it refers to the loose-leaf system?—That does not apply in the case of books.

2217. But are we not to adopt the loose-leaf system here?—No, we say that a company can adopt the loose-leaf system, but it must carry out certain requirements if it does so.

2218. By Mr. ABBOTT: Is it not compulsory upon directors to see that correct minutes of general meetings are kept?—There is that obligation definitely, but there is no such obligation at present to initial the minutes as being correct and that they shall be dealt with in that way immediately after the general meeting has been held. As a matter of practice, some directors do initial that and Mr. Craig suggests that it should be made an obligation upon directors.

2219. By Mr. WATTES: Do you think that the loose-leaf system leaves opening for fraud, notwithstanding the provisions of the South Australian Act?—I do not think there is any question that it does. It is too dangerous altogether in relation to matters of record. The practice now is to type the title of minutes on a separate sheet and paste it in a book; the sheet then becomes an integral part of the book and it would be easy to destroy whether a page of the book had been removed. If a leaf were cut out and another loose leaf substituted, detection would not be easy.

2220. By Mr. ABBOTT: That is a matter of policy?—Yes.

2221. By Hon. G. FRASER: From your remarks I take it you are not in favour of loose-leaf minutes?—Not as a matter of principle; but, given the proper safeguards, it might be desirable in some cases to allow companies to keep their minutes on the loose-leaf system.

2222. By Mr. ABBOTT: In commercial concerns it is not often wise to carry out work in a simpler way, when it is not necessary or desirable in order to specify that all minutes of all meetings are uniform. If you adopted the provisions of the Victorian provisions, what would you do in the Bill?—I am not sure. The clause in the Victorian Act expressly allows the use of loose leaf systems.

2240 and 147: The suggestions of Messrs. Goyne Miller and Hatfield relate to matters of policy. I do not see why all companies should not be allowed to adopt the loose-leaf system. Unless some such provisions are inserted in lieu of Subclauses (1) and (2) of Clause 147. Personally, I would oppose the substitution of the Victorian provisions in the Bill. These provisions are different in language and effect from the Imperial Act. The Victorian Act is an elaborate and comprehensive piece of legislation, even more so than the Imperial Act. The Victorian Parliament set out to improve the Imperial Act and I think they were correct in so doing. Mr. Merry seems to be wedded to the Victorian Act.

2223. By Hon. G. FRASER: If we adopted the provisions of the Victorian Act we would sacrifice uniformity?—Yes, definitely.

Clause 148: profit and loss account and balance sheet: A suggestion has been made to alter the prescribed form of balance sheet. Mr. Merry suggests that we exempt proprietary companies from the provisions of the Imperial Act. Clause 148, after the words “balance sheet” in Subsection (3), should be inserted in lieu of Subsections (1) and (2). That is a matter of policy upon which I am not prepared to express an opinion.

2224. By Hon. L. CRAIG: It would be difficult for many proprietary and private companies to comply with all the requirements set out—I can realise that it may be so. Mr. Merry and others would have a better knowledge of that than I have. I cannot criticise their suggestions.

Clause 149: I am personally of the opinion that the clause offers sufficient protection to the public and investors, but the question as to whether the provisions of the Victorian Act relating to accounts, audits, balance sheets, etc., should be substituted is a matter of policy. I say again that, as a matter of principle, I do not favour the idea of substituting Victorian sections for our sections, which have the virtue of uniformity. One of the main objects of this Bill is to bring the law, as far as possible, into uniformity, making special provisions to suit local conditions. I have endeavoured throughout to draft the Bill on that basis.

2225. With regard to books of account, do you agree that, as long as all the information required is set out, a particular form need not be specified?—Yes. Although a prescribed form is provided in the Bill, provision is made in Clause 149 that, so far as possible, separate forms may be used. Clause 149 needs to be altered so that forms which substantially comply with prescribed forms shall be deemed to be a compliance with the section of the particular Act. In other words, as long as the information contained in the document is the information required by the Act, that is sufficient. There is no hard and fast rule requiring the submission of the information in a particular form. The form in the Schedule is an indication of the information that is required. Whether it is put in the same order or whatever the arrangement of the form is varied, will not affect the utility of the document. There are many different forms, but the important thing is that the information is there. Clause 150 and 151: Here again we have the suggestion of Mr. Merry that we should substitute for those clauses, Section 125 and 126 of the Victorian Act, and make it easier for companies to be incorporated by companies incorporated by a special Act or incorporated by private Act. We have made it easier for companies to be incorporated by special Act. I suggest that the clause in the Victorian Act should be left as it is; but again it may be a matter of policy.

2226. Does the Victorian Act specify that all subsidiary companies shall publish a balance sheet, together with that of the main company, or amalgamates them into one?—I cannot answer the question, because I have not made any attempt to carefully examine or analyse the Victorian Act. That would be too big a job to enter on at this stage, but where suggestions have been made, say by Mr. Merry,
to substitute a particular section for one of the clauses in the Bill, I have compared those sections with the particular provision in our Bill; and I have also looked at the other Acts to see whether the particular provision is favoured, and in almost every instance I say that the other Acts are uniform and that the Victorian Act has gone a little further. For that reason only I do not support Mr. Merry’s suggestion. At the same time his reasons may override mine as a matter of policy, and that is for something else to decide.

Clause 153: This corresponds with Section 147 of the South Australian Act. It seeks to exclude managing directors from the directors concerning whose remuneration information was furnished by the company. Paragraph (c) of Subclause (1) sets out that the following particulars shall be disclosed at a general meeting:

The total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company. The South Australian amendment excludes from the obligations of that paragraph the remuneration of managing directors. That again is a matter of policy. Personally I see no justification for excluding managing directors; on the contrary I think that fullest publicity should be given concerning their remuneration. In my opinion, an amendment should not be made to Clause (1) (c).

2227. By Mr. ABBOTT: Would you distinguish between a manager and the managing director?—Yes, because a director has the greater responsibility, and far more prestige than the ordinarily employed manager. After all, members of the investing public generally are usually concerned about the stability of the company, and they want to know how the company is being managed, what the policy is, and so on. If information has to be supplied in relation to particulars of an account of remuneration paid to directors of importance, then this should apply to all directors, but that would not necessarily apply to directors who are not directors.

2228. By Mr. WATTS: A man has no say in the fixing of his own salary—No.

2229. By Hon. L. CRAIG: A managing director fills a dual capacity; he receives a salary as manager and he receives a director’s fees by virtue of being a director. I agree that what he receives as a director should be given in the balance sheet, but I do not agree that what he is paid as a member of the staff should be illuminated in a profit and loss account. Very often a managing director is a very valuable officer, and if it were published to the world what his salary was there would be the danger of someone else securing his services. The idea is to make available information which may be vital or important to the investing public. The remuneration includes all sorts of perquisites and emoluments and advantages he receives upon which a pecuniary value may be placed. You will dig into the private life of a director if you disclose that information.

2230. By Mr. ABBOTT: Would you have any objection to that information being excluded where private companies are concerned?—Private companies are in a different category altogether. A private company is more of a domestic concern in which the general public are not interested. I can see no justification for excluding the information regarding the managing director of a public company. After all, however, that is a matter of opinion and a question of policy.

2231. In that particular provision in the United Kingdom Act!—So far as I remember, it is.

2232. By Hon. L. CRAIG: I can see the provision being evaded by the board calling him a manager and his salary would not then have to be included.? You were given one concrete instance in which it might be advisable for this information to be made public, and that was in relation to the objection raised by Sir John Kirwan.

2233. That was a private company and the provision would not apply—You have a public company—excluding a small company under a very big company taking from the point of view of value—one shareholder in which has the majority control and is able to vote himself a salary of £5,000 as managing director. That is a case in which it might be desirable for the light of publicity to be given to the circumstances in the interests of the community generally. Without that information, no one would be in a position to say, “This is only a small concern but it is going to be a good proposition and I will get shares in it if I can.” The other thing is that by collaring all the profits by way of salary would be most useful to them. That is why I think that on general principle it is desirable not to make any distinction between a managing director and any other director. If directors’ fees have to be published, I see no reason to distinguish between them and those of the managing director merely because he is getting less than the amount of his director’s fees. As a matter of fact I think that is all the more reason why the figures should be published.

2234. By Mr. WATTS: Turning to paragraph (b) of Clause 153 do you interpret that as requiring the amounts of loans made to employees and officers such to be set out separately?—I would not like to say. Probably what is intended is that the aggregate amount of money lent and not the individual loans shall be divulged.

2235. Ambiguity could be removed by inserting the word “total” after the first word of the paragraph?—Yes.

2236. By Hon. L. CRAIG: Do you think that in practice it is a good idea for a manager to loan money to its employees?—That is a question I cannot answer. I do not know enough about the matter. Paragraph (d) of Subclause (1) of Clause 153 reads—The amount of any debts owing to the company which debts are in a different account to those accounts that are in fact due and payable for at least 12 months, the suggestion has been made that the word “owing” should be substituted for the words “due and payable.” I do not know that there is any great objection to the proposed amendment but a position might arise in which the word “owing” would not be the correct one. Take, for instance, the purchase of a house and land under contract of sale on time payment. Once the contract is signed the amount of the purchase price is owing by the purchaser although actually it may not at that time be due and payable. So there is a distinction between the word “owing” and the words “due and payable.” I inserted those words advisedly to make it clear that only those accounts that are in fact due and payable are to be dealt with. You may have an account which is outstanding in that the due date has arrived and it has not been paid; by some arrangement the actual payment of that outstanding account has been deferred. The amount is outstanding but if it has been deferred it is no longer due and payable until the deferred date arrives. So I used the words in the paragraph to make it clear that it relates to the accounts that are in fact due and payable and can be recovered on demand there and then and have been in that position for 12 months.

2237. Cannot you see the danger of a director or senior officer having a loan and getting the directors to extend the time when it becomes due and payable so that that time would never appear?—The time has only to be extended and the loan is owing but never becomes due and payable.—Yes.

2238. I favour the word “owing”?—I am quite easy about it myself. Mr. Merry suggested the deletion of Subclause 3 on the ground that it would be unwise on auditors. That might or might not be so; I am not in a position to say. A man can only do what is possible and we cannot ask him to do any more. All the south clause asks him to do is certain things so far as he is reasonably able to do them. The subclause in my opinion does not impose a duty that is too onerous. The auditor should give some authentication as to the accounts where necessary. Clause 14 is dealt with the signing of the balance sheet. Mr. Merry wants to introduce into it a sort of sign-post. I do not think that is necessary. Really he would be putting the cart before the horse. It is more advisable to have a balance sheet and the production of a report, etc. The duty as to the making of the report is contained in Clause 160 and I cannot see that anything will be
2254. By the CHAIRMAN: A similar provision is found in the Imperial Act and other Acts...—Yes, in all the Acts mentioned in the margin.

2255. By Mr. WATTS: From a legal point of view, if we were interested in allowing normal trading between the auditor and the company, we could safely add words to the effect of "except in the ordinary way of business"...—That might be all right. You are applying an analogy here, to say, a member of Parliament or a member of a local governing body, you are ousted from office. I take that as an analogy. It is the same as the other Acts to which I referred...

2249. By Mr. WATTS: I have been approached in the case of a company, a firm of auditors, where one of the partners is a director. Could it be interpreted that Clause 151 (1) (a) would relieve a partner of the firm from being a director—I would say that if the man happened to be a director of a company and also a member of a firm of auditors, the chance it might be a customer of theirs. Immediately his account exceeded £50, he could not serve as a member of an auditor of the company of which he was a director. Personally I think that is quite a good provision.

2253. By Hon. H. SEDDON: I have been approached in the case of a company, a firm of auditors, where one of the partners is a director. Could it be interpreted that Clause 151 (1) (a) would relieve a partner of the firm from being a director—I would say that if the man happened to be a director of a company and also a member of a firm of auditors, the chance it might be a customer of theirs. Immediately his account exceeded £50, he could not serve as a member of an auditor of the company of which he was a director. Personally I think that is quite a good provision.

2243. By Hon. L. CRAIG: Clause 58 (1) provides that each company shall at the annual meeting appoint an auditor. Do you think that should apply to private companies...—It might do so. They have to file returns with the Registrar, just as do other companies, and whether the matter relates to accounts, it might be desirable to have a proper audit.

2242. Many station properties are private limited companies, purely family concerns, and one member of the family or an accountant would keep the books and issue a balance sheet—in such cases the appointment of an auditor might not be so necessary as it is in other cases. I cannot express an opinion on it.

2241. By Mr. WATTS: The suggestion made in the remarks of Mr. Meredyth that shareholders may be resolution delegate to the directors the fixing of the remuneration of the auditors. The proviso is unnecessary. For the sake of uniformity I recommend that the recent amendment to the corresponding South Australian Section 153 be incorporated. The unity raised by the Chamber of Commerce for the amendment of Subschedules (1) and (6) are questions of policy.

2240. By Mr. WATTS: What is the reason for including the words of Subdivision 1 of Clause 154 (2)?—Otherwise it should be struck out; no alternative is involved. Clause 158 relates to auditing. Mr. Meredyth suggested the insertion of a proviso that shareholders may by resolution delegate to the directors the fixing of the remuneration of the auditors. The proviso is unnecessary. For the sake of uniformity I recommend that the recent amendment to the corresponding South Australian Section 153 be incorporated. The unity raised by the Chamber of Commerce for the amendment of Subschedules (1) and (6) are questions of policy.

2239. By Mr. WATTS: Mr. Meredyth has suggested that if a minor matter...—I do not know whether there is a good reason for the proviso being embodied in the other Acts to which I have referred. One reason may be that if you are going to have registered auditors only applying to the court, the court can more readily supervise and control the nets of the individual than in the case of a body corporate, where the acts complained of are committed by employees of that body corporate. The registration of a body corporate might be cancelled because one particular employee had not carried out his obligations as a registered auditor. That would be all right in principle because the corporation would have employed that particular man. You cannot get the same control, however, by the court over a body corporate acting indirectly through its employees as you can in the case of individuals.

2238. By Mr. WATTS: Was there any reason for excluding a "body corporate" from acting as an auditor...—Not in my own mind. It follows from an analogy that where the auditor is a body corporate the report referred to in Subclause (7) be filed in triplicate; one copy only being made available to applicants collectively, as in New South Wales and Victoria.

2237. I am informed that the National Services Co., a limited company, does a lot of its work in districts outside the metropolitan area. Unless it went into liquidation and the whole matter...—I realise that if there be no objection to the court, the court can more readily supervise and control the nets of the individual than in the case of a body corporate, where the acts complained of are committed by employees of that body corporate. The registration of a body corporate might be cancelled because one particular employee had not carried out his obligations as a registered auditor. That would be all right in principle because the corporation would have employed that particular man. You cannot get the same control, however, by the court over a body corporate acting indirectly through its employees as you can in the case of individuals.

2236. By Hon. L. CRAIG: A similar provision as regards paragraph (e) of Clause 156, "A person who is or becomes indebted to the company in an amount exceeding £50." Do you think that is desirable? I can conceive an auditor having shares not fully paid up, and he is a debtor if the shares are called up, and then he ceases to be an auditor. He may be auditors for Beany's and at the same time may be a customer of theirs. Immediately his account exceeds £50, he cannot continue as an auditor appointed, if shareholders of a private company are...—I am not conning the provisions, I think, is that so far as the public are concerned they shall be reasonably satisfied that conditions in relation to a company. The public is not conning the provisions, I think, is that so far as the public are concerned they shall be reasonably satisfied that conditions in relation to a company. As a whole, they will be satisfied that the circumstances justified the proceedings in the court.

2235. By Hon. L. CRAIG: The shareholders could...—I realise that if there be no objection to the company of the kind described, the necessity for appointing an auditor annually may create hardship which in the circumstances is unnecessary. In such circumstances, an exemption would be reasonable.

2234. By the CHAIRMAN: I do not think we should be too stringent in the case of small companies.—The difficulty is not involved in cases of that sort.

2233. By Hon. L. CRAIG: The shareholders could always have an auditor appointed, if they wished...—Clause 158 as it stands would make it obligatory upon every company each year to appoint an auditor, whether that is going to be necessary in practice or not.

2232. That would probably cost £10 a year at least...—In most cases it would be money well spent.

2231. By Mr. WATTS: There was any reason for excluding a "body corporate" from acting as an auditor...—Not in my own mind. It follows from an analogy that where the auditor is a body corporate the report referred to in Subclause (7) be filed in triplicate; one copy only being made available to applicants collectively, as in New South Wales and Victoria.

2230. The WITNESS: In connection with Clause 156, I recommend that the provisios of Section 12 of the South Australian Act of 1939 be incorporated. Provision of this amendment covers the first suggestion advanced by the Chamber of Commerce.

2229. By Hon. L. CRAIG: You are supported by the other States...—Yes. We have the marginal note, and if we are looking up other Acts, say the Imperial Act we find that our No. 154 is No. 129 in the Imperial Act. Then it is a matter of two to ascertain where they differ, we find the difference consists only of something imported from a later provision. As long as there is no confusion or omission, it will be better to leave those provisions as they are. I have realised this perhaps more than has the layman. A legal adviser, in getting a history of legislation, has to consult many Acts, and when he discovers that what appear to be similar sections actually differ, he looks for the reasons for the differentiation. Mr. Meredyth's suggestion will create that position without giving any benefit. The same remark applies to Clause 150 and the suggested marginal reference to Clause 160. I do not agree with it.
JAMES LEONARD WALKER, K.C., Solicitor General.

By the CHAIRMAN: Will you continue your evidence?—Clause 164 provides that the reports of inspectors shall be evidence under this measure. There has been a suggestion by the Chamber of Commerce that it is desirable that such documents shall not be available for public inspection and they remark that apparently they are not exempt under the provisions of other Acts. My notion is that it is a matter of policy whether, as suggested by Mr. Saw, the reports of the inspectors should not be available for public inspection. In the absence of any such expressed prohibition, they would be available for inspection like any other document filed at the Registrar's Office.

2256. That would refer to people who have shares?

— refers to any member of the general public. Anyone can go and inspect a document filled in the Registrar's Office merely by payment of a fee. That is different from documents that members of the public of shareholders desire to inspect in the Companies Office. Any document filed in the Registrar's Office is a public document, just the same as title deeds are public documents in the Titles Office. With regard to Clause 166, 170 and 171, the corresponding sections in the South Australian Act were amended by legislation passed in 1939, and I recommend that similar amendments be made now. Clause 171 of the Bill will bring our legislation into conformity with the South Australian Act as amended. With regard to Clause 171, which provides that a statement as to remuneration of directors shall be furnished to shareholders, the query was raised by Mr. Saw, on behalf of the Chamber of Commerce, who asked how the directors of "A" company could certify to the remuneration paid to a director of "B" company. I merely answer that query by saying that the demand could be made to the director of "A" company and also from a director of "B" company. Such a demand could be made upon the directors concerned.

2257. By Hon. L. Craig: You mean that the individual could demand to know from "A" company what the company paid the director?—Clause 171, says, "Any member of a company may demand on behalf of writing to the company, its directors or manager, require to be furnished to him within one month from the receipt of the demand, a statement . . . . . . . . 2258. and so on. With regard to Clause 171, which provides that a statement as to remuneration of directors shall be furnished to shareholders, the query was raised by Mr. Saw, on behalf of the Chamber of Commerce, who asked how the directors of "A" company could certify to the remuneration paid to a director of "B" company. I simply answer that query by saying that the demand could be made to the director of "A" company and also from a director of "B" company. A member of "A" company can make a demand upon that director himself and require to be told what his remuneration is from "A" company and also from any other company. He could go to a meeting of either company?—He could go to the individual; he could go to the director himself.

2259. The director need not give the required information?—If he does not he will commit a breach of the Act.

2260. You mean he could do that at a meeting?—He could do it that way. The clause says that he may write to "the company, its directors or manager." If you refer to the Interpretation Act you will see that the definition of "director" implies the singular as well as the plural.

2261. Do you mean that he would have to make his inquiry in public within the other company?—Not necessarily. He could make the demand direct upon the director himself so long as the individual was a member of the company of which he was a director.

2262. If a shareholder in a company with which I am associated were to write to me at my private home and ask what remuneration I received, I would be inclined to reply that the information could be supplied by the company or at a meeting?—You will see that Subclause 3 of Clause 171 reads—

If any director or manager fails to comply with the requirements of this section, he shall be liable to a fine not exceeding one hundred pounds. It is not the case here, but it is the case there. Mr. Saw suggested that it is a matter of practice; for my part I would suggest that it is a matter of policy.

2264. I am not objecting to this, but I think the individual's letter should be directed to the director at the company's office?—That may be a matter of practice; for my part I think the letter should be directed to the director at the company's office.

2265. By writing to each company?—The individual would write to the director, not to the company at all. Of course, he could adopt the latter course if he liked, but company "A" would not give the individual the information required from company "B." However, the shareholder need not write to the company at all, but to the director concerned, who happens to be a director in both companies.

2266. I do not know that I approve of that, because I think the individual should write to the company in order to secure the information desired. To attack a man in his private home and ask him what he drew from half-a-dozen companies is hardly acceptable?—The clause provides that the information shall be given to the shareholder by the director of the company in which the individual holds shares. It is not the same as the case of a private individual endeavouring to pry into a man's private business. The individual is a shareholder in the company of which the other man is a director, and he writes to him in that capacity in order to obtain the information.

2267. The director first of all would have to satisfy himself that a man was a member of each of the companies?—That is so. He would be entitled to do that.

2268. The information should be sought from the company?—The application may be made to the company, but the company may not be in a position to supply it.

2269. The company could supply the information in its possession and write to the other company for the information which it would. The information would be obtained from company "A" company could not obtain information from company "B" company unless he was also a member of "B" company.

2270. The shareholder should have to write to each company. You mean that would be a fair thing?—No. I personally do not think so. The best way is always the direct way.

2271. I do not think it is the function of a shareholder to write to the company for the information?—If the person seeking the information is not a member of the company from which he is seeking it, the company would say, "We are not going to tell you."
director of 'B' company' I say there is no necessity for the director to do so. The person seeking the information can obtain it direct from the director concerned and if the director concerned refuses to give it, he is under a penalty. That is the position as the clause stands.

Clause 172: Mr. Saw suggested that a provision should be inserted that a director shall not have power to vote with the consent of a company in which he is interested. That is a matter of policy. There is no legal objection and the amendment is perhaps desirable.

Clause 181: In dealing with the returns to be made by non-liability companies, Mr. Miller has stated that the information as to shareholders, etc., would be of little use to anyone. Even if this is so, there is no harm in leaving the clause as it stands at present. I notice that Mr. Gelfor is of the opinion that the clause is a good one.

Clause 183: Calls and forfeiture for non-payment: There is a suggestion in the report to the suggestions raised. The word "section" in the second line of Subclause (2) should read "subsection," as pointed out by Mr. Jackson.

Clause 184: The relative section in the present State Act is Section 254. That has been superseded in this Bill by Section 179 of the South Australian Act, merely for the sake of uniformity. The question raised by Mr. Lamb is a matter of policy.

Clause 195: Section 18 of the South Australian Act of 1939 amends the corresponding South Australian Section 179. The amendment makes this section apply to forfeited shares offered for sale after the principal Act received the Royal Assent; that is, it sets retrospectively. I agree that for reasons of policy the same provision should be made in Clause 184 of the Bill. The new Subsection (2) should, however, read as follows—

This section shall apply in relation to all forfeited shares offered for sale after the date on which the Act receives the Royal Assent.

2274. By Hon. H. SEDDON: Is the idea that it should not be retrospective—that it should be. The point is, that shares may become forfeitable while this Bill is in the House. Unless we make that provision they may not come within the scope of the clause. In other respects the Act does not come into operation until a date to be fixed by proclamation.

2275. By the CHAIRMAN: You have not commented on Clause 180—That imposes on directors a certain liability for workman's wages. I think it is desirable. It ensures that people actually employing a workman shall be responsible for some portion of his wages.

2276. By Hon. L. CRAIG: The only suggestion I have to make is that an application for wages should be made within a certain time. A man may have left his employment, with wages owing, some time previous to the company's being wound up, then, after the winding up has taken place and everything has been settled he may come back with a claim. The ordinary limitation will apply in the matter of taking action.

2277. In what way? How would a man's application for wages be limited as to time? You mean the recovery of wages?

2278. No, the application for wages. The point is, that a man seeing that a company is getting into difficulties and cannot pay wages, may secure another job. The company is subsequently wound up and everything is dispersed. Then he comes back six months afterward and submits a claim for wages owing. That would go in as an ordinary priority claim under the provisions relating to priorities in the event of a winding up.

2279. Would not the directors be liable in that case?—They might. This is intended to help directors liable at the time, whether a company is in the course of being wound up or not. If directors had to pay they would come in as creditors in the winding up.

2280. If a company is wound up and the directors have resigned, a man who had failed to get certain wages some time previously would still have a claim against the directors even though all the assets of the company had been distributed?—Yes.

2281. There may be a case of a union claiming against the company for under-payment of wages. The directors would still be liable. If it is a matter of a union lodging a claim, it would have to be brought within 12 months from the date when the liability arose. That is provided for under the Arbitration Act.

2282. Here the directors are responsible. That would be subject to other legal limitations as regards the right to claim wages. They have to be brought within three months after the date that the wages claim arose. If a claim arises subject to the provisions of the Industrial Arbitration Court—suppose for instance that a man has taken less wages than he is entitled to—then a claim must be brought within 12 months. If it is desired to be a civil action to recover wages, a claim may be made within six years. Those limitations will all apply even though Clause 180 remains in the Bill. All that the clause does is to make directors personally liable for a certain portion of wages owing to an employee. With regard to Clause 180 the Chairman mentioned that the Crown should be bound. That is a matter of policy, but it would affect the Crown's particular prerogative. In all bankruptcy proceedings the Crown's right of priority stands. That was the same case. So far as Clause 200 is concerned, there is no legal objection to the provisions of the clause being extended to cover Bankruptcy Act proceedings. I, again, is a matter of policy. What is referred to in this connection is assignments for benefit of creditors and deals of arrangement and so on. Certain amendments were made on sections of the South Australian Act corresponding with Clauses 203 and 205 of the Bill, and I recommend that those amendments be made in our measure.

2283. By Hon. G. FRASER: The trustee made a suggestion regarding Clause 220—that the trustee recommended the deletion of Subclause (2). That is purely a matter of policy. It has been suggested that the provisions of Clause 209 should be applied to all windings-up other than those by the court. There is no legal objection.

2284. By Hon. H. SEDDON: Do not you think it is desirable that that should be done?—I think perhaps it is. I see no reason to discriminate in these matters.

2285. We have had the case of a voluntary winding-up in which a person who was the director of a company was appointed liquidator and did all sorts of funny things to the detriment of the creditors—I think the same principle might apply throughout. I see no reason why it should not. The next clause is 215. The corresponding section in the South Australian Act is Section 206, which was amended in 1940. The amendment empowers the court to determine upon and set aside any provisions relating to priorities in the event of winding-up. We have a similar provision in Clause 218 (8), setting forth that the court may determine whether any and what security is to be given by any official liquidator on his appointment and whether a declaration of necessity is to be demanded. There are suggestions for an amendment to the relative clause to enable the court to fix the security, or vary the security during the currency of the liquidator's appointment. That would go rather further than Clause 218 (8) goes, and I see no objection to making the amendment to enable the court to fix the security and vary the amount of the security at any time before the appointment or during the currency of the appointment of a liquidator.

2286. Clause 218, meetings of creditors: At present, when a winding-up order has been made by the provisional liquidator, or some person appointed by the court, must summon separate meetings of creditors and contributories of the company. Mr. Saw suggested that when a winding-up order had been made in the course of being wound up or not. If directors had to pay they would come in as creditors in the winding up.

2287. If a company is wound up and the directors have resigned, a man who had failed to get certain wages some time previously would still have a claim against the directors even though all the assets of the company had been distributed?—Yes.
Clause 217 (2) (d): Mr. Martin suggested that the meaning of "officer" requires clarification. I do not think it does. Paragraph (4) reads—

"If there is a term that is clearly enough defined.

Mr. Mr. RODDIE: What would "officer" mean?—It has a general connotation. It means an individual either as an employee or an appointee in some office who is bound to carry out the instructions of the company in the way required by the company, as distinct from an independent person whom the company may engage but leave it to him to do the work for which he is engaged in his own way.

239. The term would not include auditors?—No, I say that auditors are not officers of a company. Mr. Craig suggested on Thursday last, that some auditors employed on a salary basis and might conceivably be officers of the company. I do not think that is so. The term "officer" imports a relationship requiring the man to do the work according to the instructions of the company, either as an employee or some other appointed.

238. By Hon. L. CRAIG: That would cover the position if an auditor was an internal employee. It would, provided he was a salaried officer under an obligation to do the work as he was instructed to do. Where you rely upon the skill of an expert, he is not an officer of the company but is there to do the work according to his own skill and knowledge.

239. By Mr. RODDIE: Then "an employee of the company" would cover him?—If he was employed by the company as a servant, he would be an officer.

240. Would it be better to substitute "and" for "or"?—I think you had better leave the provision as it is. You make a distinction between people who are not employes and who are employees, and you leave the disjunctive "or" to bring in the servants. If you substituted "and" for "or," you would limit the section. I think they would have to be officers and in the employment of the company, which might create confusion between an officer and an ordinary servant. Let me give an illustration. In the Railway Department there are officers and servants. An officer is a man on the salaried staff, and a servant is a man on the wages staff.

241. That would not apply here?—No; I quoted it to show that there might be a distinction between officers and servants. This is intended to include officers but not employees.

242. Such as what?—A director might not be an employee of the company, but he would be an officer.

243. He would also be an employee; he would be receiving a remuneration?—He might not be receiving remuneration.

244. You mean he might be honorary director?—Yes.

245. He would be rather a rare bird, would he not?

We have to envisage possibilities.

246. By Hon. L. CRAIG: There are directors who receive no remuneration, as I know to my sorrow.—Then he is not such a rare bird.

Clause 218, report of liquidator: A suggestion was made that the liquidator shall file the statement referred to only if directed by the court. I do not agree with the suggestion, but as an alternative, instead of inserting the words "if ordered by the court," as the Chamber of Commerce proposes, you might insert the words "unless the court otherwise directs." This would mean that instead of the liquidator acting only when the court directed him to do so, he would do it on every occasion unless the court instructed him that he need not do it. This is the converse of Mr. Saw's suggestion.

Clause 219: The trustees section query the necessity for the notice referred to in Subsection (8). They state that the appointment is made by the court and should automatically come under the Registrar's notice. This does not necessarily occur, however, but the notice will ensure that it does.

Clause 222: I do not agree with the suggestion by Messrs. Martin & Son that Subclause (1) (c) be deleted. There is no legal objection to Subclause (2) (e) being amended by the addition of the words "subject to any law of the Commonwealth relating to bankruptcy," but in my view this is not necessary because the clause must be read subject to the Commonwealth Act. I think Subclause (4) is, or would be, if the suggestion that it be deleted is a matter of policy.

297. By Hon. L. CRAIG: Is it not dangerous that preference should be given to any class of creditor? Priorities cover wages, etc. Why should any others except those covered by the priorities be given preference? Should they not rank equally after the priorities?

Clause 259 brings in provisions under the Bankruptcy Act except as otherwise provided by this Bill.

298. If that is so, then the subclause is unnecessary—By including it here you have the inconvenience of reference or oversight. It has to be presumed that everyone knows what the bankruptcy laws are. If the provision is embodied in this Bill, that will not do any harm, so long as it is not inconsistent with any other laws. I think this should be left in.

299. It has been suggested that in all windings-up priorities under the Bankruptcy Act should apply. Would that be all right?—As a matter of policy I see no objection to that. No question of law is involved, but some people are not entirely satisfied with the priorities prescribed by the Bankruptcy Act.

300. If the provisions were left in the Bill they would be covered by the Bankruptcy Act and retained. In relation to corporations there may be some virtue in having particular clauses in the Bill which are not in harmony with the corresponding sections of the Bankruptcy Act. Probably they have been inserted in the South Australian Act for that reason.

301. By Mr. ABBOTT: This corresponds with the English Act?—Yes. I have endeavoured subject to instructions to adhere as closely as possible to the English Act, particularly the English Act, particularly where the English laws. I think Subclause (4) should stand, but the amendment made by Mr. Saw's suggestion.

302. By the CHAIRMAN: The idea is to have as much uniformity as possible?—Yes.

Clause 223, Exercise and control of liquidator's powers: The suggested amendment made by Mr. Boyson and the Chamber of Commerce to enable any person aggrieved by an order of the court to appeal to the court is unnecessary, as the matter is already provided for in Clause 312.

Clause 226: The suggestions made are all matters of policy. It has been suggested that Subclause (6) be deleted. This provides that the liquidator may required to make the accounts to be printed or typewritten and copies or summaries sent by post to every creditor and contributor. The suggestion is that the liquidator shall be relieved of that responsibility. In the interests of creditors and contributors that information should be supplied to them.

Clause 229, Power to appoint special manager: The suggestion made by the trustees section, that it should not be necessary to secure court approval for the appointment of a "special manager," is a matter of policy. The answer is "yes" to the question, where a liquidator carries on a business as a result of being appointed including the manager or appoints a new manager, whether such manager be deemed a special manager for the purposes of this clause? I think the clause only contemplates the liquidator appointing some as a special manager other than a member of the company's staff which has been carrying on the business. The liquidator may require someone other than a member of the staff to carry on the business for the interests of the company and the creditors, and may desire to appoint a particular individual to do that work.

303. By Hon. L. CRAIG: It is very likely that you would?—In that case, before he can appoint that special manager, this clause requires that he gets the approval of the court.

304. How long would that take normally?—Such matters, it must be realized, can be determined in Chambers, which is a very simple and expeditious method.
2305. Is there always a judge available in Chambers throughout the year?—Yes. The judges have been very good. Where a judge is not available in Chambers, he can deal with such a matter in his private home.

2306. It might be important to appoint a particular man to a particular job quickly?—I see no possibility of delay. In cases of emergency the judges always set themselves out to help in a matter of that sort. Application can be made ex parte, and the judge might deal with the matter straight away. I see no possibility of serious delay.

Clause 235: Power to order costs of winding-up to be paid out of assets. Whether or not this clause should remain in the Bill is a matter of policy. There is a suggestion that it be struck out altogether.

2307. That could not alter priority as set out in the Bankruptcy Act—There, as far as we are concerned, this has to be read subject to any Commonwealth Act with which it may be inconsistent.

2308. By Mr. ABBOTT: I think that is hardly right. This measure would apply. The Commonwealth Act would apply only where it was not inconsistent with this measure, for the Commonwealth Act only obtains power in this case from this measure, does it not?—That is so. There must not be any inconsistency. That is the point.

2309. By Hon. H. SEDDON: Do I understand that where this measure is inconsistent with the Commonwealth Act, the Commonwealth Act would prevail?—No, it is the reverse, because this is relating particularly to companies, and State company legislation would take priority because the Commonwealth has no legislative power in that respect. Legislation except in so far as its legislation is not inconsistent with State legislation.

2310. But does not the Commonwealth Bankruptcy Act provide for bankruptcy of companies?—No. Clauses 232, 233, and 234 are all dealt with by the Bankruptcy Act. I suggest that they are merely matters of policy, and I do not propose to offer any opinion.

Clause 279: The suggestion of the trustees section that the liquidator be given power to fix the fees of an authorized auditor is a matter of policy. The only question involved is the matter of taxation of solicitors' costs, with which I have dealt in my evidence already.

Clauses 299 and 300: In dealing with the contention raised by Mr. Forbes, I would point out that Clause 290 operates subject to Clause 290. The inclusion of other preferential claims, other than salaries and wages, is a matter of policy. In reference to the suggestion raised by Mr. Boyson that preference should also be given in respect of workers' compensation payments, I would refer you to Section 12 (3) of the Workers' Compensation Act, 1912-1939.

There shall be included among the debts which under the Bankruptcy Act, 1892, in the distribution of the property of a bankrupt, and under the Companies Act, 1893, in the distribution of the assets of a company being wound up, are to be paid in priority to all other debts, the amount not exceeding in any individual case $100 due in respect of any compensation the liability whereof accrued before the date of the receiving order or the date of commencement of the winding-up, as the case may be, and those Acts shall have effect accordingly. Where the compensation is a weekly payment the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment, could, if redeemable, be redeemed if the employer or worker made an application for that purpose under the First Schedule.

So that there is provision made in relation to workers' compensation for that to come in as a priority debt in the winding-up of a company.

Clause 302: As regards Clause 1 (1), I agree that "fraudulent preferences" should be altered to "undue preferences." I think that perhaps this might be desirable.

2311. By Mr. ABBOTT: Would we be getting away from the wording of the English Act?—We might.

2312. Might not that cause confusion?—I hardly think so, because, after all, undue preference may not necessarily be a fraudulent preference. A fraudulent preference would be within the conception of undue preference. The use of the term widens the scope somewhat.

Clause 303: By Hon. L. CRAIG: Under the Bankruptcy Act an increase of priorities would be fraudulent, would it not?—It may not necessarily be fraudulent. It may be unlawful in that it is a contravention of the Act. When you use the term "fraud," you suggest that something is done deliberately. It may be unlawful and with the knowledge that it is wrong, and with an intention to deceive or disadvantage somebody. That shows deliberation, but quite true; it does not give a preference which is not authorised by law. You are not doing that deliberately.

2314. It is a fraudulent action although it may be done without a knowledge of the law?—No, quite; I must be deliberate. You intend to deceive or disadvantage somebody when you do the action, but you may do something which is unlawful, but which you do insincerely and not intending to injure the individual.

2315. It must have been put into other Acts for a very good reason and anyone handling the winding up of a company should know the Act. Therefore, if days depart from the priorities they are doing something fraudulent and they should be liable?—These are events before the winding up. The Bankruptcy Act uses the term "undue preference."
2320. Mr. BOYSON: I do not apply. The latter clause applies to winding-up by court and Clause 307 applies to all windings-up whether voluntary, by the court or otherwise. Dealing now with Clause 308, the first matter raised by Mr. Boyson was one of administrative policy which refers to the fund into which should be paid the unclaimed assets of a company. Mr. Boyson suggested that the unclaimed assets should be paid direct to the Treasurer, where the provision stands as it now stands, provides that the assets shall be paid into a special fund, held there for a period, and then subsequently paid to the Treasurer. The latter clause applies to Western Australia, it would be definitely earmarked by the Treasurer, in the Companies Act. By referring to the Companies Act, it goes into Consolidated Revenue, and before any payment can be made from the public funds it is necessary to secure Executive Council authority. On the other hand, while the money is still held in a special fund, no such necessity would arise. In some circumstances, an order of the court might be required, but it would not be necessary to secure Executive Council authority. While such assets remain in a special fund, they are definitely earmarked and identifiable, whereas once they are paid into Consolidated Revenue, they lose their identity and become part and parcel of the ordinary public revenue. Being part of Consolidated Revenue, it would be necessary to secure Executive Council authority. The only difference that might be made is: That is the only difficulty in practice.

2321. Mr. BOYSON: And it might cause delay—Yes, in securing Executive Council authority. As the money has to remain in a special fund for a period—I think it is six years—the money is then automatically taken out, if not claimed, and paid into Consolidated Revenue. Therefore, a claimant would have no legal right to a payment from the fund, and he could only recover money as an act of grace on the part of the Government. Mr. Boyson suggested that the order referred to in Subclause (2) should be made under the Companies Act for winding-up. That is the provision. Clause 304 confers power upon the Registrar to strike off companies off the register. The period of time to allow for the subsequent reinstatement of a company struck off the register is a matter of policy, but a fairly long period is necessary to make it reasonably certain that a company is in fact defunct. We make provision for 20 years, and Clause 305. Mr. Martin suggested that three years should be sufficient. I think there should be a fairly long period.

2322. Mr. BOYSON: Twenty years does seem a bit long—I do not think three years is long enough.

2323. By Mr. ABBOTT: What period would you suggest—I would prefer to leave that to others. I would leave it at 20 years, because that is the period mentioned in other Acts.

2324. By Hon. H. SEDDON: Is there any particular reason why so long a period should be retained? No, except that it may happen that while a company is perhaps dormant, it is not actually defunct. It may easily happen that the Registrar may strike a company off the register as being defunct, and later on find himself obliged to reinstate it. If a company has not been carrying on business for a substantially long period, the Registrar will be reasonably certain in doing what he does, when he strikes a company off as being defunct. Apart from the desire to secure uniformity, I attach no particular virtue to the period at all.

2325. If a company is dormant, what about the necessity for annual returns, and so on?—That certainly may affect the position. A company may not be actually dormant, but, to speak, it simply isn’t live.

2326. Is there not a danger there? I have in mind mining companies. They may remain dormant for years, and then, with the advent of a boom, they are reactivated, very often to the detriment of the public.—That is so.

2327. By Hon. L. CRAIG: We know the position that arises with companies during war-time, when colossal contracts result in a profit coming to operate in Western Australia while continuing its operations in the Eastern States. During that period the company may not even have an office in Western Australia, and then the rendering of returns would be difficult. Of course, after the war was over, the company would re-commence normal business, and start operations again here. The whole object, as I see it, is to ensure that the Registrar will not close off a company by reason of the words being actually defunct. A measure of protection is given to a company, although it may not be operating actively, if it is allowed to retain its registration, where the prime reason behind the provision. If it is desired to reduce the period from 20 years to 15 or 12 years, that is a matter of policy; but as the provision stands now it is uniform with the relevant sections in the Imperial Act and in the Acts of the other States.

Clause 315. Register to act as representative of defunct companies in certain events: Mr. Boyson has suggested that the clause should be reduced from 20 years to six years. That is a matter of policy upon which I am not prepared to express an opinion. Clause 320. Mr. Martin suggests that the position might be covered by the Federal Bankruptcy Act; even if that be so, I think Clause 320 should stand.

2329. By Hon. L. CRAIG: What is the difference between an unregistered company and a partnership? There is no difference, it is there.—Perhaps not now; but co-operative companies were, for the purposes of the Companies Act, unregistered companies. However, they might be wound up under the Companies Act. Some of those companies have, since 1929, been brought under the Companies Act, for the reason that co-operative companies, since 1929, could not be registered under the Co-operative and Provident Societies Act of 1905. There are some co-operative and provident societies in this State registered under the 1905 Act, making that registration. They would now be unregistered companies for the purposes of this provision.

2330. By Mr. WATTS: Is there no provision in the Co-operative and Provident Societies Act for winding-up?—I am speaking from memory. There is a provision by reference to the Companies Act; they can be wound up as unregistered companies under the provisions of the Companies Act. The machinery provisions are contained in the Companies Act.

2331. That makes this clause necessary.—Yes.

Clause 321: A suggestion was made that these companies might be wound up voluntarily. Clause 321 provides that they shall be wound up by order of the court and I see no reason why this provision should be altered. Such companies should be wound up by order of the court.

Clause 347 and 348. The suggestion is made that we should insert the term ‘carrying on business.’ I consider it inadvisable to attempt a definition of the term ‘carrying on business.’ The term has a general connotation in the same way as the term ‘property’ has. Clause 332, which is a definition clause, the expression ‘carrying on business’ includes establishing or using a share transfer or share registration office; and to ‘carry on business’ has a corresponding meaning. So that the attempt in Clause 332 is to widen the connotation of the expression ‘carrying on business.’ When some attempts to make definitions the tendency is to narrow down the definition. It is far better to leave the connotation as it stands at present.

2332. By Hon. H. SEDDON: Does that mean that if a company is selling goods in Western Australia it must register as a foreign company under our Companies Act? If a company is carrying on business and making the contract in Western Australia, it would be carrying on business here; but if it merely has orders it is not so. But if it is in the Eastern States, then the company is not carrying on business here. That question has been dealt with on numerous occasions under our taxation laws with regard to liability for income, a dividend duty and so on, the point being whether the company is carrying on business within the State. Now, under the new Income Tax Assessment Act, both in relation to individuals and
companies, the matter of carrying on business has been more clearly defined. The general principle was that the place where the contract is made and the money is payable is the place where the business is carried on. If in a case it only goes to another place to solicit orders, it is not carrying on business there.

Clause 348: Mr. Boyson has suggested that the period of one month mentioned in Subclause (3), within which foreign companies must comply with Subclause (2) is too short. He suggests the period should be extended to six months and I am inclined to agree with his suggestion. I do not agree with the suggestion of Mr. Jackson that it should be unnecessary for foreign companies were only required to file a list of directors in this State or nominally resident in Australia, together with the necessary particulars, contributing to such as valuable information as regards persons of directorates may remain undisclosed. He does not want companies to divulge the names of directors, but merely to state the number and certain particulars. That of course is a matter of policy. The whole purport of the relevant provision is to make available to the public the information which they ought to have for the protection of their interests.

2332. By Mr. ABBOTT: I do not know whether this applies to private companies but you would not suggest it should.—Not to private companies.

2333. By Hon. H. SEDDON: Take the case of a foreign mining company. The directors' activities may vary considerably. It would mean a continual revision on the part of the companies to comply with the Act—It may be that the interests of the public would make it desirable that that information should be given.

2334. For foreign companies—Yes. People are buying shares here in foreign companies.

2335. By Hon. O'BRIEN: There may be a director of 30 companies in England. It would be difficult to get the information required. His directorates might change!—The crucial point is whether it is desirable in the interests of the investing public that this information which is now required should be given. Mr. Jackson thinks it is going to create trouble and delay for companies to provide it. If their trouble and delay outweighs the public interest, you will cancel the clause accordingly, but until it is shown that the companies' interests are to be considered before those of the general public, I think the clause should stand as it is.

2337. By the CHAIRMAN: I think the general public should be considered first—It is a question for other people to express their opinions about. The usual policy is that if I do not agree with Mr. Jackson's suggestion because it seems to me the public interest should outweigh company interest.

2338. By Mr. WATTS: Mr. Jackson made it plain that there would be times when it would be impossible to comply with the full requirements of the section, and I gathered from him that those giving information would be obliged to give wrong information because of the difficulty of knowing at the moment what those directorates were. Would it not be well to minimise that?—Definitely, if cases of that sort are going to arise.

2339. I turn to the question of the protection of the public. It seems to me to be little guide to investors in Western Australia to know that Sir Samuel Jones, if the register is such a person, is a director. It would be all right if Lord Halifax were, because he has a public reputation. It seems to me that mostly companies will be too to trouble without any definite result?—That may be right. All I am working on is that the provision as it stands is intended to protect the public interest. If the Registrar sees where it would be impossible for a company using every effort available to supply the information, that is justification for making some provision in the clause to relax its rigidity or impractical nature in cases where the Registrar is satisfied it cannot be complied with.

2340. By Mr. ABBOTT: This information would have already been filed in the case of English companies in the English Companies Office, would it not?—I do not know.

2341. The reason I suggest is that you have copied this section from the English Companies Act. Therefore companies registered under that Act would apparently have to supply that information to the Registrar there! I take it that would be so. It may be that the information would be available from the Companies Office in England.

2342. There would not be much difficulty in a company sending it out here!—There may be some delay.

2343. I take it that where you say that Clause 348 corresponds with Section 234 of the English Companies Act the whole purpose of this clause substantially conforms with the English provision?—Definitely. You will find that in most cases the clauses required from the South Australian Act are practically identical in terms with the corresponding sections of the Imperial Act. Turning to Clause 349, I agree that an amendment is necessary to cover cases where public policy is involved.

2344. Have you any idea why that is not required in England? Apparently that particular clause has no corresponding section in the English Act—No. In regard to Clause 351, a suggestion has been made that it should be clearly indicated that Eire is not included. I suggest that at the present time it is a matter of Imperial policy to leave the clause at it stands and not treat Eire as being a non-British possession.

2346. By Hon. H. SEDDON: A man was called up the other day under our Act governing military service and claimed that he was exempt because he was born in Eire and therefore was not liable to military service. How would that contention fit in with the argument raised in connection with Clause 351?—It is merely a matter of interpretation of the agreement between Great Britain and the Irish Republic, Eire is to all intents and purposes a separate nation.

2347. They would object to being called a British possession with regard to the agreement. The present time the clauses provides that a company formed and incorporated in the United Kingdom or in any British possession, which is duly registered under this part shall have the same power to hold lands in this State as if it were a company incorporated under this Act.

2348. By Mr. WATTS: Is Australia a British possession at the present time, or would it be better to adopt some other phraseology such as His Majesty's Dominions and Colonies?—Of course Australia is a British possession because it is under the King of England. The Dominion of Canada, which is under the King of Australia and the Dominion of New Zealand, while they recognise the King of England as their King, are British possessions.

2349. In view of that explanation, how can Eire be included?—At the present time, as a matter of law, it might not be a British possession, but anything might happen any day whereby Eire may come within the fold. If that happened, the clause as it stands would cover the position. If Eire was expressly excluded and desired to come within the fold, it could not do so. As a matter of Imperial policy, we should not expressly exclude Eire from the benefit of this legislation, but should retain the clause as printed.

Clause 354 (1). Companies filing balance sheets: It is a matter of policy whether it remains necessary for foreign companies to post balance sheets in their registered offices. The present law is uniform with the provisions of the South Australian and Victorian Acts. Regarding Subclause (4) of Clause 354, I agree that the words "private or proprietary" should be deleted. A similar amendment was made to the corresponding section was made in South Australia under the amending Act of 1939. Clauses 355 and 356: The suggestions made are purely matters of policy.

Clause 357: I agree with Mr. Boyson concerning the necessary publicity to be given by a foreign company intending to come business.

Clauses 361, 363, and 366: The suggestion made by Mr. Forbes that Clause 361 should be modified to apply only to foreign companies actually carrying on one or more of the businesses set out in Clauses 365 and 366 is in a matter of policy, but is perhaps desirable unless Clause 361 is deleted. In this respect the Law Society
thought it should be obligatory for a foreign company carrying on business in Western Australia to have a local share register. Clause 365 requires certain foreign companies to have a local register, and Clause 364 specifies that those companies be included in the Schedule. If Clauses 364 were deleted, Clause 365 would apply to all foreign companies. Whether Clause 364 should be deleted is a matter of policy. Mr. Forrest stated that he could not understand why only Clauses 365 and 366 were referred to, as Clauses 367 to 376 also dealt with local registers. In answer to this, I would point out that Clauses 365 and 366 apply only to those companies specified in Clause 364, while Clauses 387 to 390 apply to all foreign companies.

Clauses 370 and 372: Mr. M. S. Murray suggested these clauses be placed in sequence. I agree with the suggestion.

Clauses 379 and 380: These suggestions relate to matters of policy, and I do not propose to express any opinion on them.

Clause 381: This is an interpretation clause. The suggestion has been made that it might be transferred from the end to the commencement of Part XI. I agree with the suggestion.

Clause 383 to the appointment of receivers: Section 21 of the South Australian amending Act of 1929 amends Section 311 of the South Australian Act corresponding with Clause 366 of our Bill. Section 311, as it stood before the amendment, prohibited an unregistered auditor from being appointed as a receiver. The amendment removes that prohibition. Personally, I do not agree with the amendment, since it would not ensure the honesty and rectitude of any measure of protection. However, it is a matter of policy. Others might have a better opinion than I can offer.

Clause 387: The objection to amount of penalty: This is a purely a matter of policy.

Clause 389: I recommend the adoption of the recent amendment to the corresponding South Australian Section 377.

Clause 390: I agree to the following suggested amendments:—

(a) In the second line of Clause 390, after the words "from place to place" insert the words "whether by appointment or otherwise,"

(b) In the fourth line of Clause 390 after the word "purchase" add the words "or in exchange for other shares."

Regarding the suggestion that the Registrar may grant a certificate in respect of the shares of certain companies, this represents a matter of policy, but I do not think it is possible because too much responsibility is placed on the Registrar who may find himself bound by precedent. Under the provisions of the 1938 Act, it was left to the Registrar to grant exemptions. This was not considered unfair, as he would find himself bound by precedent, and that he would feel constrained to grant exemptions which otherwise he might have refrained from granting. It is better to relieve the Registrar of that responsibility. The suggestion was made to go back to the 1938 Act, and thus give the Registrar power to exempt companies from the prohibitions associated with this clause.

Clause 392. By Mr. ABBOTT: Might not that be getting away from the English Act? That may be so. I point out that the Canadian Act has a very much wider field than we do. It relates to all market securities issued by companies, such as investment companies. It makes provision for the direct licensing of all dealers who are going to deal in the securities of those companies. Essentially, the definition has the meaning "offer to the public." We have not gone as far as the British Columbia Acts, because we are concerned more with the administration of our Act and the sale of shares in exchange for debentures, etc. In drafting the Bill I did not, advise, go to the same lengths as has been the case with the Canadian Acts. In that country there is a definite system of licensing and a more rigorous control over share-dealers than I have attempted in this Bill.

Clause 393. By Hon. H. SEDDON: It is a question whether this will be sufficiently effective to deal with fraudulent concerns of which we have already had experience? We can only find that out by experience. The licensing system in British Columbia may be more objectionable than would be the registration system I have provided. I have endeavoured to strike a midway line between the two. Admittedly we have the licensing of land agents, auctioneers, etc. It occurred to me we might some extent follow the system of the Commonwealth Bankruptcy Act in registering the auditor and provide for registration. To avoid any undue rigidity, we could provide for the registration of certain companies who are bound to the public by their rectitude and honesty in a pro forma way, and provide a certificate for the registration of other people who desired to deal in the sale of company shares, debentures, etc., thus being reasonably sure that only trustworthy people would be carrying on that class of business. You can only reduce the possibility of misjudgment to a minimum in the best of circumstances. It occurred to me that the bankruptcy system of registration I have provided would be more flexible than the system operating under the British Columbia Acts. As a first measure it might be desirable, I thought, to use this as the most flexible method and if necessary improve on it when it proves itself or shows its defects in practice.

Clause 394. By Mr. ABBOTT: What provisions have you substantially copied to enable you to do this, and from what Acts? From no Acts. They are actually my own conception, an evolution, if you so like to call it, of the principle of the British Columbia Act. I am referring now to those clauses of the Bill which impose restrictions on share-dealers.

Clause 395. By Hon. H. SEDDON: It certainly goes a long way towards the clauses of the English Companies Act.—The clauses in question follow to a large extent the licensing system as found in the Australian Act. However, I did put up a note on those clauses (390 to 401), relating to restriction on the sales of shares by unauthorised persons.

Clause 396. By Hon. G. FRASER: How do you view the possibility of a monopoly in the sale of shares? I am definitely opposed to it. I might have read the note I put up on this subject previously:

Re Clauses 390 to 401—Restrictions in Sale of Shares by Unauthorised Persons.

1. Clause 390 prohibits sales of shares from house to house, and also sale of shares anywhere by any person other than an authorised share-dealer.

Clauses 392 to 401 then relate to restrictions against share-dealers.

2. The prohibition against sales of shares from house to house is merely a re-enactment of the present law. (See Section 16 of our Purchasers’ Protection Act, 1923.)

3. The Clauses 392-401 imposing restrictions against persons dealing in sales of shares are new in the Commonwealth of Australia, but to a substantial extent correspond with the laws in British Columbia in this respect. As I have drafted them, they embody provisions for the proper and effective control of share-dealers or share-brokers, by which means they may be called, which the draftsman considers to be a necessary corollary to the restriction against sales of shares from house to house.
5. Although there may be some virtue in the suggestion of the stock exchange that the well-known term "share-broker" should be used in preference to the new term "share-dealer," and I see no objection to their suggestion being adopted, I very definitely oppose their suggestion that Clauses 392-401 be deleted from the Bill altogether.

6. The mere prohibition of sales of shares from house to house is not sufficient to protect the public from imposition or fraud by unscrupulous or irresponsible persons who have shares to sell. The latter can carry on a nefarious business in the sale of shares by correspondence and other means without going to the houses where their potential victims live.

7. It seems to me, therefore, to be very necessary that there shall be a proper statutory control over these persons who sell shares as a matter of business as a broker or agent; and Clauses 392-401 are intended to enable such a control to be exercised without the same being unreasonably rigid. Thus members of approved stock exchanges and their servants or representatives will be entitled to register in pro forma without payment of a deposit; other reliable persons may obtain an exemption from the Minister, while still other persons to whom the Minister may not be willing to grant exemption can obtain registration provided they obtain an order of the court and deposit £500 with the Treasury.

8. In this way the possibility of unscrupulous persons engaging in the sale of shares will be reduced to a minimum, and a proper control will be held over all share-dealers by means of the power to cancel their registration.

9. These provisions will not be onerous or unjust in their application and will leave the field open for honest dealers.

10. In comparison, therefore, the provisions of Clauses 392-401 must operate for the benefit of the public without imposing any undue hardship upon the potential share-dealers or share-brokers.

11. I very strongly recommend, therefore, that Clauses 392-401 be retained in the Bill in their present form and be allowed to run their course in practice, any defects therein which may be disclosed by actual experience could be easily rectified.

On the other hand any substantial alterations in the said clauses as they now stand may upset the balance of these clauses taken as a whole.

J. L. WALKER, Solicitor General.

27th February, 1941.

---

2355. By Hon. A. THOMSON: Some years ago several business men in the Great Southern District took an option over a flour mill, and then we, not as agents and for no profit to ourselves, canvassed the district selling shares with a view to reviving the business in the town. Under this measure one of these business men has to get approval and lodge a deposit of £2000.—Not necessarily, if the persons who were going to do that canvassing were not members of a Stock Exchange. If it were a proper case, they could apply to the Minister for exemption. Then the Minister could grant them authority to apply to the court, and on their paying a deposit they would get registration by virtue of their exemption by the Minister. That is the object of that particular provision.

2357. By Mr. WATTS: Which clause is that in—

2358. Clause 393 (d) in Clause 393 "share-dealer" is defined.

2359. The clause I was looking for is the one giving authority to the Minister.—It is authority to the Governor.

2360. That brings me to my difficulty. The definition of "share-dealer" would then not include the persons, or would it include the persons, to whom Mr. Thomson referred? The Ministry is only authorised on the application of a shareholder. "Share-dealer" means any person who carries on the business of selling the shares of companies as broker or agent. Mr. Thomson's friends surely were not carrying on any business or doing anything which they would not be entitled to do according to the definition of "share-dealer."
2371. By Hon. A. THOMSON: Would it be possible to frame a provision that the premium of the bond would automatically increase proportionately to the increased volume of business transacted by the individual?—That is a matter respecting which you would have to seek information from the insurance companies, which generally issue these bonds. The variation in premium is involved in the matter.

2372. I had in mind the position under the Workers' Compensation Act whereby a person takes out a comprehensive policy and the premia paid are based on the amount of wages actually disbursed?—That is the basis of assessment and is worked on a declaration, but there is no such thing in this instance.

2373. I have in mind some provision that will give the small holder a chance?—That difficulty is being experienced to some extent in connection with the proposed third-party motor insurance. The difficulty is to get down to what may be accepted as a reasonable premium to cover the amount of liability that owners will incur in respect of third-party risks. In the legislation that was presented to Parliament during the last two sessions it was not possible to produce such a provision through a committee who would regulate the premiums paid, but it is considered impossible at the present moment to get down to a reasonable premium to cover all the risks. However, it would be a matter for discussion with the insurance companies; I cannot say.

2374. By Hon. G. FRASER: The weakness of Mr. Thomson's suggestion regarding automatic increases is that the share-dealer would have already done the business. Why in the necessity for the bond being increased would be removed?—The amount of bond would not necessarily increase in proportion to the increased volume of the individual's business. The idea of a deposit is partly to ensure that other than men of straw shall obtain registration, and partly to provide a sort of indemnity fund out of which people may be reimbursed, in whole or in part, the amount they have suffered through the wrongdoing of a share-broker.

2375. By Hon. H. SEDDON: Would the individual have to put up the £300 you suggest in cash or by way of a bond?—That is a matter to be determined in the Bill or by way of regulation, whichever is desired. As a rule, rather than require an individual to put up the actual cash, a bond is usually accepted from an approved surety, generally an insurance company or a bank. Concerning the ability to put up a bond here, there is no doubt. A bond would not be accepted from a man of straw.

2376. No, but I am looking at the matter in this way: Where it may be able to be done, if the payment of an annual premium whereas if he had to find £300 in cash it would be a totally different matter?—In practice, particularly in relation to land and estates, acreages are put up by bond and not actual cash. A man may be able to secure a bond by the way of a surety, and this is the idea of the provision. The general provision to cover such matters refers to 'cash or other approved surety.' That applies to recognisances taken in the police court. Sometimes an approved surety is accepted in lieu of cash.

2377. Regarding the attitude of the Stock Exchange, the objects in path or any other surety, is it to be that the Stock Exchange would then have a monopoly?—Yes.

2378. The provision for approved authorized dealers may be modified for in to whom the Stock Exchange has refused registration, as a sort of appeal against the decision of the Exchange?—Personally I regard that as a roundabout way of dealing with the matter. The fairer method would be to grant members of the Stock Exchange pro forma registration rather than to say that everyone who was admitted to the Stock Exchange should be entitled to sell the shares and not have the unnecessary expense of registering a person who would be thoroughly reputable persons in respect of whom there would be no necessity to exact the deposit.

2379. The attitude adopted by the Stock Exchange is that the members of that body have to maintain an establishment all the year round, a considerable expense, and they claim that in times of boom other people desire to come in and take advantage of the situation, which they regard as unfair. They claim they are entitled to protection against that class of person who is, as it were, merely a bird of passage taking advantage of temporariness. Is there any great objection to that as a matter of principle?

2380. Only that the latter class is more likely to fleece the public and £300 would not stop that?—It is not sufficiently that they shall put up £300; they have to satisfy the court as to their integrity and have to secure an order of the court before they can be registered. It is open to anyone to appear in court and say that such and such a person should not be registered, because he is not a suitable person to carry on that class of business.

2381. Take the position of Mr. Barker: In the early stages of the game he might have been able to secure registration?—Anyone knowing anything about Mr. Barker could have opposed any application made for registration.

2382. By Mr. ABBOTT: You cannot provide for every contingency?—No, but the court, under its rules, requires certain information to be provided by applicants. Speaking from memory, I think there is a provision enabling the court to make rules and regulations about such matters and it will require the applicant to furnish particulars deemed necessary. The object is that as far as possible that the right type of man is registered. You cannot provide for everything in an Act, but as far as is possible that is done by way of the rules of the court.

2383. By Hon. H. SEDDON: I think the authorisation of persons outside members of the Stock Exchange should be made difficult, but, on the other hand, I cannot see the necessity for any monopoly for the Exchange—Yes. We suggest we are here providing for a sort of monopoly that we can, and yet not too rigid, by the system I propose. It can be proved only in practice. Practice will show where the faults lie and they can be corrected. I have in mind that the court will lay down rules with respect to applications by persons to the court for an order. By those rules many possible loopholes may be closed.

2384. By Mr. RODGERDA: Why have you provided for the registration of the three classes of share brokers, that is, two outside the members of the Stock Exchange; one of these two classes must put up a deposit, and the other not?—I had in mind persons such as those mentioned by Mr. Thomson, men who would not be engaging permanently in the business of share-brokering, that is, two outside the members of the Stock Exchange, one of these two classes must put up a deposit, and the other not?—I had in mind persons such as those mentioned by Mr. Thomson, men who would not be engaging permanently in the business of share-brokering, but who might be destroyers of shares and would not be reputable people. I thought it wise to include a provision to cover that class of case.

2385. In that event, do you think it wise to limit the provision to the case of one particular class of share-dealer?—I think it would be difficult to provide for that limitation in the Act, but I see no reason why it should not be provided for in regulations.

2386. It seems undue discrimination to exact £300 from one class only?—The exempted men would be those acting more or less temporarily for a particular company; whereas the others would be required to carry on share-dealing as their ordinary business.

2387. In relation to this division of the Bill, the drafting seems complicated; I took a couple of hours to digest it and make annotations?—I am not surprised.
2388. Do you think if you were given time that you could simplify this division of the Bill? That is quite possible, because I do not now have an opportunity to submit or review the Bill. I drafted it between the end of April and October, and, beyond checking it for typographical errors during a period when I was recovering from a fortnight's illness, I have not had an opportunity to revise it. No doubt the division could be simplified if it were revised, and if it were examined in the time which was required. There is a suggested amendment to Sub-clause (1) of Clause 397 dealing with the manner in which deposits paid by share-dealers to the Treasurer may be withdrawn. The suggestion in the amendment is that instead of this being left to regulation it should be fixed by the Act. I do not agree. I do not consider it in the provisions relating to deposits with the Treasurer should be set out in the Act as it would make the clause too rigid. The circumstances under which deposits may be withdrawn may be numerous and various, and regulations can be remodelled to cover those cases, whereas very often the Act cannot be remodelled. The matter is one of policy, but I think that the procedure should be governed by regulations. I agree with Mr. Boydon's suggestion that to enable the Registrar to keep his records up to date a provision should be inserted in Clause 398 requiring the Governor to notify the Registrar of any appointments or cessations of registered share-dealers. With regard to Clause 413 the suggestion made by the Stock Exchange does not involve any question of law; it is a matter of policy. I do not understand the reference made by Mr. Lamb and Mr. Saw. This is only a saving provision as regards companies relating to the time this Act comes into operation. The suggestion is that the following be added to subparagraph (ii) of paragraph (b)—"without increasing its total borrowing or indebtedness as at the passing of this Bill or at any subsequent date." As it stands the clause is merely saving. They want to provide for the limitation to be carried forward to subsequent sets of the company.

2389. By Hon. H. SEDDON: Is that desirable? It is a matter of policy, and I am not prepared to offer an opinion.

2390. By Mr. RODIN: The amendment means that the present conditions would continue indefinitely without any limitation being placed on them? They are not committing an offence. Within three years they have to put themselves right with the Act. In the meantime they will not be committing an offence if they are doing these things.

2391. If we agree to the amendment they will be allowed to carry on for all time as at present—No, up to three years. I do not understand the purport of their suggestion if they want to carry it as a substantive provision in the Act governing all future actions. I would be inclined to leave the clause as it stands.

2392. By Hon. H. SEDDON: Do you think it would be an emergency in which an investment company might participate in the underwriting of the issue of securities by another company. They might exceed the 10 per cent. minimum provided in the Act? But this clause will not authorise them to do anything after the Act comes into operation which is unlawful, but will merely protect them for three years in respect of what they have done and what it would not be possible to do afterwards.

2393. Quite so, but in the Bill as now before us they are prohibited from holding more than 10 per cent. of the securities of more than one company—Yes.

2394. Suppose there were an underwriting proposition by a company, do you think it would be wise to vary the 10 per cent. to enable them to participate in such underwriting, or is it better to leave the clause as it is? I think it is better to leave the clause as it is.

2395. These clauses are taken directly from the Victorian Act and, so far as I know, Victoria has not seen fit to make any alteration yet. Presumably, therefore, the provisions as they stand are proving satisfactory in practice of the Victorian Act and, so far as I know, Victoria has not seen fit to make any alteration yet. Presumably, therefore, the provisions as they stand are proving satisfactory in practice of the Victorian Act. I would prefer to follow the experience of Victoria.

2396. By Hon. L. CRAIG: You do not like the suggestion of the Stock Exchange? No. To my knowledge there are no Underwriting Companies in Western Australia or in any other part of Australia at present that this provision would affect. It is only a saving provision with regard to borrowing transactions of companies existing at the time the measure comes into operation.

2397. By the CHAIRMAN: Really it will not have any effect in Western Australia?—Not unless there are companies existing at present of which I have no knowledge.
be at liberty, as would anyone else, to move the court to set aside its order to avert liability:

"-He would have only the evidence before the court, or whatever authority had set the matter of recovery, to justify the order. It is more correct that the suggestion made by the Law Society that the clause should be amended, in the manner of the clause represents a matter of policy.

Clause 426: The suggestion of Mr. Bedford that Sub-clause (1) be amended by inserting after the words "body corporate" the words "or any director or employee thereof" is a matter of policy, but is perhaps desirable. The suggestion that Sub-clause (2) be amended by adding a similar proviso to that suggested for Clause 193, and that fees payable by registered auditors and liquidators should be on registration only, and not annually, are matters of policy. I do not agree that Sub-clause (3) should be amended in the manner suggested by Mr. Bedford.

By Hon. H. SEDDON: What is your objection to Mr. Bedford's suggestion? He wants a man to have been in actual practice on his own behalf as a public accountant. That is an essential we have not provided for. I do not know that you can require that a man should have been in practice himself as an accountant before he can be qualified to become an auditor.

His argument is that a young man may become a public accountant, but that until he has been in practice for some time he is not competent to carry out the work. The same thing might apply to the medical or legal profession. It may be said that until those young men have had some practice they do not know the function of an auditor. That young men who have taken their accountancy examinations have in a sense been working under articles. They have been in some employment where they can get actual practice while carrying on their studies. Personally, I think his suggestion to make one of the conditions precedent to appointment or registration, that the man must have practised for himself as well as having all the other attributes, is not the right thing, and that is why I say I do not agree with the proposal.

2106. By Hon. L. CRAIG: A man might be in practice and not competent, whereas another man employed by a firm of accountants might be highly competent.—Yes.

2407. By the CHAIRMAN: But until a man got into practice, his knowledge would be very limited.—That is so. I think Mr. Merry's suggestion narrows the matter down too much.

2408. I know of accountants who have passed all their examinations, but who, because of want of practical experience, would be almost useless in such circumstances?—The court would take that into consideration in the case of applicants.

Clause 428: The clause might be amended in the manner suggested by Mr. Davies to enable authority to make a rule for such a matter as failure by a registered auditor to maintain his bond.

Clause 429: I agree that the word "registered" should be inserted before the word "letter" in the last line.

Clause 430: I do not agree with the contention of Mr. Davies that this clause would be more appropriately incorporated in Clause 204, Clause 240 deals with the provisions for the audit of a Liquidator's account. Clause 401 deals with the matter of a company wound up by or under the liquidation of the court, or voluntarily not having sufficient assets, the court must be in possession of opinion whether the provision would be better placed in conjunction with Clause 226. However, it comes under the subheading of 'Miscellaneous,' where I consider it is more correctly placed. However, that is purely a matter of opinion.

Clause 490: This provision was copied from the South Australian Act. It relates to proceeding in a local court against a company. The Australian Act imposes a limitation of £50. I would not suggest increasing the amount. Although the local court has power to deal with claims up to £500, actually, when in excess of £100, claims have to be heard by a judge of the Supreme Court.

2409. By Mr. ABBOTT: What do you think of the provision as a whole? I think it is a simple and expeditious manner of recovering a simple debt by means of a judgment process. By the judgment process under the Local Courts Act the court works from the basis that the debtor is committing a contempt of court by failing to satisfy the judgment made against him; and provided that the judgment creditor can prove that the defendant has at some time since the judgment had the means to pay, the court will impose an order for imprisonment against the debtor, but will direct that the imprisonment order be suspended while the debtor makes payment by instalments. The idea of the clause is to adopt that method of procedure in relation to simple debts owing by a company against whom the judgment has been obtained, and if by summoning the manager or director or some other officer of the company you can obtain evidence that the company has had the means to pay, you can get the necessary order compelling satisfaction of that debt, except that of course the individual whom you cannot be imprisoned. However, I think it might be an effective method of recovering quickly simple debts owing by a company; and for that reason perhaps it is desirable to have it in the Bill. If it is not going to be very effective, of course judgment creditors will not avail themselves of it; but it is there to be availed of if it is of any advantage. It is not going to create any hardship against companies, and it may conceivably well operate for the benefit of private creditors to whom companies are owing simple debts. The provision is there as a process for recovery, and I would think it is worth while to have it there. If there is a desire to increase the amount of the jurisdiction beyond £50, there is no objection to that as far as I see, either in law or as a matter of policy. I would be in favour of having it down to £100 which is the ordinary jurisdiction of the local court.

Clause 442: Transfer to avoid liability: I agree with the suggestion made by the Law Society that the clause be amended to throw the same upon the former share-
holder of satisfying the requirements of the section, but in recent years Parliament has opposed such provisions in Acts of Parliament. There are many cases where the plaintiff is put into a practically impossible position because he cannot prove the essentials which are easily rebuttable by the defendant. We have the situation throwing the burden on the defendant of proving the negative rather than compelling the plaintiff to prove the positive, when the plaintiff is often in an impossible position and cannot do so. If the suggestion can be put through I will agree with it.

Clause 444. Penalty on company publishing misleading statements: There is no objection to the operation of the section being extended to any statement made by foreign companies in this State. That was the suggestion made by Mr. Jackson on behalf of the Chamber of Mines. I agree with the suggestion.

Clause 451. Hearing of applications: This provides that any application to the court not heard by a judge or a Master in Chambers shall in the first instance be heard by a single judge. That does not affect the hearing of applications in chambers, but it does prevent the matter going to the Full Court in the first instance.

342. Would not that matter be dealt with in the Supreme Court rules as well?—Yes, Second Schedule: The suggestion made by Mr. Forbes was that Table A be amended to give power to the court to delegate the right to operate on banking accounts. That is a matter of policy. I agree that Tables A and B require amendment in the manner suggested by Mr. Miller. In Article 19 substitute the word "proprietary" for the word "court" to conform with Clause 128 of the Bill. Article 17, Table B, requires the same amendment. These will bring the articles in the schedules into conformity with Clause 128. Third Schedule: The words "directed by shareholding" require to be struck out from the heading to the schedule, as suggested by Mr. Forbes and as amended in the South Australian Act of 1939. I also agree that the authority to be included in Article 5, schedule 6A, Fourth Schedule: I do not agree with the suggestion made by Mr. Miller that the word "proprietary" be deleted as regards addresses and addresses of vendors of property. I see no objection to the amendment suggested by Mr. Merry being adopted. As I remarked earlier in my evidence, the term "proprietary" is a definite legal connotation, and I do not think we should interfere with it any more than we can help. Tenth Schedule: The question of fees is a matter of policy. I would prefer to leave the fixing of fees to the Registrar of Companies. I would direct the Registrar to express an opinion of his own.

Eleventh Schedule: In paragraph 22 at the commencement of line 5, the word "fee" should be substituted for the word "or." This is merely a typing error.

That concludes my references to the special clauses of the Bill. There are some general matters that call for some observations. Section 13 of the South Australian amending Act of 1930 inserted a new Section 158A after Section 158 of the South Australian Act, which corresponds to Clause 103 of our Bill. This new South Australian section provides for a special inspection of companies' affairs at the instance of the Attorney-General on a report from the Commissioner of Police. I think this is very desirable and therefore consider that a new clause in the Act Clause 158A, to be inserted after Clause 158. I take it that in inserting in our Bill provisions relating to private companies similar to those included in the South Australian Act, you had in view that there would be a demand for the type of company solely concerned with a few individual shareholders, and that such a company should be as free as possible from restrictions such as are imposed upon public companies?—Yes. Possibly there will be a desire to secure that result and we must provide for them, as far as possible, reasonable relaxation from the hard administrative control exercised over public companies. I have re-examined the South Australian Act and I find that the provisions dealing with matters of policy and upon which others can speak more effectively than I can, are:

1. Advisability of a compulsory local director for all companies.
2. Compulsory for foreign companies to hold meetings in Western Australia.
3. Amount of stamp duty chargeable on shares.
5. Inquiries of owners of shares.

Mr. Forbes suggested that a provision similar to Section 346 of the South Wales Act be incorporated for the purpose of validating certain...
schemes. Personally I think this should be the subject of separate legislation to embrace other corporate bodies as well as companies. Suggestions were made that a new clause be included in Part XV of the Bill permitting the Registrar to extend the time fixed by the measure for the doing of any matter or thing, for a period not exceeding three months. Personally I think this matter of extending times should be one for the court and not for the Registrar. Under the Bills of Sale Act we have regulations providing for the extension of time in respect of which orders have to be obtained from the court. It is far better for the court to control such matters than for the Registrar, who is the registering authority, to do so.

2418. By the CHAIRMAN: Will the court have that power under this Bill?—I think the Bill contains specific clauses providing that the time may be extended by order of the court.

2419. By Mr. ABBOTT: Dealing with Mr. Forbes’ suggestion with regard to pensions, your remark related more to a matter of policy, rather than to any question of a legal difficulty?—Yes.

2420. If such a section were inserted in the Bill, there would be no objection left to bringing in a general Bill dealing with pensions?—There may be pension schemes initiated by the general managers of other types of companies; and if there is necessity for validation, surely they could be listed in a schedule and a short Act passed validating all the pension schemes set out in the schedule.

2421. The difficulty is, so far as I can see, that no provision is made for future pension schemes?—All these suggestions to validate the present pension schemes were met.

2422. I do not think that was Mr. Forbes’ suggestion?—That was my note. Surely a company can, by its memorandum, make provision for pension schemes.

2423. No. The difficulty is the law against perpetuities?—Mortmain?

2424. Yes?—I understand. It may be advisable and even desirable to insert some such provision. I have not made any other observations on the point, except that I have in mind a measure to provide pensions for all companies.

2425. The suggestion was not to validate past pension schemes, but to enable pension schemes to be inaugurated in the future?—Perhaps that might be desirable.

2426. By Mr. WATTS: Do you see any legal objection to a provision making it compulsory for foreign companies to hold meetings in Western Australia?—No.

2427. By Mr. ABBOTT: The only method of control would be to register the company if it did not hold the meetings here?—Yes.

2428. By Hon. L. CRAIG: What would be the object of a foreign company holding meetings in Western Australia if only three per cent., or five per cent., of the shareholders were resident in Western Australia?—I do not know, but I cannot see any legal objection to making foreign companies do so if for any reason it is desirable.

2429. By Hon. A. THOMSON: Suppose a company is registered in Western Australia as an offshoot of a foreign company in Victoria or New South Wales, possibly a third of the shares in that company may be actually sold in Western Australia. Notwithstanding that company is registered in Western Australia, its meetings are held at the head office. The Western Australian shareholders receive notice that a meeting will be held at such and such a place in Sydney on such and such a date. If the Western Australian shareholders are unable to attend, they are requested to sign a proxy. A form of proxy. The success or failure of the company may depend upon the support given to the company by the Western Australian shareholders, yet that company is registered in Sydney?—That may be a very good reason, as a matter of policy, for making statutory provision that such a foreign company shall hold its meetings in Western Australia. If that is desirable as a matter of policy, there is no legal objection to making provision for it.

2430. I will give you an instance which I feel keenly about the matter. I am personally interested in it. A certain company is registered in Western Australia and a number of the shareholders desire that the meetings of the company shall be held here. After a considerable amount of discussion, the company eventually visited Western Australia and attended a meeting, at which the local shareholders were well represented. They passed a resolution that a local director should be appointed by the shareholders and that meetings should be held of the Western Australian company in this State. Despite the fact that the resolution was carried unanimously by the shareholders present, they were politely told that it would have no effect and that the general manager would not even bother to put it before his directors. It is perhaps for that reason that we should make statutory provision for meetings to be held in Western Australia.

2431. The local shareholders did not constitute a majority of the shareholders, but the position is that at least one-third of the shares, probably one-half, are held by members of the parent company; the shares did not vest those shareholders anything, but the Western Australian shareholders subscribed for their shares in cash. My desire is that minority shareholders should have some protection against the fact that we are now altering the law, some provision should be made in this Bill?—It is possible to include anything you like in the Bill, but the question is whether it is practicable or practicable in the Bill. As to that, I am not prepared to express an opinion; but so far as the legal aspect is concerned, there is no objection whatever to inserting a provision in the Bill making it compulsory for foreign companies to hold meetings in Western Australia. It may be necessary, if such a provision is put into the Bill, to go perhaps further and say under what circumstances these meetings in Western Australia shall be held and what effect resolutions carried at these meetings will have.

2432. By Hon. G. FRASER: Such a provision is necessary in view of what Mr. Thomson has said?—It is a matter that would have to be considered by persons more closely connected with company administration than I am.

2433. By Hon. A. THOMSON: Where the earning capacity of a company depends entirely upon people in Western Australia, then, notwithstanding the majority of the shares may be held by persons in the Eastern States, it is desirable that meetings of the company should be held in Western Australia; the local shareholders may desire to ask particular questions. What hope have Western Australian shareholders of getting information unless they go to the expense of travelling to the Eastern States? It may be many reasons which would justify the requirements of foreign company to hold meetings here and there may be means by which such meetings could be made effective. I cannot say that myself, but I can say that it would be possible to frame a provision making it compulsory for foreign companies to hold meetings in Western Australia. There is no legal objection to inserting it. A company under the Bill?

2434. You say it is a matter of policy; policy for whom?—When I use that expression I desire to convey that it is a matter not necessarily of any legal involvement or legal principle, but a matter pertinent to the administration of a company. There are others who are dealing with the administration of company law in actual practice who know more about these aspects of the matter than I do, and I would prefer their views to be taken on these matters rather than mine, because they have greater knowledge and experience than I, and are, therefore, more competent to express an opinion. If they think that as a matter of policy, it is desirable, I would not venture to contradict them. I am only concerned to tell the Committee whether or not, assuming that provision was inserted in the Bill, there would be any legal objection to it.

2435. I contend that if a company is registered under the Western Australian Act, it should have its meetings in this State. If it is registered in New South Wales or Victoria, we have no say in the matter. We have no power at the present stage to compel foreign companies registered under the Western Australian Act to hold meetings here.—No.

2436. Does not that seem a slight weakness?—It may be, but I would not say it is the only remaining matter to which I wish to refer is the suggestion to incor-
corporate in the Bill the provisions of the New South Wales Companies Act Amendment Act, 1894, which provides for the insertion in the New South Wales Companies Act, 1888, of an additional Part VI, containing provisions under which a foreign company, instead of merely becoming registered in New South Wales as a foreign company and still retaining its incorporation in the other country or State in which it was originally incorporated, may transfer its said incorporation from such other country or State to New South Wales whereupon for all purposes of the New South Wales Act it will not be a foreign company but a company incorporated in New South Wales. I cannot see any necessity at present for the inclusion of these provisions in our Bill, since it is hardly likely that companies incorporated elsewhere will even consider the matter of abandoning their original incorporation in order to become purely local companies. I think the New South Wales Act is intended to benefit those companies which are incorporated say in England or any other country involved in the present disturbed condition of the world, and which may see the advisability of abandoning their incorporation in England and transferring it to Australia, coming into the Commonwealth at all intents and purposes as a company incorporated in one of the Australian States. If that be so, they would transfer their incorporation from England to New South Wales or any other State that makes the necessary provision for it. If the Select Committee thinks it desirable to make a similar provision in our Bill, there is no objection to it, so far as I can see, though I think at the present time it is hardly likely to be necessary and I do not want to load the Bill with any more extra provisions at this stage than we find to be absolutely necessary.

2437. By the CHAIRMAN: Do you not think it would be wise to have provisions? Take our mining industry. Consider the Great Boulder. It may be. That is a consideration that did not appeal to me.

2438. We would have no provision unless it were made in this Bill—that is so. That aspect had not occurred to me. It may be a reason for justifying the inclusion of these provisions in the Bill.

2439. By Mr. WATTS: Would you be good enough to explain the exact position of existing companies if and when this Bill comes into operation? At the present time, they are operating under the Companies Act, 1893, and hereafter it appears they will operate under the provisions of this Bill. It has been represented to me that there may be certain things in the articles of association of certain companies which this Act is liable to render improper. Will they be obliged to amend their articles of association? In such a case, will there be able to carry on under them? Is not the answer to the question contained in Clause 4 of the Bill which reads:

4. (1) The Acts mentioned in the First Schedule to this Act are hereby repealed, provided that such repeal shall not affect—

(a) The incorporation of any company registered before the commencement of this Act; or

(b) Table "A" in the Second Schedule to the Companies Act, 1893, or any part thereof (either as originally contained in that schedule or as altered in pursuance of the provisions of that Act), so far as the same applies to any existing company.

2439A. The alteration there referred to is the alteration by the company itself to suit its own circumstances?

Yes. Paragraph (c) indicates other things, which such repeal shall not affect.

2) The mention of particular matters in this section, or in any other section of this Act, shall not affect the general application of the Interpretation Act, 1815, to the repeals effected by this Act, except where the said Act is inconsistent with this Act.

The Interpretation Act preserves continuing matters to continue.

(3) The repeal effected by this section shall not affect any of the provisions of the Mining Companies Act, 1888, relating to the winding up of companies already registered thereunder, except to the extent to which the same relates to the winding up of no liability companies registered under the said Act and not under liquidation at the coming into operation of this Act.

Subject to Clauses 1 and 7, except as to Part VIII, there are saving provisions in Clause 5 of the Bill. The existing companies are adequately protected by specific clauses in the Bill.

2440. By Mr. ABBOTT: Will they be able to carry on as in the past?—Except insofar as this Act requires companies to furnish returns they do not have to file now.

2441. In other words, the Registrar will be bound to say whether, on perusal of their articles, they are private, proprietary or public companies?—That is so.

2442. He will say, "You are a private, a proprietary or a public company," and demand the necessary compliance with the provisions of the Act?—Yes.

2443. By Mr. WATTS: And if they do not apply within six months, they are to be deemed to be public companies. Is that not so?—Yes.

2444. The alteration will be in their hands under Clause 10?—Yes.

2445. Then, in that case, if they apply to be changed to private or proprietary companies, they have to satisfy the Registrar that their articles and so forth are in accordance with the measure?—That is so.

The CHAIRMAN: I have received the following communication from Mr. E. S. Sow, Secretary of the Chamber of Commerce:

31st March, 1941.

Accounts—Clause 147 (2): My Chamber's attention has been drawn to Clause 147 (2), line 22, which sets out that the "Books of account shall be open for the inspection of members of the company during the hours of business of the company." This clause is the same as the W.A. Companies Act, 1893, Section 42, and therefore no comment was made upon it by the writer as representative of the Chamber when tendering evidence before the Committee. Since then, however, my members have noted that the South Australian Companies Act, Section 141 (2) and the Victorian Companies Act, Section 120 (3), state:

"The books of account shall be kept at the registered office of the company, or at such other place as the Directors think fit, and shall at all times be open to inspection by the Directors."

I now respectfully suggest that Subsection (2), Clause 141 of the South Australian Act be substituted, as it is more satisfactorily worded, in view of the varying requirements of different businesses. The substitution of this subsection should also protect companies against undue disclosures of their private records.

The Committee adjourned.

WEDNESDAY, 23rd APRIL, 1941.

Present:
Hon. E. Nusen, M.L.A., Chairman,
A. V. R. Abbott, Esq., M.L.A.,
Hon. J. Craig, M.L.C.,
Hon. G. Fraser, M.L.C.,
A. F. Watts, Esq., M.L.C.,
ALEXANDER GEORGE HERBERT BRISKHAM, Registrar of Companies, South Australia, examined:

2446. By the CHAIRMAN: We welcome you to this sitting of the committee and are very pleased that you have been able to attend. On behalf of the committee I tender you our sincere thanks for your assistance in helping us to frame a Bill that we hope will be as efficient as the South Australian Act is, I understand you have prepared a statement?—Thank you, Mr. Chairman. I have prepared a statement and will read it a paragraph at a time.
It is assumed that the memorandum required is a full outline of the drafting and administration of the present Act as compared with the Act of 1892, which was similar to the present Western Australian Act. To detail each and every change brought about by the new Act would make a very lengthy memorandum, so I have confined myself to the headings covering the most important changes with my comments as to how these changes affected the working and administration of the Act in this office.

Provision for private and proprietary companies:—The original draft of the Act provided for proprietary companies only. When it was realised that certain companies which were of a private nature could not conform under the new Act to a proprietary company, it was decided that provision for private companies be included in the Act; also that the proprietary companies would not be prevented from obtaining benefit under the new Act which proprietary companies would have.

The provisions relating to proprietary companies were retained in the Act mainly to bring it in line with other State Acts. I see no good reason for changing the proprietary provisions, although, except for the use of the word "proprietary," a company incorporated as a private company has less restrictions imposed upon it.

From the outset numerous companies took advantage of the provisions which would class them as private, and of course private companies are now the most popular. Many partners and partnerships became companies, and the companies which were formed in different States, with which there were no restrictions upon them, were formed in order that they could become partners and partnerships with limited liability, and in consequence could more readily dispose of their shares than was the case when they were firms. On the other hand, the leading is protected by his right to place a receiver in to satisfy his loan, in the event of any default being made by the mortgagee in complying with the conditions of the charge given as security.

This led to an extension of trade within the State, with its ultimate benefit to all.

Under the National Security Regulations it is very different to obtain extra capital or even to incorporate a company. The result is that in South Australia capital is being obtained by way of deposit.

2447. By Hon. L. CRAIG: By way of loan.—Yes. If you exclude the private company, you will prevent the proprietary company getting money outside of its members. I see no reason why you should not retain the provisions as they are at the moment. They cannot do harm, and must do good. Let both kinds of company be covered. I find in practice that for every ten private companies formed only one proprietary company is formed. There is another reason why I suggest that you retain the provisions that the proprietary company, Big interstate companies wish to form branches in the various States, and to incorporate separate companies. They become the holding companies and like to make their proprietary companies. In the Eastern States they have not got what we know as private companies. I do not know your conditions here, but these are the conditions in South Australia.

I now make my statement:

Extension of provisions covering prospectuses:—These provisions have been vital to the community in that they have had a very salutary effect upon undesirable company promoters. A further protection has been the section whereby application moneys are now considered trust moneys with a penalty for default up to £100.

I understand that this State is not the happy hunting ground for the unscrupulous company promoter as has been the case in South Australia.

2448. By Hon. G. FRASER: We are too poor here!—The provisions of which I speak have put a stop to that kind of business, with which I am scared of them. All kinds of information are handed to me from the other States concerning our State. People think we are terrible in Adelaide, but really they do not give them a fair deal there. I look upon this provision of the Act as one of the best provisions we have passed so far. It definitely has helped the people I am out must to protect, the widow and the spinster, who unfortunately in the past have been victims of this type of men. My attitude towards my own sex is that it is men's own fault if they are taken down, but I do think that a woman is not one of her men to put up a strong proof against these men. I may say that I was the sole Royal Commissioner in the inquiry into the MacArthur Trust Companies; so I know something about this.

2449. By Mr. RODORBA: Do you think that any of these provisions covering prospectuses are specially odious? Do you think they impose undue hardship on companies?—No.

2450. By Hon. L. CRAIG: Are you now speaking of public companies only or of all companies?—All companies.

2451. Private companies, too?—Yes, everything.

2452. By allotments do you mean transfers of shares?—No.

2453. Only the original allotments?—Yes. We are not interested in transfers at all.

2454. The share list changes as shareholdings change through sales, and so the man coming to search could not get a complete list at the time?—No; but he would get the actual number of shares instead. Who owns the shares does not matter in the majority of cases.

Power to issue redeemable preference shares. I think it is a dangerous provision. It is a very nice position if one can get people to subscribe for shares in a company at a certain fixed rate, which shares the company, when it makes sufficient profits, can redeem, and not have them hanging round its neck forever.

2455. That makes such preference shares like debentures?—More or less, except that there is not the same security as in the case of debentures.

2456. And therefore people would not subscribe for such preference shares. I think it is a dangerous provision?—It has not received any unfavourable comment in South Australia since its introduction in 1924.

2457. One might issue a £50,000 company with £25,000 in preference shares and the rest in ordinary shares. If the company is not successful, the shareholders get no dividend in any case, though they lose their capital in the same way as the ordinary shareholders. If the company is successful, the ordinary shareholders will say, "Let us pay off the preference shares, and then we own the company." They simply pay off the other people who helped to build up the company. The system has its dangers?—Quite so.

2458. The poor old preference shareholder, who as a rule takes a lower rate of return because he gets preference, is only protected against loss if the company is unsuccessful, and if it is successful, the ordinary shareholders buy him out?—Yes. I see your point there.

2459. By the CHAIRMAN: Would it be possible for preference shares to be converted into ordinary shares, or the other way round?—It has been done especially where preference dividends have been long in arrear.
2460. If the company were successful, that would be all right in the interests of preference shareholders—I think you should retain the provision in the Bill in case you want it. It certainly cannot do any harm. To resume my statement—

Provisions to cover filings or mortgages, charges, etc.: With certain additions, the Act now embodies the 1924 Act providing for the registration of mortgages and charges.

2461. By Hon. L. CRAIG: The suggestion has been advanced here that all clauses dealing with bills of sale should be taken out of the Companies Bill—The trouble involved is one of administration.

2462. Why should not the Bills of Sale Office handle that business?—All provisions of that description should form part of the work of the Companies Office. When it is a matter of search, the public should then go to one office and find out all that is to be ascertained about any company.

2463. Under your scheme, the office would deal with people as well as with companies?—Yes.

2464. If you did away with the Bills of Sale Office, you would not only be the Registrar of Companies but you would deal with bills of sale as well, whether they concerned an individual, a partnership or a company?—Yes.

2465. What we had in mind was that individuals, companies or anyone else would deal with bills of sale through the Bills of Sale Office, and any provisions in the Companies Act affecting the position should apply to the Bills of Sale Act in that regard?—Under those conditions, two searches would have to be made, one at the Companies Office and one at the Bills of Sale Office. Suppose a man has to report on the affairs of a company, including its powers, the powers of the directors, its issue of capital, mortgages, and so on, the man has to go to two offices to get the necessary information. That was the idea underlying the South Australian Companies Charges and Mortgages Act, of 1924. The particular object was to bring that work under one administration.

2466. It seems to me that you duplicate the Bills of Sale Act in the Companies Act?—Certainly not the whole of it, but perhaps some of it.

2467. By Hon. A. THOMSON: At any rate, you seem to think it would make for economy if the work were under one administration?—I do. Of course, I do not know what conditions obtain in your State.

2468. By the CHAIRMAN: Our Bills of Sale Office is under the same administration and under the same roof as our Companies Office—That may not be so bad. To continue my statement—

Restriction on commencement of business (public companies): A public company cannot now commence business unless certain conditions are complied with; minimum subscription must be reached; directors must have taken up qualifications; and shares and a statutory declaration filed. This removes the old position with regard to what I may term "crook" companies, which were formed with just a few shareholders, and a lot of propaganda literature got out with the object of gulling the public. Out they went to dispose of the shares, and by the time we were aware of the position, all the trouble had been done and those responsible had left the State. Now they cannot do anything unless they secure my certificate to enable them to commence business. They can form a company, but cannot do much more.

2469. Do the same conditions apply to a private company as to a public company?—No, that applies only to public companies, those that have to go to the public for their capital.

2470. By Hon. A. THOMSON: Does your statement mean that a director must actually have taken up the number of shares necessary to earn him to be a director?—Yes, he must do that. Passing on to my statement—

Annual returns: This now replaces the annual list and summary and makes the balance sheet and profit and loss account. The return has proved of invaluable value both from the point of view of the public and in the administration in the Registrar's Office. Any alteration in the following year may be checked and certified if they do not agree with the documents filed:—

Alterations in capital, allotment of shares, registered office, auditor (whether licensed or not), directors, mortgages and charges, holding of the annual meeting, etc., etc. You will notice that we altered our date from the 31st March to the 30th September. That was done to suit the commercial community, and also to secure better information of the condition of the year. The majority of our companies in South Australia work with a financial year ending on the 30th June. If returns had to be filed on the 31st March, they would probably represent the period from the 1st January to the 31st March. On the other hand, if returns are filed at the end of September, they will include accounts completely up-to-date. By the time accounts are audited, the information required is generally ready.

2471. Was that the reason for the change?—It was one of the reasons. Then again, the Chamber of Commerce asked for the filing period to coincide with the time for taxation returns from companies. The Chamber of Commerce thought it would be helpful if the annual returns and the taxation returns could be prepared together, because all the information would be then available.

2472. By the CHAIRMAN: That is a distinct advantage?—Yes.

Statutory meeting and statutory report: All companies must hold statutory meeting and prepare report within a certain time. Public companies must file such report and send copies to shareholders. This provision provides you with a further safeguard to the investing public and a further check on the activities of companies generally.

Under the old system, a company could be formed and shares could be subscribed for; but the company would probably not hold a meeting for 18 months or even a year and nine months. Nobody would know anything about the company except the promoters. Under this provision a meeting must be called on the 3rd month of the incorporation of the company; that is the limit. The directors must make a statement before that meeting showing what has been done. Any preliminary contract made between the company and any other person or between the directors and any other person can be varied only at that meeting. The provision is a most important one.

2473. By Hon. A. THOMSON: It would be possible for the directors to get a rake-off?—Yes.

2474. Or those interested in promoting the company might get a rake-off?—Yes.

2475. By the CHAIRMAN: It gives the public greater protection?—Yes. The provision covers all companies, including private and proprietary.

 Provision for keeping books and accounts and form of balance sheet: These provisions, together with additional audit provisions, have resulted in companies keeping to a more or less orthodox system of bookkeeping which in the past has been sadly neglected in many cases.

2476. By Hon. A. THOMSON: Some objection has been raised to what has been termed a standardised balance sheet; have you had any difficulty in that respect in your State?—No. My inspectors have now got companies in South Australia to adopt a more or less orthodox system. The companies now agree that something was necessary in that direction and they are thankful for our assistance. Not only the acountancy profession but the commercial world appreciate those provisions.

2477. You have inspectors visiting companies?—Yes. In administering the Act we had to make a start. Nearly all the members of the Association gave us free access to their companies.

2478. By the CHAIRMAN: How does your accountancy system compare with the Victorian system, about which we have had evidences—I have read the Victorian Act and my information cannot be particularised—is that the Victorian system in some respects has gone a little too far.

2479. The system you have adopted in South Australia is efficient?—Yes. I have power under the Sixth Schedule of our Act to give companies authority to group
assets in their balance sheets. The main idea is that companies shall not be compelled to disclose vital information to competitors. In actual practice, companies may advance substantial reasons for me to give them authority to group their assets.

2450. By Hon. A. THOMSON: Would your inspectors certify the correctness of the assets?—No. Unfortunately, our Act does not go quite far enough. The majority of the companies voluntarily show my inspectors their books of account, but I cannot compel them to do so. Some director or secretary might think that we were too inquisitive, that we were trying to restrict, not to help them, and so they would not assist us. In the majority of cases the rest of the community do. I am happy to say, appreciate our work. I instruct my staff to approach company officials with politeness and to carry out their duties tastefully. By that method we find we get results.

2451. By the CHAIRMAN: You have not had many complaints about the inspectors?—No.

2452. By Hon. A. THOMSON: What prompted me to ask my question with respect to the grouping of assets was that I presume you would be perfectly satisfied the balance sheet would exhibit a true and correct statement of the company's assets?—Yes.

2453. It might be possible to group assets and give their value at £100,000, even in fact they were worth only half that sum. The company must show me their books of account if they desire me to exercise my powers. I have the thick end of the stick in such a case.

2454. By the CHAIRMAN: You say that the South Australian Act does not go quite far enough?—Not with regard to inspection. Under the Bill as drawn, I had power to inspect all books; but certain vested interests took the stand that under the Act it would be dangerous, overlooking the fact that all my inspectors are under an oath of secrecy in just the same way as are taxation officials. The companies must give taxation officials access to their books and accounts and must furnish all information asked for. If we had that power the information could not leak out unless we had an unscrupulous officer, and I have not had one yet. Again, the officers are not long enough on his inspection to obtain very vital information; he just inspects the layout and often finds that proper provision has been made in the books of account for items enumerated in the Act.

2455. As you say, the taxation officials have the power to make all necessary inspections?—Yes. I have not heard an outcry about that in South Australia.

2456. By Mr. WATTS: Do the same provisions operate in regard to private companies?—Yes. I am not so much concerned about the public companies. If I find it just a waste of time to go around. They have first-class officers, the books are kept properly, and the statute is correctly adhered to. The private companies give me the headaches.

2457. By Hon. H. SEDDON: What about the mining companies?—The least said the better.

2458. By the CHAIRMAN: On what do you base the statement that the private companies give you headaches?—In order to cheapen their costs of administration, they do not employ the best type of labour. They employ unqualified persons to act as secretary and accountant, and the standard of education of the office employees of private companies is nowhere near as good as that of the employees of larger companies. It took a long time to get the private companies into line but I think they are all in line now.

2459. I think that a certain amount of latitude should be allowed to private companies?—Yes; I give them any amount of latitude. Sometimes I think I give them too much. If I gave them less latitude, I could probably have half the cases.

2460. Private companies would not have much effect on the public from the point of view of exploitation?—No, it is the creditors' interest I have in mind there. The shareholders of a private company can look after themselves; the creditors are the people who need some protection.

2461. Private companies would not have much effect on the public from the point of view of exploitation?—Yes.

2462. Would that apply to the proprietary company as well?—Yes.

2463. You have the same trouble with the proprietary company?—Yes.

2464. And you still think that companies of both those types should be provided for in the measure?—Yes.

2465. By Hon. A. THOMSON: Your inspectors would be in a position practically to certify that the assets shown were true and correct in value?—I think so. I would like to say that. My inspectors would not be in the office long enough to make a thorough investigation, except in cases where we have had complaints of unscrupulous trading, and then I would like the inspector to watch the company carefully. In that event he would spend more time there.

2466. By the CHAIRMAN: If your inspectors did not spend sufficient time on the work, there would be a mutilation of books?—Of course there is always that possibility. I have suspected it with regard to minutes; in fact I know it has happened.

2467. By Hon. A. THOMSON: Regarding stock, generally speaking the auditor says that the stock sheets have been submitted and that he has accepted them as being correct. Sometimes such a return might be falsified?—A member of the chartered institution always accepts the certificate of the manager as to the value of the stock. That is a principle which is followed. Auditors are not experts on the prices of goods and they accept the manager's certificate.

2468. By Mr. WATTS: Is that a particularly satisfactory way of safeguarding the public? Is the smart man just as likely to go wrong as the mediocre man?—Yes, but the inspector makes a more thorough investigation where a mediocre man is concerned. In practice this works very well.

2469. Do you have private companies carrying on pastoral properties, for example?—Yes, quite a lot.

2470. How do you impose upon them the duty of having qualified secretaries and the like if their headquarters are some hundreds of miles from Adelaide?—The country companies are the only ones that we have not as yet been able to inspect. This has been due to the war. Those companies would represent only about one-half per cent. The majority of the pastoral companies in South Australia have offices in Adelaide.

2471. But are they private companies?—Yes, they are generally run by firms of accountants. The books and accounts are kept by a firm of chartered accountants in the city and that is the registered office. The interest in the balance sheet would.

2472. By Hon. G. FRASER: Have you any instances of a pastoral company being a family affair run entirely from the station?—No, I do not know of one case.

2473. By Mr. WATTS: We have a few of them here and we are rather anxious not to impose upon them obligations that will prove a hardship, especially if a private company relocated as such has no interest for the public subscriber?—So far we have not had to face the problem. All seem to be satisfied with the present situation. We must have a couple of hundred pastoral companies in South Australia.

2474. By Hon. G. FRASER: And all of them have headquarters in Adelaide?—Yes, in the offices of public accountants. In the circumstances, they give no trouble at all. Proceeding with my statement—

Subsidiary companies: These provisions contain a definition as to what constitutes a subsidiary company and state the manner in which such companies should be set out in the balance sheet.

We have very few subsidiary companies and I should think you would have a little difficulty. The auditor is another factor which I could count on my fingers the number of subsidiary companies in South Australia.

2475. By Hon. A. THOMSON: I suppose you have companies that are really an offshoot of a parent body in another State?—Yes, but they are separate local entities.
2504. What are the conditions under which they operate? Do they have a vote?—Yes. These provisions would not apply to a company of that sort, but in Victoria and New South Wales they would.

2507. The meetings would probably be held in Sydney or Brisbane and a local shareholder would have little hope of attending and could only be represented by proxy—The need has not arisen. I have received no complaint on that score.

2508. There is one such company here, about one-third of the shares are held in Western Australia and the meetings are held in Sydney—Can you give me the name of that company?

2509. Here it is—Those people came to us and made preparations to form a company, but the arrangements fell through.

2510. It has been suggested that where one-third of the shares are held in this State, a meeting should be held here. Do you think that would be practicable? This company is registered in Western Australia and yet the meetings are held in New South Wales—I cannot see any harm in having a provision of that kind.

2511. It practically means that the shareholders in Western Australia have absolutely no say in the matter. The position is (that the bulk of the shares are held by the parent body and were taken for the privilege of having a company here) I do not know that there is anything in any of the Acts in the Empire to meet such a position.

2512. It amounts to this, that the Western Australian shareholders in an instance such as this, have to accept the position whether they like it or not. It seems to me that where a company is registered as a separate company here, the meetings should be held here. In this instance the meeting are held in Sydney—You might be faced with the position that the company might go into liquidation, sell out to the parent body and come over here as a foreign company. Probably the whole concern might be bought out, and it would be run from Sydney or Melbourne. The business would still be kept going.

2513. Does not all this suggest that there is room for consideration as to whether it would be possible to prevent what would in effect be a snub on the people who contributed their money from Western Australia? Seeing that we are amending the Companies Act my desire is, if possible, to prevent a repetition of an experience such as I have related. You have given us room for thought and we should try to prevent the possibility of a concern squeezing out the Western Australian shareholders by going into liquidation and another company coming along to reap the benefit which amounts to a snub?—I would be inclined to advise to leave well alone.

2514. By Mr. BODDREDA: Can you see any benefit being derived from having a meeting of the shareholders locally—I cannot.

2515. Hon. A. THOMPSON: This is a Western Australian company.

2516. Mr. WATTS: In this company registered in Western Australia as a Western Australian company or is it registered here as a foreign company? Until we have that question satisfactorily answered, there is no way of considering the point.

2517. The CHAIRMAN: I take it that it would be registered as a foreign company.

2518. The WITNESS: The company might have been formed in Sydney. In Adelaide there are companies registered as foreign companies and the letters "S.A." in brackets are added to the name of the concern.

2519. Mr. WATTS: If a company is registered in Western Australia it could be made subject to the requirements of the Act and could be compelled to hold its meetings here.

2520. The WITNESS: All the Acts seem to have avoided this. Parliaments apparently have looked upon such a position as a purely domestic matter.

2521. Hon. A. THOMPSON: The registered office of this particular company is in Hay street, Perth.

2522. Mr. WATTS: If a company of that nature is registered here not as a foreign company, it should be subject to the law of Western Australia in regard to its statutory meetings. If they desire to escape that they should be honest and register as a foreign company.
2548. By Hon. A. THOMSON: Members of road boards can only notice matters in which they are personally interested, and the same principle applies to members of Parliament?—In 98 sets of articles out of 100 it is usually provided that directors cannot vote on any personal matter that concerns them.

2539. The CHAIRMAN: Members of municipal councils as well as of road boards cannot take part in discussions on matters in which they are personally interested.

2540. By Hon. A. THOMSON: A director may be in a position to coerce the manager of the company into lending him money?—That is a possibility, but I do not think we have considered this position in South Australia.

2541. By Hon. G. FRASER: Notwithstanding the experience you had?—We did not discover many things until the Act was passed. I have found out quite a lot since we had the new legislation. You in Western Australia are in much the same position as we occupied to 1934. As Registrar, I was ignorant of many things that were happening. I received the complaints, but had no power to investigate them.

2542. You have the power now?—Definitely.

2543. By Mr. RODODERA: Can you visualise any case where hardship would be imposed upon a company if we prevented it from lending money to its directors?—I cannot do so at the moment.

2544. By Mr. WATTS: Reverting to your previous position, would you set it forth that if a company wanted this as its State of origin for registration, it should be compelled to have meetings of its shareholders here?—I agree with it. That is implied. The matter has never been tested, and I have never had any complaints concerning it.

2545. By Hon. A. THOMSON: The position would depend largely on the artificer?—That is so. I resume my statement—

Provisions as to reserve funds, private balance sheets and publication of balance sheets—Under these provisions a full disclosure as to reserve funds which must be actually in existence must be made, and balance sheets must state whether or not such fund is used in the business and if any portion is otherwise invested, the manner and securities upon which it is invested. The balance sheet must be signed by two directors and the auditor's report and balance sheet shall require production of private balance sheets giving details upon which the shareholders' balance sheet is founded. In a public company a copy of the balance sheet must be sent to all persons entitled to it seven days before the meeting, and private and proprietary companies must supply members on request within seven days. Under our old provisions, shareholders could not insist on production of this, but the balance sheet of the company, or a copy of the balance sheet being sent to him, with the result that he often was unaware of what was actually going on with regard to the company's financial affairs. This was more often the case with regard to what I term private companies, covering proprietary companies as well; and I used to receive hundreds of complaints about this matter, complaints that shareholders could not get any information at all about the company and could not compel the company to supply them with information. These provisions are very well indeed at the moment.

2546. By Hon. G. FRASER: Do you still get complaints?—Not too many. If we get a small complaint, one of my clerks or an inspector rings up the company on a telephone stating that a complaint has been received, and asking what is the position, whether the balance sheet will be sent within a few days. "Oh yes, that will be done." Then we ring up a few days later and find it has been done. Beyond that we do not bother.

2547. By Hon. H. SEDDON: Have you ever had in connection with a private company a case where a director refused to give you any information regarding the company, and the director inquiring has insisted, and a meeting has been called and the other director has had him pushed off the board with the aid of the meeting?—That is not an uncommon thing.

2548. Would you deem that a reason for acting, for investigating the company?—No. That is purely a domestic matter in which I would not interfere.

2549. Even though the injured director might ask for investigation?—He would have to give very good grounds. The other day I had a case in which a director came to see me and complained that the articles of incorporation stated that the remuneration of directors should be at the rate of £100 a year but should be split up among the directors in proportion to the number of meetings each of them had attended. He said he knew that several directors had received more in fees than they were entitled to receive. I thought that was a serious allegation, but I did not take the matter up with the company; I took it up with the auditor, and I found from him that this had been happening for several years, and I ascertained from the auditor that the matter was quite right because the total amount allowed under the articles had been paid out, whilst the manner in which it had been split up among the directors was the concern of those directors and did not concern the shareholders and should not concern me. So I dropped the whole thing.

2550. By Mr. WATTS: You take it that your concern is that the amount allowed shall not be exceeded?—Quite. I think that is the only attitude.

2551. In the case mentioned by Mr. Seddon the director who has been removed by a resolution of a meeting of shareholders or has not been re-elected shall have cause for complaint?—Quite. It must have been an extraordinary sort of meeting. Probably the decision was arrived at by a show of hands.

2552. By Hon. G. FRASER: What would you do in such a case where there was a call for investigations?—The matter is purely domestic, and I do not think it should concern the registrar. That is my attitude towards all these matters. I do not think a registrar should interfere with the domestic arrangements of a company.

2553. Following that case, would you consider it a domestic matter where the managing director, through having over 50 per cent. of the shares in his name, allotted to himself a salary of some thousands of pounds and thus absorbed all the profits of the company? Would you consider that a case for investigation?—No, because the shareholders have a right to go to the court. They have their civil rights, and they should take them.

2554. Where would they have a civil right under the Act as it stands?—They have their general common law right to apply to the court for an order compelling the managing director to disgorge his ill-gotten gains, if the shareholders can prove their case.

2555. They would not be ill-gotten gains if a meeting of shareholders said, "Your salary shall be £4,500?"—No.

2556. By Mr. WATTS: It is a very involved problem?—It is. I should like to avoid it if possible.

2557. By Hon. A. THOMSON: It shows that a man with 62 per cent. of the shares of the company can simply do as he likes?—Certainly. If people are foolish enough to continue to hold shares in the company, well, it is their fault. It would not suit me.

2558. By Mr. WATTS: Don't you think that a case of that kind, if established, could lead to liquidation through the court?—Yes, and it is just and equitable that the company should be wound up under those circumstances.

2559. The company would be leading itself to something which on the face of it appears to be fraudulent, as this does to me?—Quite so. I was only stating my attitude. That is my general attitude with regard to my powers under our Act.

2560. By the CHAIRMAN: Do not you think there should be some provision giving the court some control over a man holding more than 50 per cent. of the shares in such instances as have been quoted by other members? We have other men who own small companies have been formed and the managing director has put his salary up to say £4,000, and thus has absorbed the whole of the profits, or just about. We have had three or four instances of that within my personal knowledge?—I think personally the court already
has jurisdiction under the general provision that proceedings may be initiated by the Registrar for winding up the company. I think that would be brought about.

2561. By Hon. G. Fraser: The application would be made by the ordinary shareholders?—Yes.

2562. By the CHAIRMAN: That course might result in the unnecessary winding up of a company. The company might not necessarily be wound up but the action would probably have a very salutary effect on the director concerned and I fancy you would soon find a compromise effected.

2563. By Mr. Watts: Mr. Craig has asked me to put a question to the witness about reserves by way of depreciated assets, what would probably represent hidden reserves?—The question of reserves has been a very vexed problem with us.

2564. By the CHAIRMAN: To give you an example of what is meant: if a bank bought a property 20 years ago for £20,000 and it had appreciated in value to £50,000—And it appears in the balance sheet as being worth, say, £10,000, by virtue of depreciation.

2565. Yes. That would not be a true statement of the reserves.—No.

2566. By Hon. A. THOMSON: Then take the reverse position. A man pays £30,000 for a property and it depreciates in value to £20,000 but is still shown in the balance sheet as worth £50,000. Is it your responsibility to deal with that position or would it be the responsibility of the auditor?—That would be the responsibility of the auditor. If he is satisfied, then I am satisfied.

2567. Would the auditor take that matter in hand and deal with it as he would, say, with stock?—No. He would not do that; he would definitely report on that position.

2568. By Mr. Watts: He would in the case cited by Mr. Thomson, but would he report in the case where the property had been bought for £20,000, had been written down to £10,000, and was actually worth £50,000?—Should any such writing down would call for special inquiry and an auditor would require some evidence of the depreciation. If he was not convinced regarding the valuation, I do not think he would sign the balance sheet.

2569. By Hon. G. Fraser: Take it that the property had not been written down but remained at £20,000, although its value had appreciated.—Unless the auditor actually knew the property, I think he would probably pass the entry.

2570. By Mr. Watts: Is it not considered to be good business to show in the assets that there is something like hidden reserves?—Quite.

2571. And it is fair to subscribe to the company, or to the public generally—I do not think it is quite fair.

2572. By Hon. H. Seddon: On the other hand, does it not arouse confidence in the management of a company if such sound business methods are applied?—Yes, but unfortunately so few people know about it.

2573. By the CHAIRMAN: Because the unearned increment has not been disclosed?—Quite so. I know there are some big companies in the same position, some being Australian-wide. For instance, the Broken Hill Proprietary Co. is in that position. I am certain the asset position of that concern is much better than would appear from its balance sheets.

2574. By Mr. Rodoreda: You would have a job to find many big companies not in that position?—That is so.

Appointment of auditors, qualifications and powers: These provisions provide for the appointment of auditors at annual general meeting or by directors or Companies Auditors and Liquidators' Board. There are certain minimum qualifications may be appointed, and one section deals with the powers of such auditors. It has been found that these provisions, together with the provisions for licensing, have been of incalculable benefit in every way.

Under the old Act there was no provision for the appointment of an auditor. The new Act provides that only licensed men shall be appointed. Of all the improvements effected as the result of the passing of our Act, that relating to auditors is one of the most useful. After our first annual returns came in, I put my staff on to them and we made a complete check. I realized it was one thing to appoint an auditor and another thing to do the actual auditing. As a result of this check, over 2500 companies, I found there were nearly 200 companies that had not had their accounts audited. Then I started "to bounce the ball," with startling results. Two well-known practices followed, one of which resulted in one offender being sent to gaol and in the other case the man concerned was fined heavily. This action so scared the companies generally that they immediately gave effect to the requirements of the Act. As the years have rolled on, I have discovered, especially with the small private companies, how much they welcome now, although they were formerly antagonistic to it, the services of auditors. So many of them have gained from the work of the licensed auditors a new system of accounts. Formerly they made no provision for depreciation and such like considerations. Now they have to do so and at least their affairs have been placed on a proper business basis. These concerns have come to realise the benefits of the system. Whereas formerly we used to hear derogatory remarks passed about the licensing system, we do not hear anything of the kind nowadays.

2575. By the CHAIRMAN: Do you favour the board?—After all, a man pays £80,000 for a property and it may not necessarily be wound up but the action would result in one offender being sent to gaol.

2576. By Mr. Watts: Is it not considered to be a good one. It is presided over by a stipendiary magistrate and comprises a chartered accountant, a member of the federal Institute and myself as Registrar. You can imagine who does the work. I suffer under no illusions about that, but I think I can handle the work myself quite well.

2577. By the Administration anything?—The license fees pay for that.

2578. By Mr. Watts: What are the license fees?—They are £2 2s. a year for an auditor's license and £3 3s. a year for a combined auditor's and liquidator's license. These fees represent little enough to pay to enable a man to participate in what amounts after all to a monopoly.

2579. By the CHAIRMAN: It is the privilege of one person to recommend that these auditors shall be appointed or licensed. Do you not think the court could undertake that work?—I think it is very undesirable for the court to handle this matter. Various points arise in my mind. I can imagine myself now in the position of your Registrar under this Bill. I do not do with the licensing; that is done by the court. A complaint might be made about some man who is not doing his job as well as he ought. You talk to him. You say, "If you do not mend your ways, I am afraid I will have to bring you before the Companies Liquidators' Board." It may be a minor complaint. You would not care to say to him, "If you do not mend your ways I will take you before the court," because that would result in publicity. The Registrar would not like to do that, as it might embarrass him. With a board you have more control over these men.

2580. By the CHAIRMAN: But would not such a matter be heard in Chambers? In that case there would be no publicity?—Of course, I do not know what your system will be. In this State you have a Registrar who is Master of the Court and is a person with a judicial mind. I am an Old Supreme Court official myself and I am of the opinion that your Registrar could deal with these matters as well as a judge could.
2581. One meets them outside too. You do not insist on membership of any institution?—No. A provision would have a better chance of favourable consideration if he were a member of a recognised institution, but there have been cases where men, members of institutions, have not satisfied the board as to their experience; their knowledge has been purely academic. The board asked them to sit for an examination.

2582. Is this practice laid down by the board or by regulation?—By the board.

2583. I have a case in mind upon which you may be able to comment. A person in one of our large provincial towns had, prior to the last war, commenced his studies as an accountant and had progressed half way towards membership of one of the institutes. In 1914, when war broke out, he volunteered for active service and was away until 1919. On his return he said he was not in the humour to resume examinations? I was in the same position.

2584. He set himself up as an accountant and auditor, and has carried on his business ever since to the satisfaction of those in the district who have employed him. Now he, a man of 50 years of age approximately, is faced with this legislation; he wants to know whether in effect he is to be deprived of a substantial portion of his means of livelihood because he went to the war and could not afterwards pass examinations?—I cannot imagine any board refusing that man's application, if such evidence was placed before it. Personally, I think it a mistake to tie a board down to any particular group. Leave the matter to the common sense of the board or the registrar. That is the best way. I do not advocate a board. As I say, I could just as well carry out the duties of the board; I have to do nearly all the work now.

Appointment of Inspector by Governor through Attorney-General: Under the amending Act, 1959, the Governor, through the Attorney-General, may now appoint the Auditor-General, Registrar, or any other competent person upon a report from the Commissioner of Police or the Registrar an Inspector to investigate the affairs of any company. That, to my mind, is the best provision that has ever been inserted in any Companies Act in the Empire. At last we have got to the stage where we can throttle the 'crook' company at birth. Under the present system, you must make application to the court, and those who have had experience of such applications know the long delays that must ensue before action can be taken. Have you seen this provision in our amending Act, Mr. Chairman?

2585. By the CHAIRMAN: Yes. We have it here?—You will notice that the Attorney-General can act only upon a favourable report by himself or the Commissioner of Police.

2586. A favourable report collectively or severally?—Either by myself or by the Commissioner of Police. It must be favourable, otherwise the Attorney-General would be badly attacked. The object is to remove any opportunity of political interference. If certain facts are placed before me and I am satisfied that we have in our State a group of interstate confidence tricksters who are forming a company with the object of deceiving the public, we can immediately step in and raid their offices. We have only to suspect it. We appoint an inspector immediately, probably an official from the Audit Department, and then take necessary action on his report. Had similar legislation been in force in the other States 20 years ago, we should not have had scoundals like those of the J. W. S. MacArthur and the Forbes groups. The investing public of South Australia would have been saved. I should say, at least between $2,000,000 and $3,000,000. As you can imagine, I am strongly in favour of this provision. I have had no occasion to operate it because of war conditions. Every company having been brought under the National Security Regulations, shares cannot be issued without authority.

2587. By Hon. G. FRASER: Did you have Litchfields (A/sia), Ltd., in South Australia?—Yes I know Mr. Barker.

2588. By Mr. WATTS: Do you consider that the provisions to which you have been referring would be sufficient to nip such a concern in the bud?—Yes, and as you are passing new legislation I think you should include those provisions. At first sight, they might seem to be formidable, but when the reason for them is known, it will be realised that they are advantageous.

2589. You say quite definitely that they would impose no disadvantage on the honest man?—Not on the good concern. They would interfere with nobody but crooks.

2590. By the CHAIRMAN: Would you say that of all the provisions in the South Australian Act, those afford some of the greatest protection to the public?—I would.

Directors and Managers: These provisions provide for the manner of appointment and the filing of changes, statement of remuneration to be supplied if demanded, directors' interest in contracts to be declared at meetings of directors. In public companies no person shall be named as a director or proposed director in any prospectus or statement in lieu unless consent has been given and filed, qualifications taken up, or an undertaking signed. These provisions have proved a further protection to the investing public.

The protection afforded is obvious. We are now able to find out whether the director received his shares for nothing, whether he paid or partly paid for them, whether he was given them for services rendered, or whether he just lent his name to the company. We have had evidence that there would be difficulty in obtaining that information in the case of foreign companies.—We do not ask those things of foreign companies. All we ask of any company is to keep a register of directors, full name, nationality, former nationality, occupation when appointed, etc.

2591. By Hon. G. FRASER: The point again arises as to the advisability of making it compulsory for each director to make known all the other companies in which he is acting as a director?—Personally I agree with you; I think it should be done.

2592. By Hon. H. SEDDON: How has that provision worked in South Australia?—Very well.

2593. We have had evidence that there would be difficulty in obtaining that information in the case of foreign companies?—We do not ask for those things of foreign companies. All we ask of any company is to keep a register of directors, full name, nationality, former nationality, occupation when appointed, etc.

2594. By Mr. WATTS: Do you go so far as to ask foreign companies to give you a list of their directors overseas, and of the other companies they are interested in?—No, though I should like to see that provision made. It would save me much research.

2595. We have been told that it would be impossible to supply the information?—A man is not obliged to disclose his other interests.

2596. Assume that Company A. is registered in Great Britain, and here as a foreign company, and Lord B. is a director. Lord B. may be a director of 40 other companies of which Company A. knows nothing. Inquiries could be made of Lord B., but he might or might not give the information. In effect, companies are not obliged to disclose their other interests if they are not asked. What provision would be of no value. Then there would be the changes in the directorates held by him, which might be numerous, and to keep a check of them from the point of view of a foreign company here would be impracticable? I did not mean to include foreign companies, but I see no reason why the provision should not apply to local companies. It would save me much work. In our drive for new industries, I get many communications from the Premier, seeking advice, and we could get it in one-tenth of the time. At present we have to search the records of every company of which we suspect he might be a director.

2597. That is, the records of every South Australian company?—Yes. If he is a well-known man, one with whom I am personally acquainted, I can ring him and get the information.
for the calling and conduct of meetings, audit of accounts, appointment of liquidators and committee of inspection, etc.,

Every mode of winding up: These provisions cover frauds, offences and penalties, unclaimed assets to be paid to the Registrar and Companies Liquidation Account which is kept by the Registrar to record all moneys unrealised or undistributed by liquidators.

158. By Hon. A. THOMSON: What becomes of that money?—I pay it out to claimants. The figure I have quoted is wrong. That is the amount I have in credit in that account. I should say the total was something like £20,000.

160. A considerable amount would be unclaimed; would that ultimately be distributed amongst shareholders or would it go into Consolidated Revenue?—It is a trust account.

161. And if it is never claimed?—Then I suppose it would go into Consolidated Revenue. In the old days it went into the pockets of the liquidators. The general manager of one of the oil companies in Adelaide came to see me a couple of months ago and told me that since the new Act had come into operation he had had a better return from liquidators than ever before. He said, "We are getting it in half the time, and as far as the trading community is concerned it is a wonderful innovation. If you want effective administration, you must establish at the commencement some sort of feeling that people have to comply with the Act. That is my experience after 15 years of administration. I do not think the management of the liquidator has held money for six months, undistributed, I ask him why that has been done, seeing that he should have paid out the first dividend. If he claims that a lot of the money has been unclaimed, then ask him to pay the money into our account immediately. We receive applications from all over the world for repayments out of this company liquidation account. The liquidator has gone overseas, and creditors may have sold their business and gone as far afield as New Zealand and California. The winding-up provisions are working well at the moment. The secret of success is the laying-off of liquidators, and securing the right type of man. At present you have the same state of affairs operating here as we had in South Australia, where conditions were frightful. I would illustrate my remarks by referring to one ordinary case. A private company went into liquidation, and the managing director was appointed liquidator. The terms of his appointment were £1 per week during liquidation. When the company wound up two years after the liquidator had gathered in the whole of the assets as his remuneration.

161. By Hon. A. THOMSON: That could not happen now?—No. Our Act provides that a director cannot be appointed the liquidator. If any person connected with a company should be in a position to liquidate it, because he might favour some particular person or other company.

162. Irrespective of what the terms of the resolution are, you would not allow that sort of thing to go on?—I could not imagine any group of shareholders allowing it today. It would be most unusual for them to do so.

163. By the CHAIRMAN: We have had evidence as to preferences, such as the preference of salaries over debentures on liquidation. Clause 178 of the Act says that the preference provisions should definitely come in before the priorities under the bankruptcy rules. Salaries and wages should be a first charge on liquidation. That is only just and equitable.

164. What about the expenses of the liquidator?—They should come first.

165. You would not favour the bankruptcy provisions being adopted in their entirety?—No. We considered all that.

166. Do not companies:—Provide for the striking off the register in certain cases and the vesting of property in the Registrar, disposed of property and recording by the Registrar and payment into court of money?

The taking-over and realisation of property in the name of defunct companies forms an important branch in the administration of the Registrar's office.
Since the beginning of the Act assets to the value of £2 get are actually being held and paid into court in the name of the defunct companies. These provisions have become highly useful. I am, at the moment, the largest land holder in South Australia, and if you had had hundreds of our subdivided land companies which did not survive the depression. The land was heavily mortgaged, and nobody could do anything with it. However, my name now goes on the title automatically, and I have been able to assist the poor unfortunate who took up blocks of land and could not get the title. I do it by just the mere signing of the transfers.

2616. By Mr. WATTS:—Unhappily, the land investment companies are still going here, and it is their clients who are defunct.—That is the same as the position in South Australia. However, it is useful to purge the register of these defunct companies.

2617. Have you still provision compellng persons responsible for the flotation of a company to advise you that the company is defunct and can be struck off?—Yes. I have a form of statutory declaration, prepared by myself, setting out that a company has no assets and no liabilities, or has some assets and plenty of liabilities. The declaration also provides for the giving of information about the financial accounts. I try to get a copy of the last financial statement prepared, more often unsuccessfully.

2618. By the CHAIRMAN:—Have many of your defunct companies been resuscitated?—About four. I have struck off 200 companies, purging the whole register. Those of course went back 10 years. Companies 20 years old were still on the records. It is extremely difficult now to get the Commonwealth to consent to the incorporation of a new company, and people owning defunct companies are keeping them alive in the hope of selling them to persons who want to form companies. All that is necessary is to transfer the shares to the new owner. In view of the provisions in the Companies Act which give companies implied powers, the purchasers probably have all the powers they want under memorandum of association, and can commence business.

2619. By Hon. H. SEDDON:—That applies largely to mining companies also?—Yes.

2620. As regards land companies, how did they finally wind up? I suppose many of them are still being kept alive on account of the investments they made?—Quite so. One of those companies, A. L. Wylie & Co., is still in liquidation, and the liquidator happens to be a personal friend of mine. The company has a tremendous lot of land out in one of our suburbs; I think it is the City Beach Estate. The liquidator has been trying his hardest to wind the thing up. I do not know how many thousands of pounds he has spent into it himself to try and get a proper return. If I were a liquidator of all companies, those which I would least like to handle would be the subdivided land companies.

2621. By Hon. A. THOMSON: When you automatically take control and issue titles, it certainly helps those people?—Certainly. But all of the jobs I have under the Act, this portion gives me more headaches than any other.

2622. By Hon. H. SEDDON:—How about no liability mining companies?—My attitude to those companies is not very sympathetic, because in my opinion the people who go into mining companies do so as a pure gamble. They do not go into them with the idea of investment, and if a company fails and the whole thing flickers out, that is their trouble. I do not worry about it.

2623. By the CHAIRMAN:—Mining is a very important industry in Western Australia, and produces a great deal of revenue.—That is so.

2624. By Hon. A. THOMSON: Generally as regards companies you favour the six years rather than the 20 years mentioned?—Yes, I do.

2625. Receivers and Managers:—This part provides for the appointment of receivers, fixing of remuneration and transferring of accounts to the Registrar. This, of course, like the provision regarding liquidators, is necessary. It is necessary for the accounts to be filed with the Registrar so that people having rights against a company shall know that a receivership is in existence.

Formerly we provided that licensed auditors should be the receivers, but it was realised that the man who put up some security in order to enable him to act, whereas an auditor did not. It seemed ridiculous that a receiver should be allowed to carry on and administer the affairs of a company that the man who put up some form of security. Parliament thought it wise to strike out the reference to licensed auditors and place this in the hands of licensed liquidators only.

2626. But a licensed liquidator could be an auditor?—Yes. We have very few men who are licensed liquidators only.

2627. By Hon. H. SEDDON: Evidence has been submitted to us about liquidators having to provide a bond, whereas frequently the volume of business carried on by them has not produced returns adequate to meet the amount of the premiums on the bond. What is the experience in South Australia?—I think it necessary that a bond should be provided, and surely he would be a poor liquidator who did not earn enough to provide the amount of the annual fee in respect of his bond. In South Australia we ask for a bond of £500. The average annual premium fixed is generally between £2 and £3. If a man cannot afford that, he should not be a licensed liquidator.

2628. I do not think it is so much the amount that the man has to pay but the fact that a year or two may elapse between jobs, and naturally he would object to payment of an annual fee to enable him to undertake such work?—After all, these men are securing a monopoly and surely they should be prepared to pay for that privilege.

2629. By Mr. WATTS:—It has been pointed out to us that in practice there have been very few liquidations in Western Australia, and there are no indications that the number will greatly increase. You will see that in consequence over a period of years a man might only have one company to liquidate, and he would have to pay the premium on the bond annually over that period. I do not think the idea advanced was that the bond should be in respect of any company that was to be liquidated and not on an annual basis.—In practice, I should say that the man who does not get many liquidations to undertake would be foolish to take out an annual license. Such a man would apply for an auditor's license, and only apply for a liquidator's license when occasion warranted. That is what happens in South Australia.

2630. By Hon. H. SEDDON:—That would get over the difficulty?—Yes.

2631. By Hon. G. FRASER: I think the suggestion was that the amount regarding liquidators should be more or less in line with the amount involved in the liquidation?—It would be impossible to implement that suggestion.

2632. By Mr. ARBOURT:—Is it not a fact that under the existing company laws the practice is for the court, when appointing a liquidator, to fix the amount of the bond there and then?—Yes, but you will find that the amount of the bond fixed by the court represents £500 or £1,000. The amounts do not vary from liquidation to liquidation. I do not know how you could implement the suggestion that a different bond should be provided for every liquidation. If the members of the Joint Select Committee had seen, as I have, statements of assets and liabilities indicating how much was anticipated would be secured as a result of liquidation, and compare that with the actual results of the liquidation, they would be able to appreciate the extent to which anticipation and realisation differ. The ultimate result would be that you would find it impossible to fix any such sum.

2633. By Mr. WATTS:—When you deal with a license, does its date start from the lst March, or does it date from July to June?—Our licenses start from the lst March, and have to be renewed by the end of February following.

2634. By Hon. G. FRASER:—If it was issued in December, it would be good only till the end of February?—Yes, but the board in such a case would probably reduce the fee for the remaining portion of the year. The board has that power available.

2635. By Mr. ARBOURT:—Assuming a man has become a registered liquidator and then abandons his registration?—That is done quite frequently in South Australia.
CHAIRMAN: Is there any great formality or difficulty in his securing a fresh license?—No, if the man's reputation is satisfactory. We frequently deal with such positions in South Australia. In fact, the board has more or less given me power to issue renewal certificates or licenses if I think fit.

That is, to a man who has already held registration?—Yes.

Then it would be a comparatively simple procedure for a man, after becoming registered and abandoning his license, to secure a fresh license?—Yes. There is another aspect regarding the suggestion that an application could be made to the court for a license. In South Australia a man can secure his license much more quickly by applying to the board than he would if the application were made to a court. That would apply here if your court procedure is the same as ours. I have had instances in South Australia where a man has been told that a company was going into liquidation within a few days, and the man had been asked to act as liquidator. That man has secured his license before the meeting was held. I do not think that would ever happen under an application to a court, for I think at least a week would elapse before the license would issue.

By the CHAIRMAN: The thing is that we are likely to set up so many boards that the State will be controlled by boards—I am not suggesting you set up another board, but rather that you eliminate it altogether. What I suggest is that this power be handed over to the Registrar, not to a court.

By Hon. A. THOMSON: In effect, you are the board in South Australia?—Yes.

By the CHAIRMAN: As a member of that board, do you receive any extra remuneration?—No.

The other members are paid?—Yes.

By Mr. ABBOTT: What type of evidence would you require of reputable firms?—Evidence as to character, ability and experience, the last-mentioned being the most important in about half of the three.

You take that evidence by way of affidavit?—I get my staff to make inquiries, and we take the evidence in the form of statutory declaration. We have a large form that gives various particulars, including the names of the companies and the liquidations undertaken. That enables us to check the details from our records.

By Mr. WATTS: If a man has not renewed his bond because he has no business?—The license automatically expires.

That man would have to apply for a new license should he get a job?—Yes. We ask such a man to return his license certificate, and I keep it locked away.

The effect is that anyone who wants to take on liquidation employment when available must, whether he works or not, continue to pay his license fee and apply for a certificate?—Yes.

That man is under an obligation to pay £3 or £4 a year whether he gets work or not?—Quite so.

Do you not think that should be obviated? Do you not think that these £3 here and £4 there that are tacked on to other commitments that people have to undertake these days should be done away with?—If you are going to do away with such fees, why not dispense with the practising fee in the Supreme Court?

You do not quite understand my question. Can you suggest any method by which the person will not have continually to pay the fee when he is not likely to get employment?—I suggest that he does not apply for a license until he gets a job. Immediately upon undertaking that job he discontinues the license and waits until he obtains another job before taking out a fresh license.

By the CHAIRMAN: But he must take out a license for 12 months?—Yes.

Not for a lesser period?—No.

By Mr. WATTS: Unless he applies in December, when the license would expire in March?—Yes. As I said before, these men are going to get a monopoly of this business; you will take away from directors and other people connected with a company the right to liquidate the company. The profession should be prepared to carry on that monopoly.

By Mr. ABBOTT: Do you think this is a good idea for voluntary liquidation of private companies?—Yes, more so with regard to private than public companies.

Registrar's Office and Administration: These provisions give more power to the Registrar and enable him to ascertain more readily whether or not a company is carrying out the provisions of the Act. The Registrar or person appointed by him may inspect the minute book and registers of any company.

From inspections already carried out, the effect upon the companies in consequence has shown how valuable they are from the point of view of the companies themselves and the administration of this office.

It is proposed to carry out a routine inspection of all companies as time and staff permit.

Routine inspections have been made of all companies situated in Adelaide. On account of the war, I did not proceed with my intention to send inspectors to the country; as the proportion of companies whose registered offices and books are situated in the country is very small, I have not worked unduly about them.

By Hon. A. THOMSON: Has your Act been the cause of much increased expenditure?—Certainly, but that expenditure has been met by the fees. The administration of the Act is all-important; it depends upon the administration as to whether the Act will prove successful or unsuccessful. In order to administer the Act properly, we must have the right staff. I do not know what the conditions are in Western Australia, but we have some competent men in Adelaide. It is no use sending an unqualified man to interview company officials and conduct an investigation. My staff in Adelaide consists of eight males, including myself. Of the eight, three are University graduates, two are members of the Commonwealth Institute of Accountants and the others are members of another institute. I think the Federal Institute of Accountants. I have the right kind of men to do the work. I do not know the number of companies registered in Western Australia, but I should say we have twice as many companies registered in South Australia. I administer other things besides the Companies Act.

The reason I asked that question is because some witnesses have said they were averse to increasing the cost of administration—if you are to have up-to-date legislation, I am afraid you cannot avoid that expense.

What has been the approximate increased cost in South Australia?—About £2,000 a year.

It is worth that in order to protect the public?—Yes.

By the CHAIRMAN: The increased cost would be in accord with the business that you do?—Yes.

Since your new Act has been in force, have the fees been increased to meet the extra cost of administration?—No. The filing of the extra documents covers that cost. After all, we are not a revenue-producing department. Since the Commonwealth Security Regulations have come into force, the fee for incorporation is becoming increasingly harder to get enough fees to pay for the administration. Capital fees are more or less wiped out.

It is not the function of Governments to make a profit, but to balance the budget?—The first year I did remarkably well. We collected in fees three times as much as the expenditure, but that was the conversion period.

By Hon. G. FRASER: Would you favour a loose-leaf minute book?—The amendment to our Act to that effect was made on my suggestion. In a case in England, reported in the 1939 English reports (Hearts of Oak Assurance Co., plaintiffs—I cannot recall the name of the defendant) the High Court of England ruled that a
loose-leaf book was not a book within the meaning of the Companies Act. In modern practice the loose-leaf book is largely used and so we thought it advisable to provide for it in our company legislation. I did not know what my position was; my inspectors reported that many companies were using loose-leaf minute books, and when I read that decision I wanted the position to be made clear, and I did not desire to take action against the companies in question on the opinion of the loose-leaf book. —I think it desirable. After all, there is very little difference between it and the old system of pasting typed sheets in minute books. In one famous company some minutes of the meetings were typed on loose sheets and pasted in a book; a clever official of the company afterwards served a sentence of two years for manipulating the book. He put some wet blotting paper at the end of the sheet and lifted it off and substituted another sheet. Under the English decision that book would have been a good minute book. It was a properly bound book.

3664. It was suggested that each page should be signed before the meeting, but that would only validate the minutes and certify that they had not been interfered with—I think our provision stipulates 'at the meeting.'

3665. By Hon. H. SEDDON: The idea was that the minutes of the annual meeting would be initialled while the proceedings were still fresh in mind—I am not so much interested about the manner of annual meetings. The directors' meetings are the danger point. That is where all the rogery and thuggery takes place.

3666. By the CHAIRMAN: Regarding Clause 417 of the Bill (Section 419 of the South Australian Act), has it been found in practice in South Australia that wider powers than the power of inspection given by this clause are necessary to permit the Registrar to take all practical steps to see that companies comply with the Act as required by Clause 418—I think that was covered by the evidence I gave earlier. I spoke of the need for giving the Registrar further power to inspect books of accounts.

3667. Registration of foreign companies: The effect of the provisions for the registration of all companies incorporated outside the State which may carry on business in the State has had a definite significance as a great many of the interstate concerns, which were previously trading in the State through an agent, without registration, relinquished business here with the consequent increase to local manufacturers. This must have resulted in increased employment. It was noted, however, that in practically every case, the interstate companies which had not complied with Part XII of the Act, were those whose business was to flood the local market, at intermittent times, with goods of an inferior quality at low prices, this having a disrupting influence on local enterprise. Probably the same conditions would not prevail here. In South Australia, however, this sort of thing was becoming a scandal. People would slip across the border with inferior goods, would pay no taxation and would not register. When the local retailers caught redress against them, they had to go to the particular State in order to institute proceedings. There was no one on whom proceedings could be served in South Australia; the position was impossible. When these provisions were enacted, the so-called registered company whose name appeared on an office building in Adelaide to register under an agent's name, that type of company discontinued business. I understand there is some suggestion that the term 'carrying on business' should be defined in the measure.

3668. Has difficulty arisen in South Australia in ascertaining when a foreign company is 'carrying on business' in that State? Cases that have occurred from time to time in Western Australia where it has been difficult to decide whether a foreign company was carrying on business in the State are reported, and to bring it within the Companies Act. Should an effort be made to define the term 'carrying on business' in the Bill, for general information and with more certainty than would be possible by relying on case law, the expression 'carrying on business' in the Bill is a copy of the South Australian provision. It is defined. For my purpose it does not go far enough. Unfortunately, case law is at odds and avases; it gives no help at all. It depends on the facts in each case, and I have quite a difficult job in trying to determine whether a company is carrying on business or not. I endeavoured to get our draftsman to define the term and he dodged the issue. When he looked at the case law and saw how complex it was, he decided to leave well alone. As Registrar, I should like to see a definition laying down the meaning.

3669. In England, I am informed, the words are 'established a place of business'—I would not adopt that definition. A maxim commonly used is 'establishing a place of business' but he cannot establish a place of business without carrying on business. Western Australia is a good way from the Eastern States and if a company thinks Western Australia is a good enough place in which to do business, it should register. If local people have been sold inferior goods, they should have the right of action in your courts.

3670. By Mr. ABBOTT: Do you think there might be some constitutional difficulties involved—that was put up on one occasion, but the Crown Solicitor in South Australia told me that any question of registration would not conflict with Section 92 of the Commonwealth Constitution. I think it is more important from the point of view of your State than of South Australia because we are closer to the Eastern States.

3671. By Hon. A. THOMSON: So far you have not been able to get a solution of the difficulty—No, though I have been fairly successful.

3672. By Mr. WATTS: Suppose I am an agent for six or eight Victorian companies and, as an agent bona fide I import their products into Western Australia and sell them to my own customers, I have no place to do business. Companies manufacturing those goods are registered. Do you suggest that because I am the agent in those circumstances, all of those companies should be registered as foreign companies? I shall have to consider that question, but I do not feel too happy about it. The principle I have laid down is to ask agents who carry stocks on behalf of such companies—and samples only—to register.

3673. By Mr. ABBOTT: That really comes within the case law?—Yes.

3674. By Mr. WATTS: You mean that you ask all those who carry stocks in register as foreign companies?—Yes.

3675. By Hon. G. FRASER: The South Australia brewery companies have a definition which allows them to register as foreign companies.

3676. By Hon. G. FRASER: In the name of the company whose stocks they carry I admit it is a complex problem.

3677. By Mr. WATTS: The Solicitor General suggested that it would be unduly difficult to define practically all cases of 'carrying on business.' It seems to me that if we were to go as far as you indicate, we should simply be asking for wholesale registration of foreign companies in this State because there are people here who handle their lines. As I see it, this State is peculiarly liable to that because probably there is not sufficient business for many of those concerns to warrant their being registered in Western Australia. So that while I am anxious to have a definition of 'carrying on business,' I do not desire to make it so wide that all these people should be included—that is my difficulty; I do not know where to draw the line.

3678. By Hon. G. FRASER: Would you define it as carrying on business just because they are handling goods?—It depends on how it is done. The contrast is such that they have to be fixed in Melbourne, then they are carrying on business.

3679. By the CHAIRMAN: What are you referring to principally—are the indent agents?—That is what they really are.

3680. Hon. G. FRASER: The South Australia brewing companies have agents here.

3681. Mr. ABBOTT: Fifty per cent. of those who do business here are registered. If they were not they could not sue for their accounts.

Restriction on offering shares—These provisions have proved of inestimable benefit to the public and with very few exceptions have led to the cessation of operation of interstate share and bond salesmen.
of doubtful repute who abounded in the past and caused great loss to the public. The greatest loss following such dealings was suffered by people who could ill afford it. There is no need to amplify that.

2688. By Hon. H. SEDDON: In the course of evidence it was submitted that what is proposed might possibly defeat its objective. The contention of the Stock Exchange was that a man who registered could claim by being registered that there was certain evidence of integrity and that then he might be able to carry on his activities and the amount of the bond would be insufficient to safeguard the public against fraud. What has been your experience in South Australia in this respect?—We have no share dealers; we like your provision in the Bill and if it is passed I intend to ask that it be adopted.

2684. We have provided that members of a recognised Stock Exchange automatically almost become registered. How would you view that?—I think it would be quite all right. There is one point in connection with the share business. An unscrupulous promoter can overcome these provisions by exchanging shares. We in South Australia lost a tremendous number in that way and so we amended our Act to include the exchange of shares.

2685. By Mr. WATTS: Have you had experience of members of the Exchange being concerned in aiding sales?—I do not know of any such case in South Australia.

2686. By Hon. G. FRASER: Would you be in favour of confining the registration of share dealers to members of the Stock Exchange; in other words, to giving the Stock Exchange a monopoly of share dealing?—I think not. I would prefer to leave the matter to the Registrar's discretion.

2687. Or the discretion of the court?—Whichever you like. There might be a good co-operative concern, and some man might be deleagued to call on various farmers. He would not necessarily be a member of the Stock Exchange, but might be a good man with a good personality and in the employ of the concern. Why should he not sell these shares if he has been registered and is a man of good repute?

2688. By Hon. H. SEDDON: In that case he would be registered for a specific purpose, and not as a general share-dealer?—He would be registered for share-dealing.

2689. By Mr. WATTS: I know many instances that have occurred in the country. It strikes me we should have some provision whereby a person can be appointed on behalf of a company to do what you suggest, and that such person should not be registered as a general share-dealer. In the cases I have in mind, as soon as the particular job was over, the share-vendor no longer took an interest in that kind of thing, and moreover he probably worked without remuneration?—Perhaps he went back to selling milk or cheese.

2689. He would go back to his ordinary occupation. Would it be reasonable to make some provision for the licensing of such men, without making them general share-dealers?—I think so. Give the Registrar or the court wide powers to use their own discretion, and that would cover such cases without making any specific provision. I like a provision which one can stretch, one in which you can exercise your own discretion.

2691. You think that the responsible officer should be given discretion?—Yes.

2692. By the CHAIRMAN: We should be careful as to what we do about share-hawking, a practice that has been widely exploited in this State. Perhaps there would be some objection if the share-dealer was obliged to register?—Many poor and unfortunate widows in South Australia have lost all their savings. Happenings there have been scandalous.

2693. By Hon. G. FRASER: A man might be given permission to hawk shares on behalf of some small local company. You are definitely opposed to such permission being given?—The words 'local or special reasons' are somewhat ambiguous.

2696. Very often the share-hawking has been done by an individual in a voluntary way?—I appreciate the Registrar's attitude. He would be afraid to establish a precedent that might be thrown up at him later on. Candidly, I do not know that I would like to administer such a provision.

2697. By the CHAIRMAN: It seems rather a big responsibility!—Yes. Precedent is hard to overcome. One is surprised at the number of people who know about precedents and act accordingly. I restate my statement—

Fees payable and provision for late fees: The fees payable were only slightly above those payable under the 1892 Act, but the revenue to the Department has shown a very substantial increase without inflicting any hardship on companies. The provisions in the Thirteenth Schedule for the payment of increased fees in the event of late filing of documents have had a marked effect, and documents are now filed within the correct period provided in each case, with few exceptions. This is appreciated by company officials, the majority of whom have come to search the records of other companies in this office. They were often inconvenienced by delay caused by late filing under the 1892 Act, even though the companies were not proceeding against defaulting companies frequently taken. It is now rarely necessary to proceed against a company, and the provision for late filing fees has definitely fulfilled its aim.

It is generally recognised that the times provided in a Statute for dealing with certain matters are so stated for a definite purpose and must be followed accordingly.

2698. By the CHAIRMAN: In South Australia the Registrar has discretion to reduce the amount of the final fee prescribed in the schedule. On what principle is that discretion exercised?—I try to adopt the general practice of the courts in that regard. I have a system which is working well under which I cannot be caught by precedent. If a document is filed within the statutory period, the cost is only 5s., if after that period has expired and it is filed less than a month after the fall due date, it is 25s., and if filed after that the fee is £5. We get a reliable basis for fixation of late filing fees. I have worked out the thing being equal, taking an average case, for the first week I allow penalties for five shillings, for the second week an extra five shillings, and so on; but if a company has a bad record, I then look at the number of things that are done ill time, and moreover we can probably work without remuneration?—Perhaps he went back to selling milk or cheese.

2699. He would go back to his ordinary occupation. Would it be reasonable to make some provision for the licensing of such men, without making them general share-dealers?—I think so. Give the Registrar or the court wide powers to use their own discretion, and that would cover such cases without making any specific provision. I like a provision which one can stretch, one in which you can exercise your own discretion.

2700. You think that the responsible officer should be given discretion?—Yes.

2702. By the CHAIRMAN: With regard to Clause 290, do you think the Registrar should have power to exempt a share-hawker for local or special reasons?—To give the Registrar power to exempt companies for local or special reasons would be dangerous, and I would not recommend it. There should be a definite prohibition.
a statement that they must be furnished within a certain time. If such returns are late, I always impose a late filing fee.

2702. Supposing it is impossible for a company to get its returns in—Possibly no late filing fee would be imposed if the delay was due to inadvertence. If a man has a good case, he gets a good hearing.

2703. By Hon. H. SEDDON: Do you think it would be advantageous to arrange that a secretary of a company could apply for extension of time in case he was unable to get his returns in within the specified time?—Yes, the case it would be on record.

(b) The manner in which and the extent to which defects in the working and the administration of the Act have been disclosed in practice is covered by amendment made to the Act since it came into operation. These amendments can be amplified orally.

2704. By the CHAIRMAN: As regards Clause 279 (2), what are the views of your self on the provision in the subsahne that legal costs exceeding £20 shall be taxed?—We were faced with the extraordinary position of a bill of costs for, say, £1 being taxed and costing £3 for taxation, and then not being reduced—quite a fair bill of costs. The Master of the Supreme Court was faced with the position that he was being inundated with numerous small bills of costs, and could not hear the applications because they became so numerous. Therefore he made representations to the Government pointing this out, and the Government decided to ask Parliament to amend the Act by striking out the provision altogether. That, however, does not remove the problem at all. Quite at any time to apply to the court to have any solicitor’s bill of costs taxed.

2705. Under the rules of the court?—Yes. A licensed man has a good idea of what is a fair bill of costs. He thinks it too high, he can still go along to the court and ask for it to be taxed.

2706. Now as regards Section 153, there is the following amendment:—

Section 153 is amended by inserting after Sub-section (2) thereof the following sub-section:—

"2(a) The provisions of Subsection (1) of this section with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company; and in the case of any other director who holds any salaried employment or office in the company the amounts paid or paid to him otherwise than as remuneration for his services as a director."

What is your opinion with regard to that amendment?—That is the only amendment in our Act with which I did not agree.

2707. Why did you not agree with it?—Because I think such a provision opens the way to a practice which, I fear, is all too prevalent, of managing directors receiving fees out of all proportion to their ability, unknown to the shareholders.

2708. By Mr. ABBOTT: Has that any practical value, because most managing directors are given their titles in order to afford them the necessary status? All that would be necessary would be for such men to cease to be managing directors and become ordinary directors, and that provision would be nullified?—Quite so.

2709. So from a practical point of view it is of no value?—That is so.

2710. Would many companies be agreeable to saying what was paid to their managing directors or managers?—You do not quite understand my point. These payments are not shown separately but are lumped together. I do not ask that what salary is paid to the managing director should be set out, but it should be included in the amount setting out the whole of the directors’ fees. It should appear so that the shareholder would have an opportunity to know how much they were paying the directors.

2711. By Hon. G. FRASER: Not individually, but collectively?—That is so.
In connection with default statements in prospectuses and kindred matters, I would not object. I could bring filed regard to their as other matters which have already been discussed. I will not proceed, as I think, there is no need to do so.

The Swan Brewery, is to have an interest, as I have said, and the shareholders are not interested, as it is a matter of private opinion and not of public concern. It is absurd to bring matters into the public domain that are not of public concern.

ARBOR: Do you think South Australia derives any advantage because of the stamp duty levied? I am not aware that any such advantage has been discussed. I think there is no advantage in this matter. It is a question of private opinion and not of public concern.

2736. By Mr. ABBOTT: Do you think South Australia derives any advantage because of stamp duty? I do not think there is any advantage derived.

2737. By Mr. ABBOTT: At present, on a transfer on the local register of Swan Brewery shares, we pay 1 per cent., whereas in Victoria it is a nominal amount?

The Chamber of Commerce, that we are handicapped in the registration of companies in this State because they prefer to register elsewhere and operate as foreign companies here so that transfers are subject to duty in the other States, where it is less than the amount here. Would you care to express an opinion on that?

CHAIRMAN: In connection with the liability for statements in prospectuses and kindred matters, it has been suggested that the provisions of the Bill cannot apply to prospectuses circulated in Western Australia by a company registered in another State, and that a clause should be drafted so that the provisions of the Bill would apply to such a prospectus. Have you any such provision operating or contemplated in South Australia?

I was under the impression that your Bill covered that point. Our Act covers an interstate company having a prospectus in South Australia. A majority of the vital provisions that local companies have to supply must be included. That is my impression.

2740. The Solicitor General told us he could not recommend a clause along those lines as it involved questions of jurisdiction outside Western Australia. You are not referring to newspaper advertisements?

2741. No, to prospectuses filed with the Registrar. You say that if a company is registered in Victoria and seeks to issue a prospectus to encourage the sale of shares in South Australia, you make it comply with the South Australian Act?—It has to comply with our prospectus provisions.

2742. By Mr. ABBOTT: Even though the company is not registered in your State?—That is so.

2743. Therefore you get a prospectus filed in your office of a company about which you know nothing?—Quite so.

2744. A company not registered in South Australia, or anything of the kind?—Quite so.

2745. By Mr. WATTS: Have you had a case of a prospectus having been circulated in South Australia without being filed?—Yes.

2746. Did you take any action?—We took immediate action and got it filed. We had no need to prosecute.

2747. But for that you would have prosecuted?—Yes, definitely.

2748. By Mr. ABBOTT: In that case, the prospectus was circulated by somebody in South Australia?—Yes.

2749. If it was circulated in South Australia from outside the State, you could not have done anything?—You mean through the post?

2750. Yes?—That is so.

2751. By Hon. G. FRASER: You would take action against an individual in South Australia who was circulating it?—Yes.

2752. If the situation was here, what would you do?—You could not meet the position if the prospectus was circulated through the post.

2753. Still, we have more or less uniform legislation in Queensland, New South Wales, Victoria and South Australia. In South Africa, being the only State that so far has not adopted it, and consequently there are very few prospectuses that do not comply with our Act.

2754. By Mr. ABBOTT: But the point is that the prospectus might not be filed in your office?—I thought you were more concerned about the contents of the prospectus.
2753. By the CHAIRMAN: Regarding Clause 42 (4), it was suggested by a witness that no affidavit should be required from the director or manager of a company applying to be registered as a proprietary company, but that the Registrar should be obliged to ascertain that the articles of association of a company contained provisions permitting registration of a company as a proprietary company. What is your opinion on that?—If you dispense with an affidavit, you will put a lot of work on the Registrar. If these provisions were inserted at the commencement of the articles, instead of being scattered all over the place, we would not have to read right through the articles to determine whether they conformed with the Act, and the dispensing with the affidavit in those circumstances would be all right. However, I should not like to see it dispensed with.

2754. You say an affidavit should be insisted on?—Yes. It is no trouble to draw an affidavit; it is brief, and it is provided for in the forms contained in the Act.

2755. Regarding Clause 416 (1), which follows section 318 of the South Australian Act, should not the words "or refrain from doing" be inserted after the word "do" in line 4 of Subclause (1) (Section 319 of S.A. Act)?—I agree that these words should be added. They would improve the Subclause and clarify the position.

2756. Regarding Clause 419, should a public accountant or secretary be permitted to sign the certificate (Para J)?—No, I think not. This certificate deals with legal documents, and as such should be prepared by a solicitor. I have seen many documents prepared by secretaries and accountants who have made an unholy mess of them and caused hardship to members of the company.

2757. You think that a legal man should prepare them?—Certainly. Otherwise, it would be equivalent to asking a member of the legal profession to prepare accounts.

2758. It has been suggested by some of our witnesses, particularly the accountants, that the Victorian accounting system should be adopted in lieu of that of South Australia. What is your view?—Personally, I consider they have gone a little too far. In a small State like Western Australia where you have not very big companies, I think that the Victorian provisions might prove a little dangerous. I considered their Act and I did not think it worthwhile to introduce their proposal into our amending legislation.

2759. Your system has proved satisfactory?—Quite.

2760. I am told that the Victorian Act is not a patch on ours. This may interest the members of the Joint Committee: About six weeks ago I had an interview with the solicitor of the Broken Hill Pty Co., Ltd. He called on me about a particular matter, and he told me that he was familiar with the provisions of all the Companies Acts in Australia, and declared that the South Australian Act was the most practical. I do not consider that he was going out of his way when he made that statement. He also told me one of the provisions in the Victorian Companies Act which was anomalous. A proprietary company is required to give 30 days' notice of intention to incorporate, but in Victoria no proprietary company gives 30 days' notice; it forms as a public company and converts itself to a proprietary company within two or three days.

2761. I am told that there is no licensing system in respect of auditors and liquidators in New South Wales?—No. There was provision for it in their Bill originally.

2762. The CHAIRMAN: I thank you very much for coming along here and giving us your valuable assistance. We appreciate what you have tendered will be very helpful indeed. Our desire is to produce a good Act, one that will protect the public, and I believe we shall be able to produce such a measure. It is non-party legislation and the Joint Committee has done good work. Now, with your aid I have no doubt that we shall produce something that will be of value to the State. I shall be glad if you will convey to the Premier of South Australia the thanks of the Joint Committee for giving you permission to submit the evidence that you have tendered.

South West Co-operative Dairy Farmers Ltd. (Letter in reply)

The CHAIRMAN: Since our last meeting I have received a communication from the Secretary of the South West Co-operative Dairy Farmers Ltd. Members of the joint committee will remember that we received a letter from J. A. Thompson complaining about the repurchase of shares and the distribution of profits by the Co-operative Company in question. That letter appears on page 114 of the evidence. A copy of the letter was forwarded to the Co-operative Company and the letter which the Secretary will read is the reply:

The Secretary, Joint Select Committee, Companies Bill, Crown Law Department, Perth.

Dear Sir,

We are in receipt of your letter of the 2nd inst. enclosing a copy of your letter to your chairman for which we thank you, and appreciate the opportunity given to us to reply to the statements made by your correspondent.

Replying to the allegations in the same sequence as your correspondent we beg to advise as follows:

1. Our Article No. 37 is as follows: 'The directors may decline to register any transfer of shares without assigning any reason therefor: They may also decline to register a transfer of any share on which the company has been declared to be in default. Such an Article is not singular to this Company.

Due to the Federal Commissioner for Co-operative companies, we were obliged to embody in our Articles a restriction from allowing the company's shares to be quoted on any Stock Exchange: also to limit the share holding of any person, our limit being 500 shares.

The largest shareholder we have on the Register is Mr. Wm. Johnston, of Manjimup, 222 shares; 200 of these shares were held by Mr. Johnston in the old Manjimup Dairy Produce Company and were transferred when that company was purchased by us.

The annual list and summary that has just been sent to the Register of Companies shows that we have 2,570 shareholders with a total share holding of 31,000, so that it can be seen that there are not any very large shareholders.

2. It is quite true that we are restricted as to payment of dividends.

It was the object of the founders of the company to restrict dividends on shareholding and that after payment of whatever dividend was authorised by the company in general meeting any surplus to be distributed by way of a bonus on the business done with the company. Eight per cent. on the paid up capital is the maximum the company has ever been permitted to pay; but most dividends that have been paid have not been more than five per cent.

Since we registered under the Companies Act Amendment Act, 1929, we cannot pay more in dividends than five per cent, per annum in excess of the Commonwealth Bank's rate of interest for the time being on fixed deposit for two years.

Every shareholder qualified to vote shall have an equal voting power irrespective of the number of shares held by each shareholder. This has been in operation since the formation of the company.

Purchase of Shares: Under Section 105 of the present Companies Act, the company is permitted to purchase shares of the company but not in excess of one twentieth part of the paid-up capital of the company. Since this became operative the Directors have repurchased shares and are now almost up to the limit that they are permitted to purchase under the Act.

The shares they have repurchased have mostly been at the rate of 1½ per share, but they refused to purchase shares from shareholders who had
not given up their farms, or who had left the company and sent their cream to proprietary companies.

The reason for fixing the rate at 15s. was that in 1927 it was decided at the annual general meeting to distribute one fully paid £1 share as bonus shares for each share held by shareholders at that time, and 5,074 bonus shares were distributed, so that they had a double holding for the cash they originally paid for their shares.

When your correspondent asserts "There are a few big shareholders in touch with the company and who are always ready to purchase either direct or through the company any shares available," etc., he has either a wonderful imagination or is a prevaricator of the truth. Such shareholders are quite unknown to me and I have been with the company since 1928.

May I suggest that you ask your correspondent for the names of these mythical persons?

The only other issue of bonus shares was made in 1930 when the company in general meeting adopted the following resolutions:

Profit and Loss Account: After making due allowance for depreciation, there remains a balance of £21,231 15s. 0d., which your directors with the sanction of shareholders propose to distribute as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>To the reserve for bad debts</td>
<td>596</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Allowance for current taxation</td>
<td>750</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>To pay a dividend of 5 per cent.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>on the Paid-up Capital at 30th April, 1929</td>
<td>920</td>
<td>18</td>
<td>7</td>
</tr>
<tr>
<td>To pay cash bonus at 1d. per lb. on butter fat supplied by shareholders during the 12 months ended 30th April, 1930</td>
<td>8,044</td>
<td>14</td>
<td>3</td>
</tr>
<tr>
<td>An additional bonus of 1d. per lb. on butter fat supplied by shareholders during the same period to be paid by issuing to them fully paid shares for the equivalent amount of the pounds sterling due to them on the cash bonus</td>
<td>8,032</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Fractional amounts under one pound to be paid in cash and included in the cheque for the cash bonus</td>
<td>612</td>
<td>14</td>
<td>3</td>
</tr>
<tr>
<td>Balance undistributed to be carried forward</td>
<td>1,771</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>20,231</strong></td>
<td><strong>16</strong></td>
<td><strong>9</strong></td>
</tr>
</tbody>
</table>

As is shown in these resolutions, 8,039 fully paid £1 bonus shares were issued on the basis of butter fat supplied by shareholders.

Your correspondent’s further statement "By this method a few shareholders have made large profits, etc." is a pure figment of his imagination which he cannot substantiate.

We admit we have substantial book reserves, all of which have been used in building factories to meet the growing demands of the dairying industry.

The company has been managed by honourable men as directors, mostly dairy farmers who have the interest of the dairying industry at heart. Our balance sheet and accounts are published every year and sent to all shareholders as well as to the Lieut.-Governor and those Ministers of the Crown that are concerned, also to departmental officers. We come straight out in the open and are not afraid of any investigation that might be made.

Up to 1933 bonuses on butter fat were distributed only on butter fat supplied by shareholders. Since that date owing to a ruling by the Commissioner of Taxation the bonus has been distributed to all suppliers of butter fat, irrespective of whether they are shareholders or not, on the basis of the quantity of butter fat supplied by them to the company.

It would be interesting to know how many, if any, shares in this company your correspondent holds, and whether he held them at the time either of the issues of bonus shares were made; if so, whether he attended either meeting and if so, how he voted.

As to your correspondent’s suggestions in the final part of his letter, I don’t think you want me to take up your time dealing with those matters except to set out the tabulation of our Reserve A/c., and Profit and Loss A/c. over the period 1933-1940:

<table>
<thead>
<tr>
<th>Year</th>
<th>General Reserve</th>
<th>Redemption P. &amp; L. Appropriation A/c.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1933</td>
<td>19,450</td>
<td>181 3 8 11,582 17 2</td>
</tr>
<tr>
<td>1934</td>
<td>19,450</td>
<td>190 7 8 11,103 7 5</td>
</tr>
<tr>
<td>1935</td>
<td>19,450</td>
<td>300 7 7 15,885 12 4</td>
</tr>
<tr>
<td>1936</td>
<td>19,450</td>
<td>668 16 2 10,585 16 5</td>
</tr>
<tr>
<td>1937</td>
<td>19,450</td>
<td>852 18 6 9,489 0 9</td>
</tr>
<tr>
<td>1938</td>
<td>19,450</td>
<td>925 2 0 11,560 1 7</td>
</tr>
<tr>
<td>1939</td>
<td>19,450</td>
<td>1,039 16 0 14,382 10 3</td>
</tr>
<tr>
<td>1940</td>
<td>23,638</td>
<td>1,039 16 0 6,289 4 10</td>
</tr>
</tbody>
</table>

For your information we enclose a copy of our Memorandum and Articles of Association and also copies of our accounts for the twelve months ended April 30th, 1933 to 1940.

Yours faithfully,

For South-West Co-operative Dairy Farmers, Ltd.

H. F. JOHNSTON.
Appendix III.

Statement tendered on behalf of the Co-operative Federation of W.A., by Mr. R. D. Forbes, Solicitor, of Messrs. Parker & Parker.

When evidence was given on behalf of the Co-operative Federation of W.A., the witness was under the impression, gleaned from the Crown Law authorities, that the amending Act of 1929 dealing with co-operative companies was so worded as to prevent future companies from registering therein as co-operative companies. The evidence adduced was therefore based on the assumption that the Government had determined that the Companies Bill would not make provision for the registration of future co-operative companies.

Legal advice since taken by the Federation is to the effect that the amending Act of 1929 had no such meaning and that it was always competent thereafter to register a new company under the Companies Act of 1893, as amended by the 1929 Act, having the word "Co-operative" in its name.

The Act of 1929 only excluded companies already registered under the parent Act from continuing to use the word "Co-operative" as part of the name unless such companies became registered under the parent Act as amended by the 1929 Act, within a period of one year from the coming into operation of the last mentioned Act.

The right of future co-operative companies to register and trade as co-operative companies under the amending Act of 1929 was afforded by that Act by the following provisions since incorporated in the consolidated Act of 1883-1893, namely paragraph (e) of Section 101 and Section 103 of the consolidated Act.

To preserve the effect of such provisions in the new Companies Bill and allow of future co-operative companies registering and trading under the new Act, it will be necessary to amend the Bill as follows:

1. Include Section 103 of the consolidated Act of 1883-1893, with the following modifications, namely—

   (a) in the second line of the section after the word "this" insert the words "part of this";

   (b) in the second and third lines of the section delete the words "as amended by the Companies Act Amendment Act, 1929.";

2. Amend paragraph (c) of Section 101 of the Bill to read as follows:

   (c) A company registered under the Companies Act, 1893, as amended by the Companies Act Amendment Act, 1929, or a company registered under this part of this Act.

As it stands at present, paragraph (e) of Section 103 of the Bill would not only prevent the registration of co-operative companies but would entitle any pre-existing company registered only under the 1893 Act, and not under that Act as amended by the 1929 Act, to change its name and trade as a co-operative company without the necessity of altering its Memorandum and Articles as required by the 1929 Act.

It will also be necessary to delete paragraph (j) at the foot of page 26 of the Bill.

As to paragraph (e) of Section 103 of the consolidated Act, there has always been a doubt as to the proper interpretation of the section in regard to the availability of reserve funds for bonus distributions to shareholders in proportion to trading support. The paragraph now suggests that the only profits available for distribution are the surplus profits remaining in hand after deduction of the dividend declared for the relative year and the amount in respect of such year carried to credit of the reserve fund. But the co-operative companies have uniformly understood the paragraph to mean that the amounts carried to the credit of the reserve fund in any year can be made available at any time for distribution by way of bonus.

It is desirable to clear up any doubts as to the true interpretation of the paragraph by adding the following proviso:

Provided that the company may at any time elect to treat the amount of the accretion to the reserve fund in any year as being surplus profits for such year available for distribution by way of bonus under this subclause.

Section 107 of the consolidated Act (Section 193 of the Bill) is impossible to understand. The only meaning which one can attribute to the section in its present form would lead to this result, namely, that any surplus moneys in the hands of the liquidator after paying the debts and expenses of winding up and the moneys due to shareholders on return of capital would not belong to anybody. Reserve funds of a company can only be distributed in the form of dividends to the extent permitted by the Act and cannot otherwise be distributed unless the company first capitalises the reserve funds and applies to the Court for permission to reduce its capital and make a distribution accordingly. If the latter course were followed then a doubt would arise as to how much a subsequent liquidator could pay to the members in view of the restrictions contained in the section. It is obvious however that the reserve fund could not be distributed in the form of dividends beyond the allowable dividends as contemplated by Section 103 of the consolidated Act.

It is suggested that Subsection 1 of Section 193 of the Bill should be deleted and the following section inserted in lieu thereof, namely:

In the liquidation of a company registered under the Companies Act, 1893, as amended by the Companies Act Amendment Act, 1929, or of a company registered under this part of this Act, no shareholder shall receive in the liquidation any amount exceeding the capital paid up in respect of the shares held by him with the dividends (if any) due and any other moneys to which he may then be entitled under the Memorandum or Articles of the company as then in operation. As to any surplus funds in the hands of the liquidator after paying all debts and expenses of the winding up and after paying to the shareholders the full amounts to which they are respectively entitled under the foregoing provisions of this section the liquidator shall treat and pay such surplus funds as if they were surplus profits available for distribution under Subclause (e) of Section (the counterpart of Section 103 of the consolidated Act) but payable only to the shareholders who have done business with the company during the last three completed financial years and the broken period prior to liquidation and in proportion to the business done by such shareholders with the company at the election of the liquidator in proportion to the profits earned by the company on such shareholders' business.

The Co-operative Federation also submits that Section 194 of the Bill should be deleted, such section reading "No society shall be registered under the Co-operative and Provident Societies Act 1908, as a co-operative society after the commencement of this Act."
co-operative cash stores conducted by co-operative societies in industrial centres and the co-operative store and agency businesses running on a credit basis in our agricultural areas. It was apparently assumed that the co-operative provisions of the Companies Act would fulfill entirely the requirements of those desiring to conduct industrial co-operatives.

I am informed—

(a) that an organised move to set up industrial co-operatives in this State can be expected at any time and that the driving force will come from those who have experienced this type of co-operation in other parts of the world and who will be anxious to register under the type of legislation to which they have been accustomed elsewhere;

(b) that the Farmers' Co-operative Movement does not wish to interfere with the rights of those whose interests would be best served by recourse to the 1903 Act;

(c) that the larger co-operative units as distinct from those which would be expected to register under the 1903 Act find it an advantage to be known as companies and to be subject to the general provisions of company legislation. That from year to year such companies need the temporary use of substantial sums of money for financing seasonal supplies of fertilisers, jute goods etc., and for making advances in connection with the marketing of wheat, wool, fruit, livestock, meat, butter, cheese, and other primary produce. That financial institutions such as banks and insurance societies are accustomed to regard company law as the preferable form of protection where overdrafts or advances are provided for organisations financing primary production in the manner mentioned;

(d) that the 1903 Act has proved to be a very useful measure and provides a convenient form of registration and practical operation for co-operatives of the more simple type. That although further registrations under it were debarred after the 1929 Act there are still some societies operating successfully under its provisions such as—

Dungin and South Carolina Farmers' Co-operative Society;

Armedale and Kelmscott Co-operative Society;

Collie Industrial Co-operative Society.

That these are prosperous societies and find the provisions of the 1903 Act to be simple and convenient. That for example such provisions limit the amount of capital which one member can hold and permit of members withdrawing their accumulations including share capital from a society when removing from the district in which the society carries on business;

(e) that the 1903 Act would be equally satisfactory for other co-operatives whose operations are limited to certain specified purposes. That a great deal of interest in co-operative methods is being shown throughout some of the Australian States and that this is evident also in this State especially amongst women. That some of the activities in which operations would be covered in a simpler and more accessible form under the 1903 Act are—

Storekeeping;
Societies for co-operative supply of books and material for University and College students;
Students' hostels;
Single productive enterprises on a co-operative basis;
Newspaper and printing works;

(f) that while there is this distinction between co-operative companies and societies in scope of operations, it must be kept in mind that both types conform to the distinctive co-operative principles of—

(a) democratic basis of voting;
(b) limitation of dividends on capital;
(c) distribution of net surplus as bonus in proportion to trading support.
Appendix IV.—Extracts, Minutes of Meetings, Etc.

1.—COPY OF ROYAL COMMISSION.

[Published in Government Gazette 11th July, 1941.]

ROYAL COMMISSION

Western Australia, | By His Excellency Sir James Mitchell, I.E.O.M.G., Lieutenant-Governor to and
James Mitchell, | over the State of Western Australia, Lieutenant-Governor, and its Dependencies in the Commo-


I, THE said Lieutenant-Governor, acting with the advice and consent of the Executive Council, do hereby appoint you Emil Nulsen, Arthur Valentine Rutherford Abbott, Aloysius Joseph Rodoreda, Arthur Frederick Watts, Harold Scaddan, Leslie Craig, Alexander Thomson, and Gilbert Fraser to be an honorary Royal Commission, without payment of remuneration, to do the following things, namely:

1. To examine, inquire into, consider and report generally upon the provisions of the Bill for an Act to consolidate and amend the Law relating to Companies and for other purposes now before the Legislative Assembly in the Parliament of Western Australia;

2. To do such other acts, matters and things in relation to the said Bill as you might or could do as a joint select committee of the Legislative Assembly and the Legislative Council of the Parliament of Western Australia pursuant to the resolutions thereof referring the said Bill to you as such Select Committee;

3. To consider and make any recommendation in relation to the amendment of the provisions of the said Bill, the deletion therefrom of any of the said provisions or the insertion therein of any further provisions, which in the opinion of the Commission are justified or warranted by any of the inquiries and investigations made under paragraphs 1 and 2 hereof.

And I hereby appoint you the said Emil Nulsen to be Chairman of the said Commission.

And I declare that you shall, by virtue of this Commission, be a Royal Commission within the Royal Commissioners' Powers Act, 1902, as reprinted in the Appendix to the Sessional Volume of the Statutes for the year 1928, and that you shall have the powers of a Royal Commission or the chairman thereof under the Act.

And I hereby request you, as soon as reasonably may be, to report to me in writing the result of this your Commission.

Given under my hand and the Public Seal of the said State, at Perth, this 9th day of July, 1941.

By His Excellency's Command,

(Sgd.) J. WILLCOCK,
Premier.

GOD SAVE THE KING ! ! !

LEGISLATIVE COUNCIL, WEDNESDAY, 4th DECEMBER, 1940.

20. Companies Bill.—Joint Committee on.—The Order of the Day for the consideration of Message No. 71 from the Legislative Assembly was read.

The Message was as follows:

Message No. 71.

Mr. President,

The Legislative Assembly acquaints the Legislative Council that it has agreed to refer the “Companies Bill” to a Select Committee of four members, and requests the Legislative Council to appoint a Select Committee with the same number of members, with power to confer with the Committee of the Legislative Assembly.

J. B. SLEEMAN,
Speaker.

Legislative Assembly Chamber,
Perth, 3rd December, 1940.

The Chief Secretary moved, That the request as transmitted by Message No. 71 from the Legislative Assembly be agreed to.

Question—put and passed.

The Chief Secretary moved, That the Honourables H. Seidion, L. Craig, A. Thomson, and G. Fraser be appointed a Select Committee to confer with the Select Committee of the Legislative Assembly on the “Companies Bill.”

Question—put and passed.

A ballot having been held, the following members were declared duly elected to serve, with the mover, on the Committee: Messrs. Abbott, Rodoreda and Watts.

Ordered—That the Committee have power to call for persons and papers, to sit on days over which the House stands adjourned, and report on the first day of the reassembling of Parliament in 1941.

Ordered further, That a Message be transmitted to the Legislative Council acquainting it that the Legislative Assembly had agreed to refer the Companies Bill to a Select Committee of four members, and requesting the Legislative Council to appoint a Select Committee with the same number of members, with power to confer with the Committee of the Legislative Assembly.
TUESDAY, 10th DECEMBER, 1940.

The Committee met at 2.30 p.m.

Present.—Hon. E. Nulsen, Hon. A. Thomson, Hon. H. Seddon, Mr. Abbott, Mr. Rodoreda, Mr. Watts.

Election of Chairman.—On the motion of Mr. Abbott, seconded by Mr. Seddon, Mr. Nulsen was elected Chairman.

Election of Deputy Chairman.—On the motion of Mr. Thomson, seconded by Mr. Watts, Mr. Seddon was elected Deputy Chairman.

Next Meeting.—It was decided to hold the next meeting of the Committee on the 14th January, 1941, and sit on three days a week; a fortnight to elapse between the last sitting and the next sitting day. The sitting on the 14th to begin at 2 p.m. On the Wednesday and Thursday of that week, from 10 a.m. to 1 p.m., and from 2 p.m. to 4 p.m.

First Witness.—On the motion of Mr. Thomson, seconded by Mr. Watts, it was decided that the Law Society (through its representative) be the first body to give evidence before the Committee. The Society to submit a statement of its opinion before the 8th January.

Printing of Evidence.—It was decided that the evidence taken before the Committee should be printed, instead of typed. Eight copies for members; one copy for the witness and two copies to be attached to the report when laid upon the Table of both Houses of Parliament.

Statements from Certain Bodies.—It was decided to secure statements from the following bodies as to their opinions on the Bill:
- The Registrar of Companies.
- Chamber of Commerce, Perth.
- Chamber of Commerce, Fremantle.
- Chamber of Manufacturers.
- Associated Banks.
- Stock Exchange.
- Chartered Institute of Accountants.
- Federal Institute of Accountants.
- Australian Institute of Secretaries.
- Insurance Underwriters.
- Law Society.
- Chamber of Mines.
- Under-Secretary of Mines.
- Taxpayers’ Association.
- Primary Producers.
- Wheatgrowers’ Union.
- Chamber of Commerce, Kalgoorlie.
- Chamber of Commerce, Balnuy.
- Chamber of Commerce, Albany.
- Chamber of Commerce, Geraldton.

Advertisement for Witnesses Interested.—On the motion of Mr. Watts, seconded by Mr. Rodoreda, it was decided “that all persons who desire to give evidence be invited by advertisement to write to the Secretary prior to the 31st January, setting out the points on which they desire to testify.”

Advertisement to be placed in the papers once a week every week during the month of January.

Appointment of Secretary.—On the motion of Mr. Abbott, seconded by Mr. Watts, it was decided to leave in the hands of the Chairman the appointment of a Secretary to the Committee.

Adjournment.—The Committee adjourned.

TUESDAY, 11th FEBRUARY, 1941.

The Committee met at 2 p.m.


Apology received from Mr. A. F. Watts, M.L.A.

Minutes.—Minutes of meeting held on 10th December, 1940, read by Secretary on direction by Chairman.

On the motion of Mr. Seddon, seconded by Mr. Abbott, it was decided to confirm the minutes.

Matters arizing out of the Minutes.—(a) Appointment of Secretary: The Chairman reported having obtained the services of Mr. A. S. Cown, A.F.I.A., of the Crown Law Department as Secretary to the Committee.

On the motion of Mr. Fraser, seconded by Mr. Abbott, confirmation of the Chairman’s action was agreed to.

(b) Organisations requested to give evidence: The Chairman reported having requested certain organisations other than those named in the minutes, to give evidence. The organisations approached were—
- Chambers of Commerce—Northam, Kalgoorlie, Collie, Margaret River.
- Association of Accountants.
- Commonwealth Institute of Accountants.
- Trustees and Liquidators Association.
- Institute of Incorporated Secretaries.
- Combined Committee—Accountancy and Secretary Institutes.

Resolved on the motion of Mr. Fraser, seconded by Mr. Abbott, That the action of the Chairman be indorsed.

Correspondence.—It was resolved on the motion of Mr. Rodoreda, seconded by Mr. Thomson, That the correspondence be read by the Secretary.

Correspondence read by Secretary.

It was decided on the motion of Mr. Thomson, seconded by Mr. Craig, That the inward correspondence be received and that the outward correspondence be adopted.

Adjournment of the Meeting.—It was resolved, That the action of the Chairman in postponing the meetings from the 14th, 15th and 16th January, 1941, to the 11th, 12th, and 13th February, he agreed to.
TUESDAY, 11th FEBRUARY—continued.

Evidence.—On the motion of Mr. Fraser, seconded by Mr. Craig, it was resolved that the statements as read by the witnesses be taken section by section and discussed separately.

Witnesses.—At 2.40 p.m. Mr. K. H. Hatfield and Mr. T. F. Davies appeared to give evidence on behalf of the Law Society.

Adjournment.—Meeting was adjourned at 4.35 p.m.

WEDNESDAY, 12th FEBRUARY, 1941.

The Committee met at 10 a.m.


Apology received from Mr. A. F. Watts, M.L.A.

Minutes.—Minutes of the meeting of the 11th inst. read by the Secretary on the direction of the Chairman. On the motion of Mr. Abbott, seconded by Mr. Seddon, confirmation of the minutes was agreed to.

Witnesses.—The following witnesses attended for the purpose of submitting evidence upon the provisions of the Bill—

(a) A. C. Curlewis, Secretary W.A. Chamber of Manufacturers, 10.10 a.m. to 10.30 a.m.
(b) R. D. Forbes, Solicitor, 10.30 a.m. to 12.25 p.m.
(c) A. H. Telfer, Under Secretary for Mines, 12.25 p.m. to 1.10 p.m.

Adjournment.—The Committee adjourned for luncheon at 1.10 p.m. and resumed at 2.10 p.m.

Witnesses.—The following witnesses attended after the luncheon adjournment—

(a) L. W. Jackson, Solicitor, representing the Fire and Accident Underwriters’ Association of W.A. and the Chamber of Mines of Western Australia (Inc.), 2.10 p.m. to 3.35 p.m.
(b) G. J. Boyson, Acting Registrar of Companies, 3.35 p.m. to 4.10 p.m. (Evidence only part heard).

Adjournment.—The meeting adjourned at 4.15 p.m.

THURSDAY, 13th FEBRUARY, 1941.

The Committee met at 10 a.m.


Apology received from Mr. A. F. Watts, M.L.A.

Minutes.—Minutes of the meeting of the 12th inst. read by the Secretary on the direction of the Chairman. On motion of Mr. Rodoreda, seconded by Mr. Seddon, confirmation of the minutes was agreed to.

Witness.—Mr. G. J. Boyson, Acting Registrar of Companies, continued his evidence, 10.3 a.m. to 1 p.m.

Adjournment.—The Committee adjourned for luncheon at 1 p.m. and resumed at 2 p.m.

Witnesses.—Evidence was tendered on behalf of the Stock Exchange of Perth by Mr. A. C. L. Lamb, and Mr. E. S. Saw.

It was resolved that the statement submitted by Stock Exchange of Perth be read completely through by Mr. Lamb, and that reference be then made to the commentary annexed to the statement.

Mr. A. C. L. Lamb tendered evidence from 2 p.m. to 3.40 p.m.

Mr. E. S. Saw followed Mr. Lamb in submitting evidence and continued until 4 p.m.

Adjournment.—The meeting was adjourned at 4 p.m.

TUESDAY, 25th FEBRUARY, 1941.

The Committee met at 2 p.m.


Apology received from the Hon. L. Craig, M.L.C.

Minutes.—The Secretary reads the minutes of the meeting held on the 13th instant, following instructions received from the Chairman. Confirmation of the minutes was agreed to on the motion of Mr. Seddon, and seconded by Mr. Thomson.

Witnesses.—Mr. L. W. Jackson, Solicitor, attended on behalf of the Fire and Accident Underwriters’ Association of Western Australia, 2.30 p.m. to 3 p.m.

Mr. E. S. Saw, Secretary of the Perth Chamber of Commerce and of the Stock Exchange of Perth, submitted evidence on behalf of these organisations, 3 p.m. to 4 p.m. (Evidence part-heard.)

Adjournment.—The meeting was adjourned at 4 p.m.

WEDNESDAY, 26th FEBRUARY, 1941.

The Committee met at 10 a.m.


Apology received from the Hon. L. Craig, M.L.C.

Minutes.—The minutes of the previous meeting were read by the Secretary on instructions received from the Chairman, and were confirmed on the motion of Mr. Rodoreda and seconded by Mr. Seddon.

Request by Mr. Seddon.—Mr. Seddon requested that the Companies Acts of Canada and the State of British Columbia be available for the use of members.

The Chairman replied that these Statutes would be obtained.

Witness.—Mr. E. S. Saw, Secretary of the Perth Chamber of Commerce, resumed his evidence on behalf of that organisation, 10.10 a.m. to 1 p.m.

Adjournment.—The Committee adjourned for luncheon at 1 p.m. and resumed at 3 p.m.

Witness.—Mr. R. Gumble-Miller attended and submitted evidence on behalf of the Secretarial Section of the Combined Committee of Accountancy, Secretarial, and Trustees Association.

Adjournment.—The meeting was adjourned at 4.20 p.m.
THURSDAY, 27th FEBRUARY, 1941.

The Committee met at 10 a.m.


Minutes.—The minutes of the previous meeting were read by the Secretary on instructions received from the Chairman, and were confirmed on the motion of Mr. Watts, seconded by Mr. Seddon.

Witness.—Mr. C. H. Merry submitted evidence on behalf of the Accountancy Section of the Accountancy, Secretarial, and Trustees Associations’ Combined Committee, 10.10 a.m. to 1 p.m.

Adjournment.—The Committee adjourned for luncheon at 1 p.m. and resumed at 2 p.m.

Witnesses.—Mr. C. H. Merry continued his evidence 2 to 2.30 p.m.

Mr. A. Martin submitted evidence on behalf of the Trustees and Liquidators Section of the Combined Committee of the Accountancy, Secretarial, and Trustees’ Associations, 2.30 p.m. to 3.25 p.m.

Motions re Adjournment.—The motion of Mr. Rodoreda, as seconded by Mr. Fraser, that the meeting be adjourned until the 18th March, in lieu of the 11th March, was lost.

The motion, That the meeting be adjourned until the 11th March, 1941, at 2 p.m., as moved by Mr. Seddon, and seconded by Mr. Craig, was carried.

Evidence of Solicitor General.—The Chairman advised members that he intended calling upon the Solicitor General to submit evidence on the 12th day of March.

It was decided on the motion of Mr. Watts, seconded by Mr. Thompson, that in questioning the Solicitor General, the Bill be considered clause by clause, and that the ordinary Rules of Committee be operative.

Companies Bill, 1938.—Mr. Watts requested that a copy of this Bill be obtained for the use of members. The Chairman stated that his request would be complied with.

Summarised Statements.—Mr. Thomson suggested that a summarised statement of the main points raised by witnesses be circularised to members. The Secretary was requested to attend to this matter.

Adjournment.—The meeting was adjourned at 4 p.m.

TUESDAY, 26th MARCH, 1941.

The Committee met at 2 p.m.


Apologies received from Hon. L Craig, M.L.C.; Mr. S. Saw, Secretary of the Stock Exchange of Perth, 10.15 a.m. to 11.55 a.m.; Mr. A. Hitchcock, 11.5 to 12 noon; Mr. C. H. Merry, Chartered Accountant, 12 noon to 1 p.m.

Adjournment.—The Committee adjourned for luncheon at 1 p.m. and resumed at 2 p.m.

Correspondence.—Inward correspondence relating to co-operative companies read by the Secretary, and received on the motion of Mr. Rodoreda, seconded by Mr. Fraser.

Special Meeting.—It was decided to hold a special meeting on Wednesday, 23rd April, 1941, at 10.30 a.m. for the purpose of hearing evidence tendered by Mr. A. Briskham, Registrar of Companies for South Australia.

Witness.—Mr. C. W. Harper, Chairman of the Co-operative Federation of W.A. submitted evidence, 2.35 p.m. to 3.50.

Adjournment.—The meeting was adjourned at 3.50 p.m.

THURSDAY, 27th MARCH, 1941.

The Committee met at 10 a.m.


Minutes.—Minutes of the previous meeting read by the Secretary, and confirmed on the motion of Mr. Watts, seconded by Mr. Fraser.

Witnesses.—Evidence was given by the following witnesses:—R. Gwyne Miller, Chartered Accountant, 10.5 a.m. to 10.30 a.m.; J. L. Walker, Solicitor General, 10.30 a.m. to 1 p.m.
THURSDAY, 27th MARCH, 1941—continued.

Adjournment.—The Committee adjourned for luncheon at 1 p.m. and resumed at 2 p.m.

Continuation of Evidence.—Mr. J. L. Walker continued his evidence, 2 p.m. to 3.35 p.m.

Next Meeting.—It was decided to hold the next meeting on Tuesday, 1st April, 1941, at 10.30 a.m. to hear further evidence from the Solicitor General.

Adjournment.—The Committee adjourned at 4.20 p.m.

TUESDAY, 1st APRIL, 1941.

The Committee met at 10.30 a.m.


Minutes.—Minutes of the previous meeting read by the Secretary and confirmed on the motion of Mr. Watts, seconded by Mr. Craig.

Watts's evidence was tendered by Mr. J. L. Walker, Solicitor General, 2 p.m. to 4.20 p.m.

Adjournment.—The Committee adjourned at 3.35 p.m.

Correspondence.—Correspondence read by the Secretary. Outward correspondence adopted and inward correspondence received on the motion of Mr. Fraser, seconded by Mr. Craig.

Adjournment.—The Committee adjourned at 3.35 p.m.

TUESDAY, 6th MAY, 1941.

The Committee met at 11 a.m.


Minutes.—Minutes of the previous meeting read by the Secretary and confirmed on the motion of Mr. Watts, seconded by Mr. Seddon.

Correspondence.—Inward correspondence received and outward correspondence adopted, on the motion of Mr. Abbott, seconded by Mr. Craig.

Resolutions vs Principles:

(a) Resolved to accept as a principle that the registration of company securities shall remain as in the existing Act.

(b) Resolved on the motion of Mr. Watts, seconded by Mr. Abbott: “That we accept the principle that Co-operative Companies should have separate provisions in the legislation, but feel that as far as possible all companies should be under one Act; therefore we ask the Solicitor General to advise us how this should be done.”

(c) Resolved on the motion of Mr. Seddon, seconded by Mr. Watts: “In order to provide for small mining companies as suggested by Mr. Malloch, we accept the advice of the Solicitor General that the Limited Partnerships Act be amended.”

(d) Resolved on the motion of Mr. Fraser, seconded by Mr. Thomson: “That the principle of registration of share-dealers shall remain in the Bill.”

(e) Resolved on the motion of Mr. Abbott, seconded by Mr. Craig: “That the licensing authority for auditors and liquidators be in the first instance the Registrar of Companies, with right of appeal to the Court.”

(f) Resolved on the motion of Mr. Watts, seconded by Mr. Abbott: “That with regard to priorities, the provisions of the Bankruptcy Act shall be followed.”

(g) Resolved on the motion of Mr. Abbott, seconded by Mr. Fraser: “That periods utilised by the Act for various notices, filing of documents, etc., should on principle be 14 and 28 days.”

Luncheon Adjournment.—The meeting was adjourned at 1 p.m., and resumed at 2 p.m.

Consideration of Clauses:

Clause 1 and 2 agreed to.

Clause 3: Resolved that the term—

(a) “Authorised Auditor” be altered to read “Registered Auditor.”

(b) “Authorised Liquidator” be altered to read “Registered Liquidator.”

(c) “Court” be amended by striking out the words “or any Judge thereof” and adding the words “of Western Australia.”

(d) “Manager” be amended to read: “Manager means the principal executive officer of a company whether such principal executive officer be the managing director, or the secretary or some other officer with some other designation.”
TUESDAY, 6th MAY, 1941.—continued.

(c) "Mining purposes" be amended by adding thereto the following proviso: "Provided that quarrying operations for the sole purpose of obtaining stone for building, road making, and similar industrial purposes are not included."

(f) "Officer" be inserted as follows: "Officer mean manager unless otherwise specified."

(g) "Registrar" be amended by adding at the end thereof the following words: "for the time being and includes any duly appointed acting or deputy registrar."

 Clause 4: Resolved that clause 4 be amended by amending the word "enter" appearing in the eleventh line of subclause (e) to read "entered."

Clauses 5 to 12 agreed to.

Clause 13: Resolved that clause 13 be amended:

(1) By inserting in subclause (1) after paragraph (d) thereof, a new paragraph to stand as paragraph (e) as follows: "(e) the full names, addresses, and occupations of the subscribers of the memorandum, and whether each subscriber is over or under the age of twenty-one years."

(2) By inserting after subclause (3) a new subclause to stand as subclause (4) as follows: "(4) No person under the age of twenty-one years shall subscribe to a memorandum."

Time of next Meeting.—Resolved that the meeting to be held on the 7th instant shall commence at 10.30 a.m.

Adjournment.—The meeting was adjourned at 4 p.m.

WEDNESDAY, 7th MAY, 1941.

The Committee met at 11 a.m.


Minutes.—Minutes of the previous meeting read by the Secretary and confirmed on the motion of Mr. Thomson, seconded by Mr. Watts.

Consideration of Clauses:

Clause 14: Resolved that subclause (3) be deleted, and a new subclause be inserted in lieu thereof as follows:—

(3) No company shall be registered as a non-liability company until it is proved to the Registrar by statutory declaration and such other evidence as he shall require that five per cent. of the nominal capital of the company has been paid up and lodged to the credit of a trustee for the company in a bank approved by the Registrar.

Clauses 15 and 16 agreed to.

Clause 17: Resolved as follows:—

(1) That the proviso to the clause be deleted.

(2) That the Solicitor General be requested to draft an amendment to enable an attorney to sign on behalf of a subscriber, to enable the Registrar to require production of the power of attorney and evidence that it is unrevoked, and to prohibit an orally authorised agent from signing on behalf of a subscriber.

Clauses 18 to 21 agreed to.

Clause 22: Resolved that clause 22 be deleted.

Clause 23 agreed to.

Clause 24: Resolved to ask the Solicitor General to inform the Committee why subclauses (3) and (4) should remain in the Bill.

Clause 25 agreed to.

Clause 26: Resolved that clause 26 be amended by deleting from subclause (2) in the first line thereof, the words "may refuse to" and inserting in lieu thereof the words "shall not."

Clauses 27, 28, 29 and 30 agreed to.

Clause 31: Resolved that clause 31 be amended as follows:—

(1) Insert after subclause (2) a new subclause to stand as subclause (3) as follows:—

(3) (a) Where a company has, prior to the commencement of this Section been registered under the repealed Acts by a name which includes therein any of the words (other than the word "State") mentioned in subclause (2) of this section, nothing in this section shall prevent the continuance of the registration of such company by such name after the commencement of this section.

(b) Where a company has prior to the commencement of this section been registered under the repealed Acts by a name, which includes therein the word "State," the registration of such company shall cease and be cancelled by the Registrar after the expiration of three calendar months from the date of the commencement of this Act unless in the meantime—

(i) the Governor shall, on the application of the Company, by order published in the Government Gazette, consent to the continuance of the registration of the company by the name aforesaid; or

(ii) the company shall, by special resolution and with the approval of the Registrar signified in writing, have changed its name by the exclusion therefrom of the said word "State" and the substitution therefor of another word or other words which are not prohibited by this Section.

(c) Where a company changes its name in accordance with the provisions of subparagraph (ii) of paragraph (b) of this subsection it shall be deemed to have been authorised so to do by subsection (1) of section thirty-three of this Act and thereafter subsections (3), (4), (5), and (6) of the said section thirty-three shall, with such adaptations as may be necessary, apply and have effect in relation to the change of its name by the company as aforesaid.

(2) Subclauses (3), (4), and (5) are renumbered (4), (5), and (6).
WEDNESDAY, 7th MAY, 1941—continued.

(3) Subclause (6) be deleted, and a new subclause be inserted in lieu thereof as follows:—

(7) In this section the word "company" does not apply to a company which at the commencement of this Act has already been registered as a foreign company under the repealed Acts or to a company which at the commencement of the Act had not been registered as a foreign company under the repealed Acts but had been carrying on business in this State as a company incorporated elsewhere than in this State; but save and except as aforesaid the said word "company" includes a company which upon application made after the commencement of this Act is registered under Part XI of this Act.

Clause 32: Resolved to amend clause 32 by inserting in subclause (4) thereof, after the word "thirty-four" in the sixth line, the words "and section one hundred and thirty-five."

Clause 33: Resolved that clause 33 be amended by inserting in subclause (8) in the first line thereof after the word "certificate" the words "or a copy thereof certified as correct under the hand and seal of the Registrar."

Clauses 34 to 36 agreed to.

Clause 37: Resolved that clause 37 be amended by deleting from subclause (1) in the second line thereof, the word "person" and inserting in lieu thereof the word "member."

Clause 38 agreed to.

Clause 39: Resolved that clause 39 be amended by inserting after the word "powers" in the third line, the words "included in its memorandum or."

Clause 40: Resolved that clause 40 be deleted.

Clause 41 agreed to.

Clause 42: Resolved that clause 42 be amended as follows:—

1. Subclause (3) be amended by striking out the last three lines thereof.

2. Subclause (4) be amended by striking out the word "affidavit" in the second line thereof and inserting the words "statutory declaration" in lieu thereof.

3. An additional subparagraph be added to incorporate the provisions of clause 45.

Clause 43: Mr. Watts moved that clause 43 be deleted.

Resolved to defer further consideration of clause 42, and consideration of clauses 43 to 47 until the meeting to be held on the 8th instant.

Luncheon Adjournment.—The Committee adjourned for luncheon at 1 p.m. and resumed at 2.30 p.m.

Acting Chairman.—In the absence of the Chairman and Deputy Chairman, it was resolved that Mr. Rodoreda act as Chairman for the remainder of the meeting.

Further consideration of Clauses:

Clauses 48 to 53 agreed to.

Clause 54: Resolved that the Solicitor General be requested to draft the necessary amendment to incorporate subclauses (3) (b) and (6) of the Victorian Companies Act, 1938.

Clause 55: Resolved as follows:—

1. That the Solicitor General be asked to draft an amendment to enable relief from rescission, from accidental or inadvertent error of a minor character, and that his attention be drawn to the example afforded by clauses 104 and 111.

2. That the Solicitor General be requested to insert in their appropriate position the following subclauses:—

(1) Where any statement made by an expert or contained in what purports to be a copy of or extract from a report, memorandum or valuation of an expert is included in the prospectus, there shall be set forth the date on which the statement, report, memorandum or valuation was made, and whether or not the same was prepared by an expert for the purpose of the same being incorporated in the prospectus, and also what are the qualifications of the expert as such making such statement, report, memorandum or valuation.

2. A certificate from the Department of Mines containing full details of any mining title acquired or to be acquired under option shall be included.

3. That the Solicitor General be requested to insert in an appropriate position, the wording of section 35, subsection (14) of the Victorian Act reading as follows:—

No prospectus shall contain the name of any person as a trustee for holders of debentures or as an auditor or a solicitor of the company or proposed company unless such person has consented in writing before the issue of the prospectus to act in such capacity for the debenture-holders or (as the case may be) the company or proposed company and a verified copy of such consent has been filed with the Registrar General.

4. Part "A," paragraph (4) be amended to read: "The names, descriptions, and addresses of the directors, solicitors, and secretary, or proposed directors, solicitors, and secretary."

5. Part "A," paragraph 13: That the word "conduct" appearing in the last line but one be deleted, and the word "contract" be inserted in lieu thereof.

6. Part "A," paragraph 15: That the words "and of every expert" be inserted after the word "director" whenever appearing.

7. Part "C": That the word "Paragraphs" in the first line be amended to read "parts."

8. Part "C," paragraph 1: That the words "is entitled to commence business" be deleted from the ninth and tenth lines thereof, and the words "has in fact commenced business" be inserted in lieu thereof.

Clause 56: Resolved that clause 58 be amended:—

1. By striking out paragraph (i) thereof, and renumbering paragraphs (ii), (iii), and (iv) as paragraphs (i), (ii), and (iii).
WEDNESDAY, 7th MAY, 1941—continued.

2. By requesting the Solicitor General to draft an amendment to present paragraph (iii) to provide that while application forms may only be issued forming part of prospectuses, the forms may be detached and returned by the applicant without the body of the prospectus provided there is a statement in the form that he has perused the prospectus.

Clause 57 agreed to.

Clause 58: Resolved that clause 58 be amended:—

1. By inserting in subclause (4) after the word “accountant” in the tenth line thereof, the word “geologist.”

2. In order to clarify the position the Solicitor General be requested to define the legal position of bankers, auditors, brokers, and solicitors named in the prospectus, insofar as the provisions of paragraphs (e) and (d) of subclause (1) provide for every person being a promoter of the company, and every person who has authorised the issue of the prospectus being liable in certain circumstances, and also with regard to the definition of “promoter” in subclause (4).

Clauses 59 and 60 agreed to.

Clause 61: Resolved that subclause (4) of clause 61 be amended:—

(a) by striking out the word “three” in the second line thereof, and inserting in lieu thereof the word “four.”

(b) by striking out the word “four” in the sixth and twelfth lines, and inserting in lieu thereof the word “five.”

Clause 62: Resolved that clause 62 be amended by striking out from subclause (2) the words “no-liability company.”

Clause 63 agreed to.

Clause 64: Resolved that clause 64 be amended by deleting from subclause (3) the words “at least six years” appearing in the first and second lines of paragraph (a) thereof.

Clause 65 agreed to.

Clause 66: Resolved that clause 66 be amended by inserting in subclause (1) after the word “commission” in the second line thereof, the words “and/or brokerage.”

Time of next Meeting.—Resolved that the meeting to be held on the 8th instant commence at 10.30 a.m.

Adjournment.—The meeting was adjourned at 4.25 p.m.

THURSDAY, 8th MAY, 1941.

The Committee met at 10-30 a.m.


Minutes.—Minutes of the previous meeting read by the Secretary and confirmed on the motion of Mr. Watts, seconded by Mr. Thomson.

Consideration of Clauses:

Clause 43: Consideration was given to the motion moved by Mr. Watts at the previous meeting, that clause 43 be deleted. It was resolved that clause 43 be deleted.

Clause 42: It was resolved to ask the Solicitor General—

1. Whether if subparagraph (a) of paragraph (i) is deleted from subclause (1), a proprietary company may or may not at its option include in its memorandum or articles a condition restricting the right to transfer its shares.

2. To draft an amendment to provide that companies which prior to the coming into operation of the Act had accepted deposits from persons other than members, be entitled to convert as a proprietary company, provided that all other conditions of the clause had been complied with.

Clauses 44 to 47 and other relevant clauses: Resolved to ask the Solicitor General to draft the necessary consequential amendments to clauses 43 to 47 and all other relevant clauses, as the result of the resolutions to amend clause 42 and delete clause 43.

Clauses 67 and 68 agreed to.

Luncheon Adjournment.—The Committee adjourned for luncheon at 1 p.m. and resumed at 2.15 p.m.

Further consideration of clauses:

Clause 69: Resolved that clause 69 be amended:—

1. By inserting at the end of the proviso to subclause (1) after paragraph (d) thereof the following paragraph:—

(e) The provisions of paragraphs (a) to (d) inclusive of this proviso shall not apply to a no-liability company.

2. By inserting the word “special” before the word “resolution” where it appears in paragraphs (a) and (b) of the proviso to subclause (1), and in subclause (2).

Clauses 70 to 73 agreed to.

Clause 74: Resolved that clause 74 be amended by inserting at the end of subclause (1), the words “by the company.”

Clauses 75 and 76 agreed to.

Clause 77: Resolved that it be referred to the Solicitor General, as to whether under the provisions of clause 77, a man can be elected a director without his consent.

Clauses 78 to 85 agreed to.

Clause 86: Resolved that clause 86 be amended:—

(a) by deleting from subclause (2) the word “seven” in the second line thereof, and inserting in lieu thereof the word “fourteen.”

(b) by deleting from subclause (5) the word “fifteen” in the first line thereof, and inserting in lieu thereof the word “twenty-eight.”

Clauses 87 to 92 agreed to.

Clause 93: Resolved to delete from the third line of subclause (1) the words “one month” and insert in lieu thereof the words “twenty-eight days.”
THURSDAY, 8th MAY, 1941.—continued.

Clause 94: Resolved to delete from the seventh line of subclause (1) the word “seven” and to insert in lieu thereof the word “fourteen.”

Clause 95: Resolved that Clause 95 be amended by deleting subclause (1) thereof and inserting in lieu thereof the following:—

(1) Every company shall within twenty-eight days after the allotment of any of its shares, debentures, or debenture stock, and within two months after the date on which a transfer of any such shares, debentures, or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, debentures, and certificates of all debenture stock allotted or transferred unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide. In this section “transfer” means a valid transfer and does not include a transfer which the company is entitled to refuse to register and does not register.

Clauses 96 to 102 agreed to.

Clause 103: Resolved that the Solicitor General be asked to alter clause 103 on the supposition that the priority in respect of salaries and wages shall be as in the Bankruptcy Act.

Clauses 104 to 110: Resolved that clauses 104 to 110 be deleted, but that the Solicitor General be asked to advise the Committee whether any of these clauses should be retained.

Resolved to recommend that the Bills of Safe Act be amended to incorporate the filing of charges etc., not required at present, but which were provided for in the Companies Bill.

Clause 120: Resolved that Clause 129 be amended:—

1. By deleting from the second line of subclause (1) the word “third” and inserting in lieu thereof the word “fourteenth.”

2. By deleting from the eighth line of subclause (4) the word “ten” and inserting in lieu thereof the word “fourteen.”

3. By requesting the Solicitor General to amend subclause (6) to provide that the company should not be deemed to have complied with the provisions of the Act until the notice has been approved by the Registrar.

Resolution re Co-operative Companies: Resolved that the Secretary interview Mr. C. W. Harper, Chairman of the Co-operative Federation of W.A., and obtain from him a draft covering the provisions required by the Co-operative Federation for legislation respecting Co-operative Companies, with a view to consideration of its incorporation in the Bill.

Next Meeting.—Resolved that the Committee meet on the 13th, 14th, and 15th instant, the first meeting to commence on the 13th instant at 11:15 a.m.

Adjournment.—The meeting was adjourned at 4 p.m.

TUESDAY, 13th MAY, 1941.

The Committee met at 11·15 a.m.


Minutes.—Minutes of the previous meeting read by the Secretary, and confirmed on the motion of Mr. Craig, seconded by Mr. Abbott.

Consideration of Clauses:

Clause 121: Resolved that clause 121 be amended by deleting subclause (2) and renumbering subclauses (3) and (4) as subclauses (2) and (3).

Clause 122: Resolved that subclause 122 be amended:—

1. By amending paragraph (a) of subclause (1) to provide that the words “registered office” should also be prominently displayed, as suggested by Mr. Boyson.

2. By deleting the word “engraved” from paragraph (6) of subclause (1).

3. By amending paragraph (a) of subclause (3) by deleting therefrom the words “wherein its name is not so engraved” and inserting in lieu thereof the words “whereon its name does not appear,” as a consequential amendment following the deletion of the word “engraved” from subclause (1) paragraph (6).

4. By inserting in paragraph (e) of subclause (1) after the word “advertisements” in the second line, the words “other than ordinary trade advertisements,” to comply with the intention of the Victorian Act.

Clause 123: Resolved that Mr. Boyson’s suggestion that subclause (3) be amended by deleting therefrom all the words after the word “certify” in the fourth line and inserting in lieu thereof “that the requirements of subsection (1) or subsection (2) as the case may be, of this section have been complied with, and that certificate shall be conclusive evidence of that fact in favour of any person dealing with a company,” be adopted.

Clause 124: Resolved that as there was some doubt as to whether the words “distinguishing each share by its number” appearing in subparagraph (1) of paragraph (a) of subclause (1) intended that each share should be separately identified in the register, those words be deleted, and the words “with distinguishing numbers” be inserted.

Clauses 125 and 126 agreed to.

Clause 127: Resolved that subclause (2) be amended by deleting the word “ten” in the eighth line, and inserting in lieu thereof the word “fourteen.”

Clause 128: Resolved that the word “seven” where appearing be altered to “fourteen,” and that the word “thirty” in the sixth line be altered to “twenty-eight.”

Clause 129 agreed to.

Clause 130: Resolved that the South Australian amendment be adopted by adding a new subclause as follows:—

(5) A company shall not be bound to see to the execution of any trust whether express, implied,
TUESDAY, 13th MAY, 1941—continued.

or constructive, to which any of the shares of the company may be subject.

Clauses 131 to 133 agreed to.

Luncheon Adjournment.—The Committee adjourned for luncheon at 1 p.m. and resumed at 2.15 p.m.

Witness.—Further evidence on behalf of the Co-operative Federation of W.A. was submitted by Mr. R. D. Forbes, Solicitor for the Federation, 2.15 p.m. to 3.40 p.m.

Further consideration of Clauses:

Clause 134:Resolved to amend clause 134 as follows:

1. By deleting from the second line of subclause (1) the word “twenty-one” and inserting in lieu thereof the word “thirty.”

2. By striking out (as in South Australia) in paragraph (six) of subclause (2) the words “which, or a list of which, are required to be registered or filed with the Registrar under this Act” and inserting in lieu thereof the words “affecting property of the company.”

3. By inserting at the end of subclause (6) the words introduced in South Australia as follows: “or to any public company as regards any year, if the Registrar has not at the thirty-first day of March of that year issued to that company a statement that the company was entitled to commence business.”

4. By deleting from paragraph (xxiii) the words “a private company or” appearing in the first and second lines thereof.

5. By deleting subclause (4) and renumbering subclauses (5), (6) and (7) as (4), (5) and (6).

Clause 135:Resolved that clause 135 be amended:

1. By deleting from the second line of subclause (1) the words “twenty-one” and inserting in lieu thereof the words “twenty-eight.”

2. By striking out from paragraph (vi) of subclause (1) the words “which or a list of which are required to be registered or filed under this Act” and inserting in lieu thereof the words “affecting property of the company.”

3. To insert a similar subclause as subclause (7) of clause 134.

Clauses 136 and 137 agreed to.

Clause 138:Resolved that clause 138 be amended:

1. By adopting the South Australian amendment and striking out the words “said date” at the end of subclause (3) thereof, and inserting in lieu thereof the words “date of the deposit.”

Clause 139:Resolved that the word “originally” be deleted from the first line of paragraph (f) of paragraph (1).

Clause 140 agreed to.

Time of Next Meeting.—Resolved that the meeting to be held on the 14th instant commence at 10 a.m.

Adjournment.—The meeting was adjourned at 4.30 p.m.

WEDNESDAY, 14th MAY, 1941.

The Committee met at 10 a.m.


Minutes.—Minutes of the previous meeting read by the secretary, and confirmed on the motion of Mr. Watts, seconded by Mr. Thomson.

Consideration of Clauses:

Clause 141:Resolved that the provisions for “extraordinary resolutions” be deleted from the Bill, and that the Solicitor General be requested to draft the consequential amendments.

Clause 142:Consequential on the preceding amendment it was resolved to delete the words “an extraordinary resolution or by.”

Clause 143:Resolved to delete paragraph (b) of subclause (4), and that Solicitor General be requested to redraft the clause with the deletion of the provisions relating to extraordinary resolutions.

Clause 144 agreed to.

Clause 145:Resolved to delete the words “or managers” where appearing in subclauses (1) and (3).

Resolved also that the Solicitor General be requested to amend the clause to provide that minutes must be written in a bound book.

Clause 146:Resolved that clause 146 be amended:

1. By deleting from subclause (2) the word “seven” and inserting in lieu thereof the word “fourteen.”

2. By deleting from subclause (2) the word “sixpence” and inserting in lieu thereof the words “one shilling.”

3. By deleting from the sixth line of subclause (3) the word “of” and inserting in lieu thereof the words “not exceeding.”

Clause 147:In order to provide for loose-leaf books of account resolved to amend clause 147 by deleting from subclause (1) the words “books of account” and inserting in lieu thereof the words “accounts.”

Resolved further to delete subclause (2) and to substitute in lieu thereof the following: “(2) The accounts shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by any director.”

Clauses 148 to 157:Resolved to defer consideration of these clauses for the time being, and that the secretary prepare a summary showing the main comparisons between the Victorian accounting provisions, and those in the Bill.

Clause 158:Resolved to adopt the South Australian amendment and amend the clause as follows:

1. Subsection (1) is amended by inserting after the word “shall” in the first line thereof, the words “at the statutory meeting held in accordance with section 137 and.”
Subsections (4) and (6) are amended by striking out in each subsection the words "first annual general meeting" and inserting in lieu thereof in each case the words "statutory meeting held in accordance with section 137." Resolved to further amend clause 158 by requesting the Solicitor General to draft an amendment providing that proprietary companies need not appoint an auditor, unless a majority of the members, irrespective of their share holding, and present either in person or by proxy, resolve to the contrary.

Clause 159: Resolved that clause 159 be amended:
1. By inserting before the words "an officer" in paragraph (b) of subclause (1) the words "a director or . . ."
2. By inserting before the words "fifty pounds" in subclause (1) the words "two hundred and . . ."

Clause 160: Resolved to add an additional paragraph to subclause (1) on the lines suggested by Mr. Briskham, as follows:

(e) Whether in their opinion the register of members and other records which the company is required to keep by law or its articles have been properly kept.

Resolved that further consideration of this clause be deferred until the secretary had reported on the operation of clauses 149 to 157.

Clause 161: Resolved that clause 161 be amended:
1. By amending subclause (6) to provide that any person failing to appear in answer to a summons shall be liable to commital, as in the case of refusal to produce documents or answer questions, as suggested by Mr. Boyson.
2. By deleting from subclause (7) the words "or any one or more of them" appearing at the end thereof.

Clauses 162 and 163 agreed to.

Resolved to insert after clause 163 a new clause to provide that the Governor may appoint an inspector in certain cases, as provided for in the 1939 South Australian amending Act.

Clause 164: Resolved to defer consideration of this clause until considering clause 434.

Clause 165: Resolved to defer the reference to a private company.

Clause 166: Resolved to insert the South Australian amendment by inserting at the end of subclause (1) the following passage:

; or (v) (in the case of a company formed or intended to be formed by way of reconstruction of another company or group of companies) made and forwarded to the Registrar a statutory declaration that he was a shareholder in such other company or in one or more of the companies of the said group, and that as such shareholder he will be entitled to receive and have registered in his name a number of shares not less than his qualification, by virtue of the terms of an agreement relating to the said reconstruction.

Clause 167 agreed to.

Clause 168: Resolved to amend the penalty clause by deleting from the last line of subclause (1) the word "three" and inserting in lieu thereof the word "one."

Clause 169 agreed to.

Clause 170: Resolved to adopt the South Australian amendment by adding at the end of subclause (2) the following provision:

Provided that where the said return or notification relates to the appointment of a director (whether one of the first directors or a director appointed on a change of directors) not resident in the Commonwealth, the period within which the said return or notification is to be sent shall be three months from the appointment.

Clause 171: Resolved to amend clause 171 as follows:

1. By asking the Solicitor General to amend the clause to avoid the position of directors of one company having to certify to the remuneration paid to one of their number as a director of another company, other than a subsidiary company.
2. By adopting the South Australian amendment and adding subclauses as follows:

(5) This section shall apply to a managing director and his emoluments; and the said emoluments shall include all fees, percentages, and other payments made or consideration given directly or indirectly to the managing director as such, and the money value of any allowance, or perquisites belonging to his office.

(6) A resolution under paragraph (a) of the proviso to subsection (1) of this section, resolving that a statement shall not be furnished, shall be of no effect unless the meeting at which the resolution was carried was called by fourteen days' notice in writing given to each shareholder.

Clause 172: Resolved that a provision be incorporated that a director shall not have power to vote when the matter of a contract with which he is personally interested is being determined.

Clauses 173 to 176 agreed to.

Clause 177: Resolved that the word "seven" in the fourth line of subclause (3) be amended to "fourteen."

Clause 178: Resolved that the words "nine-tenths" in the eighth and ninth lines of subclause (1) be deleted, and the words "four-fifths" substituted in lieu thereof.

Clauses 179 and 180 agreed to.

Clause 181: Resolved that clause 181 be amended:

1. By inserting the words "twenty-eight" in lieu of the words "twenty-one" in the first line of subclause (1).
2. By inserting a new subclause similar to subclause (7) of clause 134.
WEDNESDAY, 14th MAY, 1941.

Clauses 182 and 95: Resolved that clause 95 be amended to incorporate the provisions of clause 182, and also similar provisions as to debentures, and that clause 182 be consequentially amended.

Clause 183: Resolved that clause 183 be amended:

(1) the word "or" in the seventh line of subclause (1) be deleted and the word "and" substituted in lieu thereof;
(2) Subclause (2) be amended by deleting from the second line thereof the word "section" and inserting in lieu thereof the word "subsection";
(3) the word "fourteen" in subclause (3) be deleted and the word "twenty-eight" be inserted.

Clause 184: Resolved to amend clause 184 as follows:

(1) To provide that this section shall apply in relation to all forfeited shares offered for sale after the date on which the Act receives the Royal Assent.
(2) the word "fourteen" in the second line of paragraph (b) be deleted and the word "twenty-eight" inserted.

Clauses 185-190 agreed to.

Clauses 191-194: Resolved that the Solicitor General be requested to draft amendments to these clauses on the lines suggested by Mr. Forbes.

Luncheon Adjournment.—The Committee adjourned for luncheon at 1 p.m. and resumed at 2.15 p.m.

Further consideration of Clauses:

Clause 195 agreed to.

Clause 196: Resolved that Clause 196 be amended by inserting after subclause (2) a new subclause to stand as subclause (3), as follows:

(3) The provisions under this Part of this Act relating to the remedies against the property of a company and the effect of any arrangement with creditors shall bind the Crown.

Clauses 197-203 agreed to.

Clause 204: Resolved to delete from paragraph (1) the words "three weeks" and to insert in lieu thereof the words "twenty-eight days."

Clauses 205-208 agreed to.

Clause 209: Resolved to defer consideration of this clause until considering the provisions relating to voluntary winding-up.

Clauses 210-213 agreed to.

Clause 217: Resolved to ask the Solicitor General to clarify the meaning of subclause (2) (d).

Clause 218: Resolved to agree to the suggestion of the Solicitor General that the words "unless the Court otherwise directs" be inserted after the word "liquidator" in the second line of subclause (1).

Clause 219: Resolved to amend clause 219, as follows:

(1) to amend subclause (6) by deleting the word "seven" and inserting in lieu thereof the word "fourteen";
(2) to amend subclause (8) to provide that the Court may determine what additional security should be provided at any subsequent time after appointment.

Clauses 220, 221 agreed to.

Clause 222: Resolved to delete subclause (4).

Clause 223: Resolved to amend subclause (1) to provide that the creditors' wishes should prevail where conflict existed between the creditors and contributories.

Clause 224 agreed to.

Clause 225: Resolved that the word "seven" in the second line of subclause (2) be deleted and the word "fourteen" be inserted in lieu thereof.

Clause 226: Resolved to amend clause 226 as follows:

(1) that the words "at such times as may be prescribed" appearing the second and third lines of subclause (1) be deleted;
(2) by amending subclause (3) to provide that the Registrar shall within three months of the lodging of the account cause the account to be audited by an authorized auditor;

Clauses 227-229 agreed to.

Clause 230: Resolved to amend subclause (6) by deleting the word "seven" and inserting in lieu thereof the word "fourteen."

Clauses 231-242 agreed to.

Clause 243: Resolved to delete clause 243.

Clauses 244-245 agreed to.

Clause 246: Resolved to amend subclause (2) by deleting from the third line the word "ten" and inserting in lieu thereof the word "fourteen."

Clauses 247-250 agreed to.

Adjournment.—The meeting was adjourned at 4.15 p.m.

THURSDAY, 15th MAY, 1941.

The Committee met at 10 a.m.


Minutes.—Minutes of the previous meeting confirmed on the motion of Mr. Craig, seconded by Mr. Fraser.

Consideration of Clauses:

Clause 251: As the Committee had previously resolved that no provision should be made for extraordinary resolutions, it was resolved that the provision of an extraordinary resolution in paragraph (c) of subclause (1) be deleted.

Clause 252: Resolved to amend clause 252 by deleting from subclause (1) the word "seven" in the second line thereof and inserting in lieu thereof the word "fourteen."
THURSDAY, 15th MAY, 1911—continued.

Clause 253-261 agreed to.

Clause 262: Resolved to amend clause 262 as follows:

1. By deleting from subclause (2) in the 5th and 6th lines thereof the words “one month” and substituting in lieu thereof the words “twenty-eight days.”

2. By deleting from subclause (3) in the first line thereof the words “one week” and substituting in lieu thereof “fourteen days.”

Clause 263 agreed to.

Clause 264: Resolved to amend clause 264 as follows:

1. By deleting from subclause (1) in the last line but one thereof the word “seven” and substituting in lieu thereof the word “fourteen.”

2. By deleting from subclause (4) in the third line thereof the word “local.”

Clause 265: Resolved to amend clause 265 by deleting from the third line of the proviso the word “seven” and substituting in lieu thereof the word “fourteen.”

Clauses 266-270 agreed to.

Clause 271: Resolved to amend clause 271 as follows:

1. By deleting from subclause (2) in the last line thereof, the words “one month,” and substituting in lieu thereof the words “twenty-eight days.”

2. By deleting from subclause (3) in the first line thereof the words “one week” and substituting in lieu thereof the words “fourteen days.”

3. By deleting from subclause (5) in the third line thereof, the word “seven” and substituting in lieu thereof the word “fourteen.”

Clauses 272-273 agreed to.

Clause 274: Resolved to amend clause 274 as follows:

1. By deleting from subclause (1) in the second line of paragraph (a) the word “extraordinary” and inserting in lieu thereof the word “special.”

2. By deleting from subclause (1) in the third line of paragraph (e) the words “or extraordinary.”

Clause 275 agreed to.

Clause 276: Resolved to amend clause 276 by deleting from the first line of subclause (1) the word “seven” and inserting in lieu thereof the word “fourteen.”

Clause 277: Resolved to amend clause 277 by deleting from the fifth line of subclause (1) the words “an extraordinary” and inserting in lieu thereof the words “a special.”

Clause 278 agreed to.

Clause 279: Resolved to amend clause 279 as follows:

1. By deleting from subclause (2) in the sixth and seventh lines thereof the words “the costs of a solicitor exceeding £10 shall be taxed by the Master of the Court.”

2. By deleting from the last line of subclause (2) the word “fixed” and inserting in lieu thereof the word “approved.”

Clauses 280-282 agreed to.

Clause 289: Resolved that to make the clause apply to all types of liquidations, the words “by the Court” be deleted.

Clause 282: agreed to.

Clause 284: Resolved to amend clause 284. Consequent upon the amendment of clause 209 it was resolved to delete the words “and 209” and to amend the word “sections” to read “section.”

Clauses 285-288 agreed to.

Clause 298: Resolved to amend clause 289 by deleting from the first line the words “except so far as is otherwise enacted.”

Clause 290: Resolved that the Solicitor General be asked to prepare an amendment to clauses 193 and 290 to provide that wages and salaries priorities shall apply in future as against all securities given after the passing of this Act.

Clause 291 agreed to.

Clause 292: Resolved that the Solicitor General be asked to amend the clause so as to make fraudulent preferences the same as undue preferences provided for in the Bankruptcy Act.

Clause 293 agreed to.

Clause 294: Resolved that the words “one month” in the second line of the proviso to subclause (1) be deleted and the words “twenty-eight days” be inserted in lieu thereof.

Clause 295: Resolved that subclause (2) be amended as suggested by Mr. Boyleton that an execution against land should only be deemed to be completed for the sale of the land or the equitable interest and not merely by the appointment of a receiver or by the seizure of land which only involves the formalities of lodging a writ of fi. fa. at the Titles Office.

Clauses 296 and 297 agreed to.

Clause 298: Consequent upon the amendment to clause 147, resolved to delete from the second line of subclause (1) the words “books of account” and inserting in lieu thereof the words “accounts” and to make the consequential amendments to subclause (2).

Clauses 299-301 agreed to.

Clause 302: Resolved to amend clause 302 as follows:

1. By deleting from subclause (1) in the 9th line the word “seven” and inserting in lieu thereof the word “fourteen.”

2. By deleting from subclause (3) in the first line thereof the word “five” and inserting in lieu thereof the word “fourteen.”
THURSDAY, 15th MAY, 1911—continued.

Clause 303: Resolved to amend clause 303 by deleting from the 5th line thereof the word "fourteen" and inserting in lieu thereof the word "twenty-eight."

Clauses 304-306 agreed to.

Clause 307: Resolved to amend clause 307 as follows:—
1. That the clause be amended to read consistently with clause 226.
2. That the word "twenty" in the third line of subclause (3) be deleted and the word "five" inserted in lieu thereof.

Clauses 308-313 agreed to.

Clause 314: Resolved to amend clause 314 as follows:—
1. By deleting from subclause (2) the word "month" in the third and seventh lines thereof and inserting in lieu thereof the words "eighty-eight days."
2. By deleting from the third line of subclause (3) the word "one month" and inserting in lieu thereof the words "twenty-eight days."
3. By deleting from subclause (6) the word "twenty" in the 5th line thereof and inserting in lieu thereof the word "six."

Clause 315: Resolved to amend clause 315 as suggested by Mr. Boylson that the clause be given retrospective effect so as to apply to cases where the company was dissolved before the commencement of the new Act. (See N.S.W. section 324, subsection (3).) Clause 316 agreed to.

Clause 317: Resolved to adopt Mr. Boylson’s suggestion that "six years" be substituted in subclause (2) in lieu of "twenty years."

Clauses 318-320 agreed to.

Clause 321: Resolved to amend clause 321 as follows:—
1. That subsection (1) be amended by adding at the end of paragraph (6) the words "except by leave of the court."
2. That the Solicitor General be requested to give consideration to inserting in subclause (3) the words "or by leave of the court upon application by the company."

Clauses 322-331 agreed to.

Clause 332: Resolved to amend clause 332 by deleting from paragraph (1) in the third line thereof the word "six" and inserting in lieu thereof the word "fourteen."

Clauses 333-347 agreed to.

Clause 348: Resolved to amend clause 348, as follows:—
1. That the paragraph (e) of subclause (1) be amended to provide that it would be sufficient if foreign companies were required to file a list of all directors normally resident in Australia together with the necessary particulars relating to such directors.
2. Resolved to accept Mr. Boylson’s opinion that the period of one month in subclause (2) is too short and to substitute in lieu thereof the words "six months."

Clause 349: Resolved to amend clause 349, as follows:—
1. That subclause (2) be amended to conform with clause 120.
2. That subclause (4) be amended to govern foreign companies at present registered under the Companies Act.
3. That the Solicitor General be asked to amend and alter the clause where conflict exists between subclause (4) thereof and clause 355.

Clauses 350-353 agreed to.

Clause 354: Resolved that clause 354 be amended as follows:—
1. By deleting from the sixth line of subclause (1) all words after the first word "filling."
2. By adopting the South Australian amendment and deleting from subclause (4) the words "private or proprietary."

Clause 355 agreed to.

Clause 356: Resolved to ask the Solicitor General for an interpretation of this clause to clarify whether it applies to agencies and sub-agencies.

Clause 357: Resolved to adopt Mr. Boylson’s suggestion to allow due publicity of notice of intention to cease business as in the present Act "Notice to be published in three consecutive issues of Government Gazette and three times at intervals of one week in a daily newspaper published in Perth and circulating generally in W.A."

Clauses 358-363 agreed to.

Clause 364: It was decided that local registers should be kept by all foreign companies and not those specified in clause 304, and it was therefore decided to delete this clause.

Clauses 365-366 agreed to.

Clause 367: As this clause appears to be similar to clause 130, and suggested amendment thereto, resolved that the Solicitor General be asked to consider the position.

Clauses 368-370 agreed to.

Clause 371: Resolved that this clause be deferred and the secretary inquired from Mr. A. C. L. Lamb of the Stock Exchange as to its operation in practice.

Clause 372: Resolved to delete from the last line but one of subclause (1) thereof the word "sixpence" and to substitute in lieu thereof the words "£6."

Clause 373: Resolved to amend clause 373, as follows:—
1. Delete from the fifth line the word "thirty" and substitute in lieu thereof the words "twenty-eight."
2. Delete from the last line the word "seven" and substitute in lieu thereof the word "fourteen."

Clauses 374-375 agreed to.
THURSDAY, 15th MAY, 1941.—continued.

Clause 376: Resolved to place this clause in sequence with clause 370.

Clause 377: Defer. Secretary to interview Mr. Lamb.

Clauses 378-379-380: Defer. Secretary to obtain information from Solicitor General.

Clause 381 agreed to.

Clause 382: Resolved to place this clause at the beginning of Part XI.

Clause 383: Resolved to adopt South Australian amendment and strike out from subclause (3) the words "auditor or."

Clause 384: Agreed to.

Clause 385: Resolved to amend subclause (1) by deleting from the fourth and seventh lines the words "one month" and substituting in lieu thereof the words "twenty-eight days."

Clause 386: Agreed to.

Clause 387: Resolved to obtain an opinion as to whether the word "sale" covers the exchange of good securities for worthless ones.

Clause 388 agreed to.

Clause 389: Resolved to adopt the South Australian amendment and insert in the second line of subsection (1) after the word "in" the words "addition to."

Next Meeting.—It was resolved to hold the next meeting on Tuesday, 20th May, at 11 a.m.

Adjourment.—The meeting adjourned at 4 p.m.

TUESDAY, 20th MAY, 1941.

The Committee met at 11 a.m.


Minutes.—Minutes of the previous meeting read by the secretary and confirmed on the motion of Mr. Craig, seconded by Mr. Seddon.

Matters Arising out of Minutes.—Secretary reported on clauses 371, 377 to 380, and made a comparison between the Victorian accounting provisions, and the proposed provisions appearing in clauses 149 to 157 and 160 of the Bill.

Consideration of Clauses:

Clause 371: Resolved that the Solicitor General be requested to advise why the provisions for a State seal were inserted in the Bill, and what benefit accrues to the State by its adoption, particularly if the clause were made to apply to all foreign companies registered in this State.

Provisions as Meetings.—Resolved that the secretary investigate the advantages of making it compulsory for a company incorporated in Western Australia to hold its annual meetings in this State.

Clause 147: Resolved to delete subclause (1) and to substitute in lieu thereof a new clause on the lines of the Victorian Act, as follows:

(1) Every company shall cause to be kept proper accounts in which shall be kept full true and complete accounts of the affairs and transactions of the company.

Clause 148: Resolved to amend clause 148, as follows:

1. By inserting after subclause (1) a new subclause to stand as subclause (2) as follows:

(2) Every profit and loss account of a company not being a banking company shall show the balance of profit and loss for the period which it covers and shall in particular show separately:

(a) the net balance of profit and loss on the company's trading;

(b) (i) income from general investments; and (ii) income from investments in subsidiary companies;

(c) amounts (if any) charged for depreciation or amortisation on (i) investments; (ii) goodwill; and (iii) fixed assets;

(d) the amount transferred to the account from reserves or from provisions;

(e) directors' fees.

(Note.—This provision is identical with Victorian section 124 (4) with the exception that any profit or loss arising from a sale or revaluation of fixed or intangible assets has been deleted.)

2. By making subclause (2) as subclause (3) and adding thereeto after the word "affairs" in seventh line the words appearing in the Victorian Act, as follows: "including information as to whether or not the results of the year's operations (as disclosed in the profit and loss account or the income and expenditure account) have in the opinion of the directors been materially affected by items of an abnormal character."

Reserves.—Resolved to incorporate South Australian section 148, regarding reserves, to be shown in the balance sheet and to ask the Solicitor General whether this section was purposely omitted.

Clause 147: Clause 147 is further amended by adding after subclause (3) a new subclause similar to Victorian section 123 (7), as follows:

(4) The Court may in a particular case order that such accounts be open to inspection by an accountant acting for a director, but upon an undertaking in writing being given to the Court that information acquired by such accountant during his inspection shall not be disclosed by him save to such director.

Clauses 149 and 150 agreed to.

Clauses 151 and 152: Resolved to delete these clauses, and to substitute in lieu thereof the Victorian provisions relating to subsidiary companies appearing in sections 125 and 126 of the Victorian Companies Act, 1938.
TUESDAY, 20th MAY, 1941.—continued.

Clause 154: Resolved to delete subclauses (1) and (2) and to substitute in lieu thereof the following:

(1) Every balance sheet and profit and loss account or income and expenditure account of a company shall be accompanied by a certificate signed on behalf of the Board by two of the directors of the company, or if there is only one director resident in the State, by that director, stating that in their or his opinion the balance sheet is drawn up so as to exhibit a true and correct view of the state of the company's affairs, and that in their or his opinion the profit and loss account or the income and expenditure account (as the case may be) is drawn up so as to exhibit a true and correct view of the results of the business of the company for the year, and the auditor's report shall be attached to the balance sheet, and the report shall be laid before the company in general meeting, and shall be open to inspection by any member.

(2) Every company which issues, circulates, or publishes any copy of a balance sheet or of a profit and loss account or of an income and expenditure account which has not been certified and signed as required by this section or (in the case of a balance sheet) which has not a full and true copy of the auditor's report attached thereto, and every director, manager, or other officer of the company who is knowingly a party to the default shall, on conviction be liable to a penalty not exceeding twenty pounds.

Clauses 155 and 156 are amended by deleting therefrom the reference to a private company.

Clause 157 agreed to.

Clause 160: Resolved that clause 160 be amended, as follows:

1. By adding to subclause (1) after the words "balance sheet" in the third line the following words "and profit and loss account or income and expenditure account."
2. By inserting in paragraph (b) of subclause (1) after the word "affairs" in the fourth line thereof, the words "and the profit and loss account is properly drawn up so as to exhibit a true and correct view of the results of the business for the year, or the income and expenditure account is properly drawn so as to exhibit a true and correct view of the income and expenditure for the year."

Clause 390: Resolved to amend clause 390, as follows:

1. To adopt the South Australian amendment to the corresponding clause by adding at the end of subclause (1) the words "or in exchange for other shares."
2. To insert in the second line of subclause (1) after the words "place to place" the words "whether by appointment or otherwise."

3. That clause 390 be recast to provide that hawking under subclause (1) and offers in writing under subclause (2) be subject to the granting of a certificate by the Minister after advertisement; the Minister having power to revoke as in the Victorian section 356.

(Note.—By the resolution it is proposed to delete paragraph (d) of subclause (2).)

4. That paragraph (e) of subclause (2) be deleted.

Clause 391 agreed to.

Clause 392: Resolved to alter the term "share dealer" to "share broker" and that the Solicitor General be requested to prepare all consequential amendments to clauses 392 to 401 arising therefrom.

Resolved also to delete the term "exempted share dealer."

Clause 393: Resolved to delete paragraphs (d) and (e) and to amend paragraph (f) to read (d).

Clause 394: Resolved to amend clause 394 as follows:

1. By deleting from paragraph (e) the letters and word "(e) (d) and (e)" and inserting in lieu thereof "and (e)."
2. To reletter the letter (f) in the second line of paragraph (e) as (d).
3. Resolved that paragraph (e) be further amended by deleting from subparagraph (ii) thereof the word "three" and inserting in lieu thereof the word "five."

Both Mr. Thomson and Mr. Watts voted against this last motion and desired that their dissent be recorded in the minutes.

Clause 395: Resolved to delete paragraph (e) and reletter paragraphs (f) and (g) as (e) and (f).

Clauses 396 and 397 agreed to.

Clause 398: Resolved to delete clause 398.

Clause 399: Resolved to delete the reference to paragraph (f) of clause 399 appearing in paragraph (a) of clause 399.

Clauses 400 to 405 agreed to.

Next Meeting.—Resolved to hold the next meeting on the 21st instant commencing at 10 a.m.

Adjournment.—The Committee finally adjourned at 4.10 p.m. having previously adjourned between 1 p.m. and 2.15 p.m.

WEDNESDAY, 21st MAY, 1941.

The Committee met at 11 a.m.


Minutes.—Minutes of the previous meeting read by the secretary, and confirmed on the motion of Mr. Craig, seconded by Mr. Seddon.
WEDNESDAY, 21st MAY, 1941.—continued.

Consideration of Clauses:—

Clause 405: Resolved to delete from subclause (2) the words "has underwritten or subunderwritten" and to substitute in lieu thereof the words "underwrites or subunderwrites," and to obtain from the Solicitor General a memorandum as to the effect of the amendment.

Clauses 406 to 408 agreed to.

Clause 409: Resolved that it be referred to the Solicitor General for an interpretation whether the items shown in subparagaph (i) to (iv) of paragraph (a) of subclause (1) should be shown separately in the balance sheet apart from other investments.

(Note.—There appears to be a conflict with the Twelfth Schedule where investments in subsidiary companies are not specified.)

Clauses 410 to 415 agreed to.

Clause 410: Resolved that subclause (1) be amended by inserting after the word "do" in the fourth line thereof, the words "or refrain from doing."

Clauses 417 to 422 agreed to.

Clause 423: As it has previously been decided that the Registrar should be the licensing authority, resolved that the word "Registrar" be substituted in lieu of the word "Court" wherever appearing, and that any other consequential amendments thereafter be made.

Clause 424: Resolved to insert after the word "liquidator" in the second line, the words "or any such registration is cancelled."

Clause 425 agreed to.

Clause 426: Resolved further with regard to clause 423 that a bond should not be required of auditors, and that a registered liquidator should only be required to enter into a bond when he enters into a liquidation; the cost of such bond being borne by the company.

Clause 427: Resolved that clause 428 be amended by inserting in the second lines of subclauses (2) and (3) after the word "and" in each case, the words "in the opinion of the Registrar."

Resolved further that the Solicitor General be requested to draft an amendment to provide that a liquidator may be disqualified from acting for the same reasons as provided in the Bill for auditors.

Clause 429: Resolved that the consequential amendments to this clause be made, consequent upon the Registrar being appointed the licensing authority, in lieu of the Court.

Clause 430: Resolved that this clause be referred back to the Solicitor General to amend as suggested by Mr. Davies to clarify that rules of court may be made covering failure of a liquidator to maintain his bond.

Clause 429 agreed to.

Clause 430: Resolved that subclause (2) be deleted, and that a new subclause be substituted in lieu thereof providing that the Governor may by regulation alter or add to the forms in any of the Schedules (other than the Second Schedule), but so that the amount of fees be not increased.

Clause 431: Resolved that clause 431 be amended by inserting in the last line of subclause (2) after the word "prepaid" the word "registered."

Clause 432 agreed to.

Clause 433 deferred. Secretary to receive information from the Solicitor General as to whether liquidators should be expressly named in subclause (4).

Clauses 434 to 439 agreed to.

Clause 440 agreed to.

Clause 441 and 442 agreed to.

Clause 443 deleted.

Clause 444: Resolved that the clause be amended to extend its operation to any statement made by foreign companies registered in this State.

Clauses 445 and 446 agreed to.

Clause 447: As it was desirable that summary offences should be dealt with by a magistrate, resolved that the word "justices" be deleted from the fourth line, and the words "by a resident or stipendiary magistrate" inserted.

Clause 448: Resolved to delete the word "two" from the third line, and to insert in lieu thereof the word "one."

Clauses 449-450 agreed to.

Clause 451 deleted.

Clauses 452 to 455 agreed to.

Stamp Duty: Resolved that the Committee recommend to the Treasurer that he consider the advisability of making the stamp duty on transfer of shares comparable with that existing in other States.

First Schedule agreed to.

Second Schedule: Articles 1 and 2 agreed to.

Article 3: Resolved that the word "special" be inserted in lieu of the word "extraordinary" in the fifth line.

Articles 4 to 18 agreed to.

Article 19: Resolved that the words "one month" in the last line but one be deleted and the words "twenty-eight days" substituted in lieu thereof.

Articles 21 to 33 agreed to.

Article 31: Resolved to delete from the first line the word "ordinary" and to insert in lieu thereof the word "special."

Articles 35 and 36 agreed to.

Article 37: Resolved to delete from the first line the word "ordinary" and to insert in lieu thereof the word "special."

Article 20: Resolved that the Solicitor General be requested to interpret the provisions of this article, particularly the reference to a "deceased survivor" in the fifth line.

Articles 38 and 39 agreed to.

Article 40: Resolved that the word "extraordinary" be deleted and the word "special" inserted in lieu thereof. Resolved further that any reference in the Bill to extraordinary general meetings should be amended to special general meetings.

Article 41: Resolved that the word "special" be substituted in lieu of the word "extraordinary" wherever appearing.
WEDNESDAY, 21st MAY, 1941.—continued.

Article 42: Resolved to delete from the second line the word "seven" and to substitute in lieu thereof the word "fourteen."

Article 43 agreed to.

Article 44: Resolved to delete from the second line the word "extraordinary" and to substitute in lieu thereof the word "special."

Article 45 agreed to.

Article 46: Resolved to delete from the first line the word "fifteen" and to insert in lieu thereof the word "thirty."

Article 47 agreed to.

Article 48: Resolved to delete from the first line the word "fifteen" and to insert in lieu thereof the word "thirty."

Article 49: Resolved to delete from the sixth line the word "ten" and to insert in lieu thereof the word "fourteen."

Articles 50 to 60 agreed to.

Article 61: Resolved to delete from the eighth line the word "extraordinary" and to insert in lieu thereof the word "special."

Articles 62 to 71 agreed to.

Article 72: Resolved that paragraph (e) be deleted and the following paragraph inserted in lieu thereof:

(e) takes the benefit, whether by assignment, composition or otherwise, of any law relating to bankrupt or insolvent debtors; or.

Resolved further that any similar clause in the Bill be similarly amended.

Articles 73 to 79 agreed to.

Article 80: Resolved to delete from the first line the word "extraordinary" and to insert in lieu thereof the word "special."

Articles 81 to 86 agreed to.

Articles 87 to 88: Resolved to amend these articles consequent upon the proposed amendments to clauses 147 and 148.

Articles 90 to 100 agreed to.

Article 101: Resolved to delete from the fourth line the word "seven" and to insert in lieu thereof the word "fourteen."

Articles 102 to 107 agreed to.

Tables B and C: Resolved to make similar amendments where necessary to tables B and C.

Tables A, B, and C: Resolved that an article be inserted to give power to directors to delegate their right to operate on banking accounts.

Third Schedule: Resolved to delete from the heading the words "Limited by Shares."

Resolved to insert in article 22 specific authority to sell land.

Fourth Schedule: Resolved to delete from the heading the words "or a private company."

Fifth Schedule agreed to.

Sixth Schedule, Form A: Resolved to delete the references to private companies.

Forms B and C agreed to.

Seventh, Eighth, and Ninth Schedules agreed to.

Tenth Schedule, Table A: Resolved to make the Court and Land Titles Office production fees uniform at 12s.

Table B agreed to.

Table C: Resolved to delete the fees relating to registration of mortgages, etc, consequent upon the provisions relating to registration of charges being deleted from the Bill.

Eleventh Schedule: Resolved to amend paragraph 23 by deleting from the fifth line the word "or" and substituting in lieu thereof the word "for."

Twelfth Schedule: Resolved to refer the Solicitor General to clause 409 for an apparent inconsistency.

Consequent upon a previous resolution, to delete the reference to "loans to directors."

Thirteenth Schedule agreed to.

Next Meeting.—Resolved to hold the next meeting on the 22nd instant commencing at 10.30 a.m.

Adjournment.—The meeting was finally adjourned at 4 p.m., having previously adjourned for luncheon between 1 p.m. and 2.15 p.m.

THURSDAY, 22nd MAY, 1941.

The Committee met at 10.30 a.m.


Minutes.—Minutes of the previous meeting read by the secretary and confirmed on the motion of Mr. Seddon, seconded by Mr. Fraser.

Consideration of Clauses, etc.:

Fifth Schedule: Resolved to adopt the South Australian amendment by adding after the words "Names, descriptions, and addresses of directors or proposed directors" the following words: "Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment."

Sixth Schedule, Form A: Resolved to adopt the South Australian amendment by adding immediately before the words "date of holding of last annual meeting" the following words: "Name(s) of the auditor(s) of the company at the date of this return."

Resolved to further amend the Form A as in South Australia by deleting the words "or transferred" in the penultimate footnote, and by deleting the whole of the last footnote to the said form.
THURSDAY, 22nd MAY, 1941.—continued.

Thirteenth Schedule: Resolved to adopt the South Australian amendment by deleting Form G, and substituting in lieu thereof a form as follows (page 365):

Form G (Sections 350 and 430).

THE COMPANIES ACT, 1941.

Certificate of Registration.

This is to certify that a company called

....................formed and incorporated in...

and carrying on business in Western Australia, did on the......day of.........19., duly register under Part XI. of the Companies Act, 1940.

The name and place of abode or business of the person appointed by such company as agent to carry on its business in Western Australia is

....................

The registered office of the said

is situated at.............

Given under my hand this.........day of

..............................19..

..................................Registrar of Companies.

Thirteenth Schedule: Resolved to also adopt the South Australian amendment to corresponding Form F (page 304) by adding after the word “proposes” in line three of the said form the word “is” in italics.

Tenth Schedule: Resolved to add to the Tenth Schedule, fees for registration under Part XI. of the Act of a company not having a share capital comparable with the fees payable under Part B of the Schedule, and on the lines of the South Australian amendment appearing on page 8 of the South Australian Companies Act regulations.

Clause 357: Resolved to insert new clauses after clause 357 to stand as clauses 358 to 360 similar to section 361 (a), (b), and (c) of the South Australian Act, as amended in 1930, and relating to the notice to be given to the Registrar on the liquidation of a foreign company in the country of its incorporation.

Power to destroy annual returns.—Resolved that the Registrar be empowered to destroy annual returns, etc., held for a period of at least 10 years, and that a clause be inserted on the lines of New South Wales section 378.

Pension Schemes.—Resolved that the Solicitor General be requested to draft an amendment to cover the suggestion by Mr. Forbes that there may be some existing pension or superannuation scheme adopted by some companies which are invalid on account of their offending against the rule against perpetuities, and that in regard to future schemes it is desirable to avoid the necessity of providing for a limited duration to ensure validity, and that his attention be drawn to New South Wales section 346 which contains validating provisions.

Discretionary power to be granted to Registrar.—Resolved that the Solicitor General be requested to prepare an all-embracing clause to provide that the Registrar is empowered to extend the time for filing of documents, etc., or for the doing or refraining from doing any obligation, etc., imposed in the Bill, subject to there being no similar provisions already in the Bill.

Appeals by aggrieved Shareholders.—Resolved that the Bill be amended to provide that the remuneration of directors shall from time to time be determined at the annual general meeting, and that the Solicitor General be asked to prepare an amendment to provide that when at an annual general meeting, the remuneration of any director or officer has been fixed by a resolution at which that director or officer exercised the majority of votes, then any shareholder may on proof to the Court that such remuneration is unconscionable and detrimental to the best interests of the company and its shareholders have the remuneration reviewed by the Court.

(Note.—Mr. Abbott voted against this resolution, and desired his dissent to be recorded in the minutes.)

Clause 203 (recommitted): Resolved that clause 203 be amended by numbering the existing provisions as subclause (1) and adding as a new subclause the provisions of Victorian section 166, subsection (2), as follows:

(2) Without limiting the generality of paragraph (vi) of subsection (1) of this section, the Court may, if it is satisfied that directors have acted in the affairs of a company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which in the opinion of the Court is unfair or unjust to other members, order the company to be wound up.

Co-operative Companies.—Resolved that the Solicitor General be requested to submit for the information of the Committee, the essential provisions of the Co-operative and Provident Societies Act, 1903, for insertion as a special part in the Companies Act.

(Note.—It is desired that these provisions will apply to the consumer type of co-operative company as distinct from the producer type.)

Next Meeting.—Resolved that the next meeting be called by the Chairman, upon his receiving the report of the Solicitor General.

Adjournment.—The meeting was adjourned at 12.50 a.m.

TUESDAY, 1st JULY, 1941.

The Committee met at 11.35 a.m.

Members present.—Hon. E. Nulsen, M.L.A. (Chairman); Hon. H. Seddon, M.L.C. (Deputy Chairman); Hon. A. Thomson, M.L.C.; Hon. G. Fraser, M.L.C.; Mr. A. P. Watts, M.L.A.

Apologies received from Hon. L. Craig, M.L.C., and A. J. Rodoreda, M.L.A.

Minutes.—Minutes confirmed on the motion of Hon. A. Thomson, seconded by Hon. H. Seddon.

Correspondence.—Correspondence read by the Secretary. Inward correspondence received and outward correspondence adopted on the motion of Hon. H. Seddon, seconded by Hon. A. Thomson.

Attendance of Solicitor General.—Solicitor General attended and reported on the drafting of amendments desired by the Committee.

Consideration of amendments:

Co-operative Societies.—Resolved to accept the advice of the Solicitor General to adopt the amendments
TUESDAY, 1st JULY, 1941—continued.

suggested by the Co-operative Federation by Mr. R. D. Forbes but not to import the essential provisions of the Co-operative and Provident Societies Act, 1903, as a special part in the Companies Bill. It was also agreed to recommend the amendment of the 1903 Act to provide that the Registrar of Companies should act as Registrar in lieu of the Registrar of Friendly Societies.

Clause 24: Resolved to agree to the clause as printed.

Clause 55: To be referred back to the Solicitor General for an amendment being drafted to grant relief from rescission of a contract through any inadvertent or immaterial omission.

Clause 103: Amendment as drafted by the Solicitor General agreed to.

Clause 145: Recommended. Resolved to cancel the original recommendation for the amendment of this clause, and to insert in subclause (1) thereof, in the fourth line thereof before the word "books" the word "bound."

Clause 153: Resolved that the appropriate clause be amended to prohibit the granting of loans to directors. (See clause 67.)

Resolved to insert in subclause (1) in the first line of paragraph (b) thereof after the word "the" the word "total."

Clauses 289, 321, 356, and 371: Resolved to leave these clauses as printed.

Clause re priorities: Resolved to cancel previous recommendation for the amendment of clause 196, and to insert after clause 289 a new clause as follows:

"Subject as hereinafter provided, nothing in this Act shall prejudice or in any wise affect the right of the Crown to be paid debts owing to the Crown in priority of all other debts in the winding-up of a company, and such priority of the Crown shall be preserved and shall continue and have effect accordingly: Provided that the priority of the Crown—

(a) shall not extend to any corporate body representing the Crown actually engaged in trading and carrying on business as a State trading concern under the provisions of the State Trading Concerns Act, 1916; and

(b) this section shall be read subject to section 290 of this Act."

Clause 299: Resolved to accept amendment as drafted by the Solicitor General.

Clause 409: Deferred.

Clause 423: Resolved that no particular amendment be drafted to provide for the payment by a company in liquidation of the cost of the liquidator's bond.

New Clauses: Clauses granting the Registrar power to destroy documents, stating that the rule against perpetuities shall not apply to certain pension schemes, and relating to appeals to the Court by aggrieved shareholders, as drafted by the Solicitor General agreed to.

6. Adjournment.—The Committee finally adjourned at 3.30, having previously adjourned for luncheon between 1 and 2 p.m.

WEDNESDAY, 2nd JULY, 1941.

The Committee met at 10.30 a.m.


Apology received from Mr. A. J. Rodoreda, M.L.A.

Minutes.—Minutes read by the Secretary and confirmed on the motion of Mr. Watts seconded by Hon. A. Thomson.

Deliberations.—The Committee checked the amendments to the clauses as drafted by the Solicitor General with the resolutions for amendment of the said clauses.

Clause 409: Resolved to amend clause 409 by deleting from paragraph (a) of subclause (1) thereof the words "other than" appearing in the first line, and inserting in lieu thereof the words "and including."

Clause 2: Resolved to delete from Division 8 of Part II. (page 2) the words "and private."

Clauses 3 to 13: Drafting correct.

Clauses 14 to 16: Resolved to make amendments to these clauses similar with the amendment to clause 13.

Clause 17: Proviso requires deletion.

Clauses 10 to 25: Drafting correct.

Clause 26: The word "to" after the word "refuse" also requires deletion.

Clauses 27 to 32: Drafting correct.

Clause 33: Clause 33 requires amending by inserting in subclause (6) in the first line thereof after the word "certificate" the words "or a copy thereof certified as correct under the hand and seal of the Registrar."

Clauses 34 to 41: Drafting correct.

Clause 42: The last three lines of subclause (3) require deletion. Subclause (4) requires amending by striking out the word "affidavit" in the second line thereof and inserting the words "statutory declaration" in lieu thereof.

Resolved that the new subclause (5) be referred back to the Solicitor General in order that the words may be clarified to make it clear that the company must in future comply with the requirements of paragraph (d) of subclause (1).

Clauses 43 to 54: Drafting correct.

Clause 55: An amendment is desired to enable relief from rescission of a contract where the omission is of an accidental or inadvertent error of a minor character.

Clauses 56 to 86: Drafting correct.

Clause 87: Subclause (2) requires amending by deleting from the fourth line thereof the words "twenty-one" and inserting in lieu thereof the words "twenty-eight."

Clauses 88 to 119: Drafting correct.

Clause 120: Subclause (4) requires amending by deleting from the fourth and eighth lines the words "three" and "ten" respectively and inserting in lieu thereof the word "Fourteen" in each case.

Clauses 121 to 133: Drafting correct.

Clause 134: Requires amending by deleting from the second line the words "twenty-one" and inserting in lieu thereof the words "twenty-eight."
WEDNESDAY, 2nd JULY, 1941—continued.

The words "under this Act" at the end of paragraph (xix) also require deletion.

Clause 135: The words "under this Act" at the end of paragraph (vi) of subclause (1) also require deletion.

Clauses 136 to 152: Drafting correct.

Clause 153: See previous minutes.

New Clause 153A and Clause 154: Drafting correct.

Clause 155: Subclause (3) requires amending by deleting from the fourth line thereof the word "seven" and inserting in lieu thereof the word "fourteen."

Clauses 156 and 157: Drafting correct.

Clause 158: New subclause (7) to be referred back to the Solicitor General to ask him whether the power of resolving that an auditor should not be appointed should be made at the statutory meeting or at an annual general meeting and then made consistent with subclause (1).

It is also desired that new subclause (7) be amended to make it clear that an auditor shall at all times be appointed unless the members resolve to the contrary.

Clauses 159 to 163 and 163A to 165: Drafting correct.

Clause 166: Paragraph (b) of subclause (4) requires deleting and paragraphs (e), (d), and (e) to be renumbered (b), (e), and (d).

Paragraph (d) (renumbered as (e)) requires amending by deleting therefrom the words "private company or."

Clauses 167 to 170 and 170A to 183: Drafting correct.

Clause 184: Delete from paragraph (b) in the second line thereof the word "seven" and insert in lieu thereof the word "twenty-eight days."

Clauses 185 to 191 and 191A and 192: Drafting correct.

Clause 193: Deferred. Secretary to confer with Mr. R. D. Forbes, solicitor for the Co-operative Federation of W.A.

Clauses 194 to 216: Drafting correct.

Clause 217: The Committee desire the Solicitor General to clarify the meaning of paragraph (d) of subclause (2).

Clauses 218 to 289, 280A to 292, 292A and 293: Drafting correct.

Clause 284: Delete from subclause (4) in the second line of paragraph (b) thereof the words "twenty-eight days" and insert in lieu thereof the words "two calendar months."

Clauses 295 to 310: Drafting correct.

Clause 317: Delete from subclause (2) in the sixteenth line thereof the word "twenty" and insert in lieu thereof the word "six."

Clauses 318 to 320: Drafting correct.

Adjournment.—The meeting was finally adjourned at 4 p.m., having previously been adjourned for luncheon between 1 and 2 p.m.

THURSDAY, 3rd JULY, 1941.

The Committee met at 10.30 a.m.


Apology received from Mr. A. J. Rodoreda, M.L.A.

Minutes.—Minutes of the previous meeting read by the Secretary and confirmed on the motion of Mr. Watts, seconded by Hon. A. Thomson.

Consideration of Clauses:

Clauses 321-347: Drafting correct.

Clause 348: Delete from subclause (1) in the second line thereof, the words "one month" and insert in lieu thereof the words "twenty-eight days."

Delete from subclause (3) in the fifth line of paragraph (a) thereof, the words "one month" and substitute in lieu thereof the words "six months."

Clauses 349-357 A, 357 A-370: Drafting correct.

Clause 371: Delete from the first line the word "shall" and insert in lieu thereof the word "may."

Clauses 372-382: Drafting correct.

Clause 383: Delete from subclause (3) in the last and last line but one, the words "an authorised auditor or liquidator," and insert in lieu thereof the words "an registered liquidator."

Clauses 384-422A-422 A-439: Drafting correct.

Clause 440 deleted.

Clauses 441-442-442A-455: Drafting correct.

Second Schedule.

Table A:

Articles 1-41: Drafting correct.

Article 42: Delete from the second line the word "seven" and insert in lieu thereof the word "fourteen."

Articles 43-70-70A-107: Drafting correct.

Table B:

Articles 1-62-621-99: Drafting correct.

Table C:

Articles 1-32-32A-59: Drafting correct.

Third, Fourth, and Fifth Schedules: Drafting correct.

Sixth Schedule.

Reference to be made in footnote to both forms of balance sheet to the other sections mentioned in the Bill relating to the contents of balance sheets, viz., 66 (Commissions and Discounts), 67 (Outstanding loans for purchase of fully-paid shares held for benefit of employees or of loans to persons other than directors to enable those persons to purchase fully paid shares), 68 (Statement re redeemable preference shares), 70 (Discount on shares), 76 (Re interest on share capital), 101 (Re reissued debentures), 149 (preliminary expenses, expenses incurred in issue of share capital or debentures, amount of goodwill, patents and trademarks), 151 (subsidiary companies).

Seventh to Tenth Schedules: Drafting correct.

Eleventh Schedule.

Rules for winding-up:

Rule 1 agreed to.
THURSDAY, 3rd JULY, 1941—continued.

Rule 2: Delete from the first line the word "seven" and insert the word "fourteen."
Rule 3 agreed to.
Rule 4: Delete from the seventh line the word "four" and insert the word "seven."
Rule 5 agreed to.
Rule 6: Delete from the second line the word "twelve" and insert the word "fourteen."
Rule 5 agreed to.
Rule 7: Delete from the fourth line the word "four" and insert the word "seven."
Rules 8-16 agreed to.

Twelfth Schedule.
Insert on the assets side in the particulars relating to "Investments" the words "in subsidiary companies."
Delete the words "Loans to directors and officers of the company" and insert in lieu thereof the words "Loans to officers of the company." Draft Report.—Draft report read by the Secretary, and considered.
Resolved that Mr. Watts and the Secretary consult the Solicitor General, and obtain a redrafting of the new clauses relating to appeals by aggrieved shareholders against the remuneration of a director, and that an opinion be obtained as to whether portions of the bill may be suspended from coming into operation upon the proclamation of the Act.
Adjournment.—The meeting was finally adjourned at 4 p.m., having been previously adjourned between 1 p.m. and 2 p.m.

TUESDAY, 22nd JULY, 1941.


Minutes.—Minutes of previous meeting read by the Secretary and confirmed on the motion of Mr. Watts, seconded by Mr. Thomson.

Correspondence.—Letter from Commercial Travelers Association read by the Secretary, and confirmed on the motion of Mr. Seddon, seconded by Mr. Craig.

Consideration of Clauses:
Clauses 1, 136, 145, and 170A as amended by the Solicitor General agreed to.

Bills of Sale Act.—Secretary reported attending conference between Solicitor General, and Messrs. Forbes, Blanckenes, and Jackson, on provisions recommended by the Royal Commission for the amendment of the Bills of Sale Act, and read report on conference prepared by the Solicitor General. Resolved not to proceed with the recommendation for the amendment of the Bills of Sale Act.

Meetings of Companies.—It was resolved to incorporate provisions providing for companies incorporated in W.A. to hold a general meeting in W.A., and that the Hon. A. Thomson, Mr. Watts, and the Secretary confer with the Solicitor General for the drafting of the amendment.

Report.—Report read by the Secretary and agreed to subject to alteration of paragraph relating to the commencement of the Act, and incorporation of reference to the necessity for companies incorporated in W.A. to hold a general meeting in W.A.

Adjournment.—The meeting was adjourned at 12.45 p.m.

TUESDAY, 29th JULY, 1941.


Minutes.—Minutes of previous meeting read by the Secretary and confirmed on the motion of Mr. Watts, seconded by Mr. Thomson.

Consideration of Clauses:
Clauses 1, 136, 145, and 170A as amended by the Solicitor General agreed to.

Clause 171: Resolved to extend the proviso in paragraph (a) of sub-clause (1) and prohibit any person mentioned in paragraph (b) of new clause 170A from voting.

Clause 290: Resolved to amend sub-clause (1) by adding to paragraph (a) thereof the following words:—"The expression 'clerk or servant' includes any commercial traveller or insurance or time payment canvasser or collector paid wholly or in part by commission."

Report.—Report read by the Secretary, and signed by members.

Closure.—The proceedings were closed at 1 p.m.

By Authority: FRED. WM. SIMPSON, Government Printer, Perth.