LEGISLATIVE COUNCIL

Wednesday, March 8, 1972

The PRESIDENT (Hon. Sir Lyell McEwin) took the Chair at 2.15 p.m. and read prayers.

PETITION: DAYLIGHT SAVING

The Hon. A. M. WHYTE presented a petition signed by 45 residents of Robertstown and Emu Downs requesting that daylight saving be not reintroduced in South Australia in future years and that the time remain at Central Standard Time.

Petition received and read.

QUESTIONS

AMOEBIC MENINGITIS

The Hon. R. C. DeGARIS: I seek leave to make a brief statement prior to asking a question of the Minister of Health.

Leave granted.

The Hon. R. C. DeGARIS: Yesterday I directed to the Minister of Health a question relating to swimming pools and the recent outbreak of amoebic meningitis. The Minister replied with a very long Ministerial statement which covered the facts behind the situation as the Government sees it. The question concerning me is that some suspicion has been thrown on swimming pools as a source of infection of amoebic meningitis.

The Hon. A. J. Shard: Are you referring to heated swimming pools?

The Hon. R. C. DeGARIS: No, to swimming pools generally. Statements were made in relation to heated swimming pools, but my information is that there has been no problem at all in Australia with heated pools, provided they are correctly chlorinated and correctly filtered. Will the Minister obtain for me from the department a considered reply on this matter?

The Hon. A. J. SHARD: I will be happy to do that. To the best of my knowledge there have been possibly some problems in swimming pools, but I was under the impression that this referred to heated pools. Rather than ask members to accept my word for it, I would prefer to get an official and correct statement from the Institute of Medical and Veterinary Science, through the Director-General of Public Health, so that there will be no misunderstanding. I will bring back a reply just as soon as I can.

The Hon. M. B. CAMERON: I seek leave to make a statement before asking a question of the Minister of Health.

Leave granted.

The Hon. M. B. CAMERON: In the last two days there has been much publicity regarding amoebic meningitis, and I notice that the Minister of Health has, quite properly, issued a warning to all householders in South Australia regarding the problem of water entering the noses of children or of the population generally. Will the Minister say whether it is the Government's intention to issue this warning in a more formal manner by, say, issuing some sort of bulletin to local boards of health and whether the Government take steps to ensure that the fact that some danger is associated with our water supplies is widely publicized? I believe that, in spite of the publicity, it is necessary to have a continuing warning on this problem.

The Hon. A. J. SHARD: After the last 48 hours, I do not know how much more publicity the honourable member would want. Almost every question has been about amoebic meningitis and I should think that practically everyone knew of the disease. The only way it can be contracted is by water entering the nose. So far, the honourable member's suggestion has not been considered. However, it may be advisable to consider it. I know that the Department of Public Health issues a booklet—quarterly, I think. I would be prepared to recommend to the Director-General of Public Health, Dr. Woodruff, that copies of that booklet containing a warning about amoebic meningitis be issued throughout the State. Perhaps the relevant authorities throughout the State could take up the issue with him.

SITTINGS AND BUSINESS

The Hon. M. B. DAWKINS: I seek leave to make a statement prior to asking a question of the Chief Secretary.

Leave granted.

The Hon. M. B. DAWKINS: My question relates to the sittings of this Council. The Chief Secretary has always been considerate and has extended to honourable members the courtesy of advising them of the times of sittings of this Chamber and also of the possible end of the session. On previous occasions he has always told honourable members when the Council is likely to sit at night. Of course, this is merely the latter part of the session that began last year and, since the resumption of sittings, the Council has not sat at night. Will the honourable gentleman give honourable members a reasonable warning of night sittings, and say whether the Government still

intends that the Council shall rise before Easter?

The Hon. A. J. SHARD: The matter of when the Council sits at night will be governed by the progress made in dealing with business on the Notice Paper. If it becomes necessary to sit at night, I would expect honourable members to do so. Certainly, this Council will have to sit in the evening next week. However, I make it abundantly clear that I am as anxious as other honourable members to avoid night sittings. If, however, there is sufficient business with which the Council must deal, night sittings will be necessary. It is hoped that the session will conclude before Easter, but again this will depend on the amount of business still on the Notice Paper at that time. If the Council must resume its sittings after Easter, I should not think it would be necessary to do so for more than one or two weeks. However, I make it clear that I am not the Leader of the Government.

EGG BOARD

The Hon. C. R. STORY: I seek leave to make a statement prior to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. C. R. Story: About six months ago the Chairman of the Egg Board died, and several times before the Council rose for Christmas I asked the Minister whether another person had been appointed to the position, in reply to which he said that he was considering the matter. I noticed in the *Government Gazette* that an Acting Chairman was appointed on, from memory, January 27, and that that person would complete the unexpired period of the previous Chairman's term of office, which expires on March 31. Will the Minister say whether the Government intends to appoint the Acting Chairman as Chairman of the Egg Board?

The Hon. T. M. CASEY: No.

The Hon. C. R. STORY: I ask leave to make a short statement with a view to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. C. R. STORY: I thank the Minister for his reply, which was a very brief one, but, seeing that the position has been vacant for a considerable period of time (I think for at least six months or more), can the Minister say what is inhibiting him from making a permanent appointment to this very important position?

The Hon. T. M. CASEY: I assure the honourable member that a permanent appointment will be made in the very near future.

MEAT SUBSTITUTES

The Hon. L. R. HART: I seek leave to make a statement prior to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. L. R. HART: On October 19 of last year I asked the Minister a question about synthetic meats. In doing so, I quoted a statement by the Chairman of the Australian Meat Board (Col. McArthur), who said:

> One way to curb the growth of synthetics might be to introduce legislation so that it could be impossible for these products to be described as meat. Each State Government was now seriously considering such legislation.

In his reply, the Minister stated that he agreed that this whole matter of synthetic meat could have grave consequences for Australia. He said:

> I believe that this matter will come before the Agricultural Council again, possibly at its next meeting in February. I hope that something will be resolved at that meeting.

Can the Minister report on the last meeting of the Agricultural Council and say whether or not synthetic meat was discussed and what decisions were arrived at?

The Hon. T. M. CASEY: This matter was discussed at the last Agricultural Council meeting in Perth, where it was resolved that the whole matter of synthetic or artificial meats be taken into consideration as regards labelling. It is difficult to arrive at a definition of "meat" (the red meat people would have us believe otherwise) because, if we look at the *Oxford Dictionary,* we see it is not surprising how difficult it is to define "meat". It was for this reason that the Agricultural Council resolved that this matter be placed before the Health Departments in the respective States so that legislation could be enacted soon dealing with labelling on the packages of this product. That is the present situation.

SOCIAL WELFARE OFFICE

The Hon. E. K. RUSSACK: Has the Chief Secretary a reply to my recent question about a social welfare office on Yorke Peninsula?

The Hon. A. J. SHARD: The Department of Social Welfare and of Aboriginal Affairs proposes to establish a district office at Maitland to serve the Yorke Peninsula area. Several premises at Maitland that might be suitable to accommodate the district office

have been inspected, but no final decision on them has been made at this stage.

SCHOOL BUSES

The Hon. M. B. CAMERON: Has the Minister of Agriculture a reply from the Minister of Education to my recent question about school bus stops?

The Hon. T. M. CASEY: My colleague states that location of stops on school bus routes is a matter for discussion by the headmaster of the school and the bus driver (contractor in the case of a contract route). Because of the length of many routes and the time taken for the trip each morning and afternoon it is not reasonable to stop at the house of every child on the route, especially as on some routes houses may be in clusters but spaced relatively short distances apart. It has been estimated that a bus loses three minutes each time it stops and, if stops are too close together, the time tables for the first children picked up and the last children set down would be considerably extended. Also, frequent stops increase the running costs of school buses.

When two or more houses are in a group it is usual to select a suitable stopping point for the bus that would not be an excessive distance from the houses of any of the children. It is considered that half a mile between bus stops is reasonable, but provision may be made for additional stops for children who walk some distance along a side road to reach the bus route. There are safety factors in children alighting in groups, rather than individually. A motorist is more likely to see a group of children at the side of the road, and parents have fears for the safety of young children, particularly girls, who wait alone at a bus stop. It is considered that the present policy on the location of the bus stops is satisfactory, as no children should be involved in walking excessive distances along main roads.

In the particular case of the children on the Millicent bus route, the bus driver for the contract bus that operated on this route until two weeks ago had provided an unofficial stop to set down the children at their house each afternoon. The contract bus has been temporarily replaced by a departmental bus with a teacher-driver who was unaware of the unofficial stopping place and who insisted that the children alight at the nearest bus stop, which is two-tenths of a mile from their property. The afternoon stop will be reinstated.

COUNCIL OF HEALTH EDUCATION

The Hon. V. G. SPRINGETT: Can the Minister of Health say whether consideration has been given to the establishment of a central council of health education? I ask this question, bearing in mind that on many occasions some acute social problems such as the amoebic meningitis scare and some more chronic problems regarding long-standing public health measures have occurred. There are many occasions when the public requires long-term education. As central councils of education in public health are already doing this work in some States, has consideration been given to doing this work in this State?

The Hon. A. J. SHARD: Many ways of overcoming this problem have been considered but, whether the Director-General of Public Health has this aspect in view, I am unable to say clearly now. However, I will have the question studied and obtain a reply as soon as possible.

TUMBY BAY JETTY

The Hon. A. M. WHYTE: Has the Minister of Agriculture, representing the Minister of Marine, a reply to my question of February 29 regarding the Tumby Bay jetty?

The Hon. T. M. CASEY: My colleague has considered the alternative programme, has had it costed, and an offer has since been made to the Tumby Bay council.

WHITE SNAIL

The Hon. E. K. RUSSACK: Has the Minister of Agriculture a reply to my question of March 1 regarding white snail?

The Hon. T. M. CASEY: The Director of Agriculture reports that the species of snail to which the honourable member refers is probably *helicella virgata,* which is troublesome in the northern cereal-growing areas, and appears to be spreading beyond these districts. The Director states that, following two very favourable winters, this snail is more prevalent this year and is dense enough in some localities to cause fouling of crops at harvest. Until recently control methods had been unsuccessful but, following extensive research and field work by Agriculture Department officers, the development of methiocarb baits is now proving a reasonably effective and economical treatment.

The snail bait is now commercially available to landowners and costs $3 an acre for treatment. However, the bait must be applied in expectation of trouble, not after the snails have become inactive during the hot and dry weather at harvesting. Also it is not necessary to treat whole properties, but reasonably broad edges of crops, especially where they join undisturbed pasture or grassland such as along roadsides.

Because whole properties do not have to be treated, the cost is not as prohibitive as it might sound at first. There is no evidence of complete eradication being possible, even at a cost of $12 an acre. It is possible that complete eradication from small areas could be achieved at a higher cost than that, but there would be little value in doing so because of subsequent re-invasion. The snail bait has never been recommended for eradication. If any new chemical baits are developed these will be adapted to South Australian conditions, and any other research work considered necessary will be carried out, but the department has no field-baiting programme of its own. It is considered that this is the landowners' responsibility.

OVERPAID RATES

The Hon. L. R. HART: I seek leave to make a short statement before asking a question of the Minister of Lands, representing the Minister of Local Government.

Leave granted.

The Hon. L. R. HART: As all honourable members know, under the present Local Government Act a council that has overcharged a ratepayer for rates or other fees is not permitted to refund the amount overpaid to the person concerned. At present a Salisbury business man has been overcharged $151.70 because of incorrect council rating since 1961-62. Of course, a refund of that amount is not permitted under the present Act. A warrant for recovery of moneys due can be taken out against ratepayers who owe money. In addition to overpayments of rates, overpayments of fees are sometimes made to councils. The Local Government Act Revision Committee considered this matter very thoroughly and recommended that the Act should empower councils to refund any moneys overpaid to them. Will the Government consider amending the Act to permit the repayment of overpayments of fees or rates that have been made to councils?

The Hon. A. F. KNEEBONE: I shall be pleased to take the honourable member's question to my colleague and bring back a reply as soon as it is available.

HANDICAPPED CHILDREN

The Hon. C. R. STORY: I seek leave to make a short statement before asking a question of the Minister representing the Minister of Education.

Leave granted.

The Hon. C. R. STORY: There have been articles in newspapers as recently as this morning concerning handicapped children, particularly slow readers and those who have other disabilities of the types mentioned in the articles. A week or so ago a group of people interested in this matter asked me what had happened to several Education Department officers whom the Government had sent overseas to study at Manchester University and who had gained qualifications in connection with children suffering from disabilities of the eye. I believe that at present at least two of those officers are acting as junior headmasters in country schools. Will the Minister ascertain from his colleague whether that is the situation and whether those officers are at present located in the Upper Murray area?

The Hon. T. M. CASEY: I shall refer the honourable member's question to my colleague and bring back a reply as soon as it is available.

FISHING LICENCES

The Hon. E. K. RUSSACK: I seek leave to make a short statement before asking a question of the Minister of Agriculture.

Leave granted.

The Hon. E. K. RUSSACK: I have noticed in regulations under the Fisheries Act that applicants for licences are required to give a considerable amount of detail regarding their personal affairs. Can the Minister assure me that the information tendered will be treated as absolutely confidential to the Fisheries Department and to the Minister?

The Hon. T. M. CASEY: I give the honourable member that undertaking.

AFRICAN DAISY

The Hon. Sir ARTHUR RYMILL: Last week I asked a question of the Minister of Agriculture regarding a statement made over the radio by an officer of his department. Has he a reply?

The Hon. T. M. CASEY: The Director of Agriculture has informed me that for many years the Chief Agronomist in his department has by invitation made weekly comments (of a few minutes duration) on the A.B.C.'s *Country Hour* on agricultural topics of current interest. A two-minute talk on African daisy was first given on January 5, 1972, by the Acting Chief Agronomist (Mr. A. F. Tideman) and repeated in early February by mistake because of a mix-up of tape recordings. I have with me a typed copy of the talk and a statement by the Director of Agriculture on the aim of the talk. I shall be happy to make them available to the honourable member for his perusal.

In the script, Mr. Tideman aimed to do the following:—(1) to give listeners in the introductory paragraphs a brief background of the African daisy problem, its history of introduction and the reasons why it is a problem; (2) to tell listeners that African daisy was still a potential weed in some areas and because regulatory changes had been proposed in the hills district it did not mean that the department no longer regarded it as a weed; (3) to inform listeners of the department's responsibilities, namely, to provide technical information and to carry out control on Crown lands. (Many people in the Adelaide Hills districts think that African daisy control is entirely the responsibility of the department, wherever it is growing, and they fail to recognize their own and local government responsibilities); and (4) to tell listeners that the possibilities of biological control were being given consideration. Several comments and queries have been received by the Department of Agriculture regarding the biological control aspects which may have emanated from this talk but no other comments or complaints have been received.

TRADING HOURS

The Hon. R. C. DeGARIS: My question is directed to the Minister of Lands, representing the Minister of Labour and Industry. Has the Government made full inquiries in New South Wales and Victoria into the effect of late trading hours in those States? If not, will the Government, before making any changes to the situation which was referred to a referendum some 12 months ago, ascertain the views of the States of New South Wales and Victoria?

The Hon. A. F. KNEEBONE: I will take the honourable member's request to my colleague and bring back a reply as soon as it is available.

BUILDERS LICENSING REGULATIONS

Adjourned debate on the motion of the Hon. R. C. DeGaris:

(For wording of motion, see page 860.)

(Continued from March 1. Page 3515.)

The Hon. M. B. DAWKINS (Midland): I rise to speak briefly to this motion which, as other honourable members have observed, has been on the Notice Paper for a considerable time. If one takes the trouble to examine the Notice Paper, it will be found that this matter has been discussed on no fewer than 10 occasions. I endorse the comment made recently by my friend and colleague, the Hon. Mr. Story, that our Party is not opposed to some form of licensing. We support a form of licensing or registration that is not unduly restrictive, but which would be as effective as is necessary. On the other hand, the members of my Party do not want regulations that are unduly burdensome or unnecessarily long and complicated.

Some time ago I read the regulations, the subject of this discussion, in some detail and I have recently looked at them again. One of the reasons for the delay that has occurred in this matter has been the varying viewpoints of different sections of the building industry. Some sections have wanted this, some that, some have wanted the regulations disallowed, some have not, some want them varied or amended. This matter can be dealt with only by disallowance or withdrawal of the regulations and their replacement by a new set of regulations. However, the industry seems to have resolved its differences and seems to know what it wants, which is a great improvement. If for no other reason than this, I believe the regulations should be further examined.

In having a second look at the regulations, therefore, I do so in the light of the requirements of the industry. Generally, the suggested amendments now made available appear to be reasonable and, furthermore, soundly based. I have them before me and I could deal with them in detail, but as this would take some considerable time I do not propose to do that. The suggestions now made available from the industry as a whole are the result of some compromise or agreement between the various sections, and I believe they merit the very earnest consideration of the Government. It is my opinion that the present voluminous and restrictive regulations could lead the building industry into serious trouble. They remind me, in miniature at least, of what the Hon. Sir Arthur Rymill was saying yesterday regarding the Companies Act, in that they are wordy, hard to follow, and could be difficult to interpret in practice, while I believe they are unnecessarily complicated. The 1967 legislation, which has been discussed by other honourable members, needs considerable amendment. The history of this legislation has been dealt with, also the way in which it was passed and the conference which was held, and that is the point we have reached today. I believe the legislation needs considerable amendment and also that the present regulations should be withdrawn and redrafted after taking due notice of the latest recommendations from the industry.

The Hon. C. R. Story: Do you think the Government is going to adjourn this matter to give us a reply?

The Hon. M. B. DAWKINS: I hope the Government will do this, looking at the matter very seriously and giving a considered reply. I, too, like my friend who has just interjected, will be interested in what the Government has to say about complaints that have been made and also about these late recommendations. I hope the Government will give us a reply in due course. I do not suggest that the Government should necessarily agree with all the recommendations now made. However, I believe it will find some of them both reasonable and sensible, and their incorporation into an amended set of regulations will constitute an improvement. I will note with much interest the Government's reactions to these suggestions and to some of the complaints that have been made. Anything that even remotely appears to be victimization, or inconsistent or unfair treatment, should be thoroughly investigated, and I hope this will be done.

The Hon. E. K. RUSSACK secured the adjournment of the debate.

LAW OF PROPERTY ACT AMENDMENT BILL

Received from the House of Assembly and read a first time.

The Hon. A. F. KNEEBONE (Minister of Lands): I move:

That this Bill be now read a second time.

It implements recommendations of the Law Reform Committee on two separate subjects. First, it relaxes to some extent the law relating to the execution of deeds. It provides that, where a document is expressed to be a deed and is duly signed or marked by a party to the deed, and attested by a witness who is not a party to the deed, it will be deemed to be duly executed by that party. Thus, sealing of a deed is no longer required. Further, even if the deed is not duly executed, it may be enforced against a party to the deed if he has taken a benefit thereunder.

Secondly, the Bill gives a mortgagor certain protections. A mortgage is required, before exercising rights of sale or foreclosure in respect of mortgaged land, or before entering into possession mortgaged land, or appointing a receiver in respect of mortgaged land, to give notice to the mortgagor alleging some breach of covenant or condition by the mortgagor. Where the breach is capable of remedy, the mortgagor is to be given at least 28 days to remedy the breach. Where the mortgagor does remedy the breach, the mortgagee cannot exercise any rights of the kind to which I have referred against the mortgaged land. A similar provision deals with the case where the mortgage provides that, if the mortgagee is in default under the mortgage, moneys due under the mortgage will fall due for payment at an earlier date than they otherwise would. The mortgagee is prevented from claiming the benefit of such a provision unless he has given the mortgagor a proper opportunity to remedy his default. Further, the mortgagor is empowered in proceedings instituted by the mortgagee or by himself to ask for relief against the enforcement of the mortgage against the subject land. This provision is similar to provisions of the Landlord and Tenant Act that empower a court to relieve against forfeiture of a lease where a tenant is in default.

New provisions are inserted that require a mortgagee on request to inform a mortgagor of how the amount of any demand made by the mortgagee against the mortgagor is arrived at. A mortgagee is prohibited from binding the mortgagor with collateral covenants that would extend beyond the time at which the mortgage debt is extinguished. Finally, the Bill provides that any covenant by which the mortgagee might seek to enforce a personal right to repayment of moneys after foreclosing against the subject land, and without reopening the foreclosure, is void. This is not normally possible in equity. In other words, if the mortgagee seeks to sue the mortgagor personally for the mortgage debt, he is normally required to give him an opportunity to redeem his security. However, the Law Reform Committee considered that, by reason of a provision of the Real Property Act, the possibility of a personal action without reopening the foreclosure might arise. That would clearly be undesirable, and the Bill accordingly eliminates this possibility.

The provisions of the Bill are as follows. Clauses 1 and 2 are formal. Clause 3 repeals and re-enacts section 41 of the principal Act. The new section contains the more extensive provisions relating to the execution of deeds that I have previously explained. Clause 4 enacts new sections 55a and 55b of the principal Act. These new sections contain the protections for mortgagors to which I have previously referred.

The Hon. F. J. POTTER secured the adjournment of the debate.

JUSTICES ACT AMENDMENT BILL

Received from the House of Assembly and read a first time.

The Hon. A. F. KNEEBONE (Minister of Lands): I move:

That this Bill be now read a second time.

It contains a number of very significant amendments to the Justices Act designed to expedite and modernize summary procedures. The Bill extends to preliminary examinations generally the system of hand-up briefs existing at present under the Criminal Law Consolidation Act in relation to carnal knowledge cases. Where an accused person comes before a justice charged with an indictable offence, he usually does not attempt seriously to resist the allegations of the witnesses for the prosecution at that stage. He is content to discover the extent of the prosecutor's case and reserve his defence until he is subsequently charged before a judge and jury. In such cases, it seems futile to require the prosecutor to produce his witnesses for oral examination when they will not in any event be subjected to serious challenge at that stage.

It is much less troublesome to tender written affidavits of witnesses to the court so that the court can decide whether a *prima facie* case has been made out, and the defendant may receive notice of the allegations that may subsequently be made against him if he is committed for trial. This procedure is at present available to the court under section 57a of the Criminal Law Consolidation Act in relation to carnal knowledge cases. It has worked well, and there seems no reason in principle why it should not be applied to other preliminary examinations. The Bill accordingly provides for the extension of the principle to preliminary examinations generally. It includes ample safeguards for the defendant, empowering him to require that a witness appear for cross-examination where he desires to test the witness's statement at the preliminary examination.

The Bill also seeks to expedite summary procedures where the defendant neither appears nor returns to the court a written plea of guilty. At present, the court is required in these circumstances to hear formal evidence of the matters alleged against the defendant. This means that many witnesses are put to the trouble of attending proceedings that are merely formal in nature, and the defendant himself suffers because he must pay not only the fine imposed by the court but also the witness fees. The Bill provides for a system under which the court may proceed *ex parte* in the absence of the defendant, and may regard the allegations contained in or accompanying the summons (as served upon the defendant) as sufficient evidence of the matters alleged against the defendant. It is important to notice that the court is, in such cases, empowered to proceed only upon the basis of allegations of which the defendant has received notice.

Under the provisions of the principal Act, a court of summary jurisdiction is empowered to deal summarily with certain of the less serious indictable offences known as minor indictable offences. The court itself determines whether it should deal with the case or commit the defendant for trial on indictment. This seems unduly to restrict the rights of an accused person. The Government considers that a person charged with an indictable offence should always have the right to elect to be tried before a judge and jury. The creation of the District Criminal Court means that sufficient judges are now available to handle any increase in the number of jury trials that may result from this extension of the rights of an accused person. Accordingly, the Bill provides that an accused person charged with a minor indictable offence may, at any time before the completion of the case for the prosecution, elect to be tried by judge and jury. If he makes that election the summary court shall complete the proceedings as a preliminary examination and, if it finds a *prima facie* case established, commit the defendant for trial upon indictment.

A further amendment provides that all appeals from courts of summary jurisdiction upon proceedings relating to minor indictable offences should be heard by the Full Court unless the appellant specifically requests a hearing before a single judge. This amendment is justified by the fact that the questions of law and fact arising upon the hearing of minor indictable offences are frequently just as intricate and difficult as are those arising upon the hearing of more serious offences. In dealing with appeals against sentences imposed in courts of summary jurisdiction, the Supreme Court has, on occasions, been embarrassed by the fact that it has been unable to take into account other penalties imposed upon the defendant for interrelated offences. The judges have felt that the Supreme Court should be empowered to take into account the totality of punitive and reformative measures applied by the primary court and should not be limited by the restricted nature of an appeal to merely one sentence

which may, when considered alone, appear excessively severe or lenient but which may, when considered in its proper context, appear entirely appropriate. Accordingly, the Bill enables the Supreme Court, in considering an appeal against sentence, to look beyond the sentence actually subject to appeal and consider all penalties and other orders made by the primary court against the defendant.

The Bill also rectifies provisions of the principal Act dealing with the payment of witness fees, and makes various procedural amendments. The provisions of the Bill are as follows. Clauses 1 and 2 are formal. Clause 3 enacts new section 39b of the principal Act. This new section obviates the need to call formal evidence of the administration of a bond in proceedings in which the fact that the bond exists is not really disputed. Clause 4 enacts new section 62ba of the principal Act. This is the provision to which I have previously referred under which a court may proceed *ex parte* on the basis of allegations contained in a complaint where the defendant neither attends nor returns a written plea of guilty.

Clause 5 amends section 62c of the principal Act. Where a court of summary jurisdiction determines to proceed *ex parte,* it is prevented from imposing a sentence of imprisonment. Some doubt has been raised whether this provision prevents the court from imposing a sentence of imprisonment in default of payment of a fine. Such a restriction was certainly not intended and the amendment accordingly clarifies this point. Clause 6 enacts section 62d of the principal Act. This new section is designed to facilitate proof of a defendant's previous convictions. The prosecutor may serve on the defendant a notice stating particulars of previous convictions that may be alleged against him at the trial. When he has received the notice a reasonable time before the hearing it may be tendered in evidence and the court may accept the notice as evidence of the matters alleged in it.

Clause 7 repeals and re-enacts section 72 of the principal Act. At present only a party to summary proceedings is entitled to obtain copies of depositions, convictions, orders and other similar documents. There may be other persons (for example, insurance companies) with a legitimate interest in the proceedings. The amendment enables a special magistrate to approve the issue of documents of this nature to any person who satisfies him that he has a legitimate interest in the proceedings. Clause 8 repeals and re-enacts section 81 of the principal Act. The new section modernizes the provisions relating to imprisonment for default in the payment of fines. The value of money has decreased very significantly since the present provisions were enacted and amendment is accordingly urgently needed. The provision provides for a maximum of one day's imprisonment for each $10 of the fine, with an upper limit of six months imprisonment.

Clause 9 provides for the system of hand-up briefs, which I have previously explained. Clauses 10, 11, and 12 contain consequential amendments. Clause 13 invests an accused person charged with a minor indictable offence with the right to elect to be tried by jury. Clause 14 amends section 140 of the principal Act. This section stipulates the sittings of the Supreme Court or the District Criminal Court to which an accused person is to be committed for trial or sentence. At present the sittings of the Supreme Court are those sittings that commence first after the expiration of seven days from the date of the committal order. But the period is 14 days in the case of the District Criminal Court. The amendment provides for a uniform period of 14 days in both cases, with power for the court to increase or reduce the period.

Clause 15 repeals sections 158 to 160 of the principal Act. These sections deal with the payment of witness fees. However, they relate only to proceedings in respect of indictable offences. No provisions exist for the payment of witness fees in respect of summary offences. The provisions of these sections are repealed and are re-enacted in a form capable of general application by clause 21. Clause 16 provides for an appeal in proceedings for a minor indictable offence to be heard by the Full Court unless the appellant specifically asks that the appeal be heard by a single judge. Clauses 17 to 19 modernize the appellate procedure. The amendments are to some extent consequential on the previous amendments. Clause 20 enables the Supreme Court in considering an appeal against sentence imposed by a court of summary jurisdiction to take into account and, if it thinks fit, to vary other interrelated sentences. Clause 21 invests a court of summary jurisdiction with power to award witness fees in all proceedings.

The Hon. F. J. POTTER secured the adjournment of the debate.

SOLICITOR-GENERAL BILL

Received from the House of Assembly and read a first time.

The Hon. A. J. SHARD (Chief Secretary): I move:

That this Bill be now read a second time.

Its purpose is to remove the office of Solicitor-General from the Public Service, to define the duties of the Solicitor-General, and to establish the terms and conditions of his employment as an officer of the Crown. The office of Solicitor-General of this State was created by the previous Government in February, 1969. This was done by simply changing the title of the permanent head of the Crown Law Department from "Crown Solicitor" to "Solicitor-General" and making certain consequential administrative changes within the department. So far as the change in title was concerned, this brought South Australia into line with the Commonwealth and the other States, but the status and duties of the position thus created differed materially from those attaching to the office elsewhere. The new arrangement left the Solicitor-General with considerable departmental responsibilities, including the responsibility for the day-to-day legal advice that is given in the form of written opinions to Government departments on all kinds of subject. Nor could he avoid the ultimate responsibility for the staffing and training of a small but highly skilled department of professional people.

In the present Government's view, it is desirable that the Solicitor-General should be free of any responsibility for the everyday affairs of a department, so that he may devote the whole of his time to the more important legal matters, including court cases, in which the Government is concerned, and be free for any special duties in which his services might be required. Accordingly, in July, 1970, the Solicitor-General was transferred to the Attorney-General's Department, and the Crown Law Department again came under the control of a Crown Solicitor. This, however, had the result of making the Solicitor-General a subordinate in another Government department, and in fact was not intended by the Government to be more than a first step in taking the office of Solicitor-General outside the provisions of the Public Service Act altogether. The purpose of the present Bill is to complete that arrangement.

The office of Solicitor-General is an ancient one. In England he is second law officer of the Crown, and in modern times in that country he is invariably a member of Parliament. But this was not always the case, and in Australia the Solicitor-General is usually the senior barrister, outside Parlament, in the employment of his particular Government. The Commonwealth, and each of the six States, now has a Solicitor-General as its senior legal adviser. In Queensland and Tasmania he remains in charge of the Public Service Department. In the case of the Commonwealth and the remaining States, he acts solely as a barrister, with no administration or routine duties at all, and has the terms and conditions of his employment by the Crown provided for by Act of Parliament. The purpose of the present Bill is therefore to give a similar standing to the office of Solicitor-General in this State. The provisions of the Bill are based, in the main, on the corresponding legislation of the Commonwealth, New South Wales, Victoria and Western Australia. They are designed to give the office some measure of formal status and practical independence which appears desirable, and also to make the position attractive, in the event of a vacancy, to suitably qualified lawyers in private practice as well as to those in the Public Service. It is of great importance that the office of Solicitor-General should have the status and independence that will enable Government to procure an appropriate leader of the bar to fill the position when that becomes necessary.

I shall now outline the Bill in some detail. Clauses 1 and 2 are formal. Clause 3 sets out the definition necessary for the purposes of the measure. Clause 4 provides first for the appointment of a Solicitor-General and secondly provides that the present occupant of the office under the Public Service Act, Mr. B. R. Cox, Q.C., will become the first occupant of the "statutory" office of Solicitor-General.

Clause 5 provides for the fixing of terms and conditions of appointment and the salary of the Solicitor-General and also formally provides that the Public Service Act will not apply to or in relation to the office. Clause 6 sets out, in broad terms, the duties of the Solicitor-General which are, as has been adverted to earlier, to act as the senior legal adviser to the Crown. Clause 7 provides for the removal from office of the Solicitor-General and is a fairly standard provision, and clause 8 provides for the retirement of the Solicitor-General.

Clause 9 provides for a grant of leave on retirement and is based on a comparable provision in the Supreme Court Act that provides for similar leave or payment in lieu thereof to judges of the Supreme Court. Clause 10 provides for a non-contributory pension under the Judge's Pensions Act for the Solicitor-General. The provision for a pension of this nature is in furtherance of the Government's

intentions that the condition of service of the office will be such as to attract counsel of considerable seniority. Contributory pension schemes are, in the main, not attractive to persons who enter them at an advanced age since in those circumstances they usually entail substantial periodic contributions if a reasonable benefit is to be obtained.

Clause 11 is intended to cover the case where a Solicitor-General is appointed a judge within the meaning of the Judge's Pensions Act and provides that his service as Solicitor-General will be counted as judicial service for the purposes of ascertaining his pension under this Act. Subclause (2) of this clause guards against the possibility of a double pension being paid.

The Hon. F. J. POTTER secured the adjournment of the debate.

HIGHWAYS ACT AMENDMENT BILL

Received from the House of Assembly and read a first time.

The Hon. A. F. KNEEBONE (Minister of Lands): I move:

That this Bill be now read a second time.

It deals with a number of matters, of which the most important and significant are summarized as follows: First, it confers on the Commissioner, subject to the approval of the Minister, power to operate a sea transport service. Honourable members will recall that last year the Commissioner was authorized to operate a sea ferry service to Kangaroo Island, and with this end in view, the ship *Troubridge* was purchased by the Government. At the time, it was realized that this service would have to operate at a loss, in economic terms, but the clear necessity of providing a link to the island made this loss acceptable.

However, investigations have suggested that, by extending the *Troubridge* service to Port Lincoln, the loss can be substantially reduced since certain heavy dead-weight cargoes, such as cement, building materials, steel, etc., can be carried economically with a resulting benefit to the Eyre Peninsula community as well as the community of the island. An added virtue of this proposal is that, since such cargoes cannot economically be carried by road transport, the interests of road transport operators will also be advanced. Secondly, the power of the Commissioner to close roads has been increased. In the context of modern highway development the procedures set out in the Roads (Opening and Closing) Act are really not satisfactory for the Commissioner's purposes, and accordingly certain alternative procedures are proposed.

Thirdly, the provisions regarding compensation for persons injuriously affected by the proclamation of controlled-access roads and resumptions for road widening have been clarified to the end that a proper balance be struck between the public need of improved roads and the private rights of owners affected. Fourthly, certain amendments are proposed to the principal Act that are consequential on the responsibilities imposed on the Commissioner, by amendments to the Road Traffic Act, in relation to traffic control devices. Finally, the situation regarding the provision "means of access" to controlled-access roads has been clarified.

To consider the Bill in some detail: Clauses 1, 2 and 3 are formal. Clause 4 inserts definitions of "local access road" and "means of access", which are necessary for the purposes of the Bill. Clause 5 inserts two new provisions in section 20 of the principal Act which deal with the general powers of the Commissioner. The two additional powers conferred on the Commissioner are (*a*) a power to operate ferry services; and (*b*) a power to operate a sea transport service. The reasons why it is desirable that the Commissioner should have power to operate a sea transport service have been canvassed earlier. The conferring of a formal power on the Commissioner to operate ferry services proper has also been thought desirable at this stage since in one sense at least a ferry over, say, a river can be regarded as a type of extension to a road.

Clause 6 amends section 27a of the principal Act which deals with the right of the Commissioner to exercise the powers of a council under the Roads (Opening and Closing) Act, 1932, as amended, in connection with "main" roads. This limitation to "main" roads is now inappropriate, as the Commissioner may well have a responsibility for roads other than main roads. Clause 7 is quite an important provision, in that by inserting new sections 27aa, 27ab and 27ac it provides a code for closing of roads outside the provisions of the Roads (Opening and Closing) Act, 1932, and also for the extinguishment of easements or restriction covenants. The proposed new provisions are reasonably self-explanatory, but I draw honourable members' attention to paragraphs (*b*) and (*c*) of new section 27aa, which relate to notice and compensation. New section 27ab sets out the precise effect of a proclamation closing

a road and new section 27ac casts certain duties on the Registrar-General. The provisions proposed to be inserted by this clause are not new in the legislation of this State and in fact are derived, to a considerable extent, from sections 39, 40 and 41 of the Housing Improvement Act, 1940-1970, where not dissimilar problems may be encountered.

Clause 8 again merits close attention. This clause which amends section 27b of the principal Act slightly extends the power of the Commission to acquire land. At present by this section the power may be exercised only for the purposes of widening a road, but paragraph (*a*) of this clause extends this power to cover the case where it is necessary to make any deviation of a road. Paragraph (*b*) modifies somewhat the right of an owner whose land is subject to acquisition under this section to demand that the land be acquired forthwith. It is proposed that this right may be exercised only where the land is clear of buildings. Honourable members will appreciate that road widening proposals are often very long-term proposals, and the department's financial resources could be considerably strained if it was unexpectedly faced with a demand for the immediate acquisition of land on which substantial buildings were erected when that land might be required only 10 or 20 years hence. Paragraphs (*c*) and (*d*) of this clause merely make it clear that the expression "building" or "structure" includes, respectively, part of a building or structure.

Clause 9 is in the nature of a formal amendment and is intended to give full effect to section 27c of the principal Act, which relates to endorsements on certificates of title, in relation to Crown leases and agreements. No change of principle is envisaged by this provision. Clause 10 is intended to ensure that proclamations declaring a road to be a controlled-access road will be as informative as possible. and clause 11 is intended to ensure that as far as possible owners of land likely to be affected will receive individual notifications.

Clause 12 amends section 30b of the principal Act and provides that the closing date for claims for compensation shall occur 12 months after the injurious effect to property occurred. Previously the period ran from the day of the proclamation of the controlled-access road. This provision should be of considerable benefit to claimants for compensation, since in the past it has often not been clear just what injurious effects will follow the proclamation. Clause 13 extends the power of the Commissioner to close or control access to roads abutting or adjacent to controlled-access roads. The extension of this power is necessary to ensure that movement on the controlled access roads is facilitated. Proposed new subsection (2) ensures that the fact that a means of access that existed has been closed off by an owner will not confer on a subsequent owner of the land the right to open that means of access.

Clause 14 sets out in some detail the powers of the Commissioner to construct means of access to land abutting a controlled-access road or to authorize the use of existing or proposed means of access and to close off or alter any existing means of access. It may be noted that the provisions relating to compensation will apply to any direct injurious effect on land flowing from the Commissioner's decision in this area. Clause 15 contains drafting amendments consequential upon other provisions of the Bill. Clause 16 is a drafting amendment only. Clause 17 amends section 31 of the principal Act which relates to payments into the Highways Fund and will ensure that any revenues that arise from the new operation by the Commissioner will accrue to the Highways Fund.

Clause 18 authorizes payments from the Highways Fund of the costs necessary for and incidental to the operation of ferry and sea transport services, and proposed new paragraph (*o*) provides for expenditure on traffic control devices. Clause 19 contains amendments consequential on the proposal to adopt the metric system of measurement by changing references in section 35 from "mileage" to "distance". Clause 20 amends section 36a of the principal Act by repealing an exhausted provision and making a metric conversion to that section. Clause 21 provides a suitable head of regulation-making power to cover any regulations that may be necessary in connection with any ferry or sea transport service. In the nature of things any regulation made under this head of power will in common with all other regulations be subject to Parliamentary scrutiny.

The Hon. C. M. HILL secured the adjournment of the debate.

UNIVERSITY OF ADELAIDE ACT AMENDMENT BILL

Read a third time and passed.

CRIMINAL INJURIES COMPENSATION ACT AMENDMENT BILL

Second reading.

The Hon. A. J. SHARD (Chief Secretary): I move:

That this Bill be now read a second time.

It is designed to make the provisions of the principal Act more comprehensive and to improve its operation in a number of respects. The Bill, first, widens the definition of the "offences" upon which claims for compensation may be founded to include conduct that would constitute an offence if it were not for the insanity of the perpetrator or for the fact that some ground of excuse or justification exists at law in respect of the conduct. Thus, if a person injures another in circumstances that would normally constitute an offence but it subsequently appears that he was insane at the time, or acting as an automaton, or acting in defence of his person, the injured person may nevertheless bring a claim for compensation under the Act.

The Bill also deals with procedural matters. It is felt that questions of compensation raise difficulties that justices cannot be reasonably expected to resolve. Accordingly, the Bill provides that, when an application for compensation is made to justices, they should refer the matter to a court constituted of a special magistrate. A new provision is inserted in the principal Act dealing with service of the application for compensation. This arises out of a case in which a defendant was dealt with by a court, but had disappeared before the application could be served upon him. The court is empowered by the Bill to dispense with service upon a person against whom an order is sought where his whereabouts are not readily ascertainable or where there is no reasonable likelihood that he will satisfy the order. Finally, the Bill removes the responsibility of paying claims that are made on the general revenue in pursuance of the Act from the Treasurer and places it upon the Attorney-General.

The provisions of the Bill are as follows: Clauses 1 and 2 are formal. Clause 3 amends the definition of "offence" to include conduct that would constitute an offence if it were not for the fact that the actor was insane or grounds of excuse or justification exist in law in respect of his conduct. Clauses 4, 5, 6, 8 and 9 remove references to the Treasurer and replace them with references to the Attorney-General. Clause 7 enacts new sections 7a, 7b and 7c of the principal Act. New section 7a provides that, where an application is made under the principal Act to justices, the justices must refer the matter to a court constituted of a special magistrate. New section 7b makes it clear that the Crown is entitled to be heard upon all applications under the Act. New section 7c requires service of any application upon the Crown Solicitor and upon any person against whom an order is sought. Service may be dispensed with in the latter case where the whereabouts of the person against whom the order is sought is unknown and not readily ascertainable, or where there is no reasonable likelihood that he will satisfy the order for compensation.

The Hon. R. C. DeGARIS secured the adjournment of the debate.

PLACES OF PUBLIC ENTERTAINMENT ACT AMENDMENT BILL

Second reading.

The Hon. T. M. CASEY (Minister of Agriculture): I move:

That this Bill be now read a second time.

It makes a number of miscellaneous amendments to the Places of Public Entertainment Act designed to remove the provisions relating to the imposition of entertainment tax, and to overcome certain deficiencies in the operation of its regulatory provisions. The first major amendment empowers the Minister to grant exemptions from the provisions of the Act and regulations in respect of ovals, sportsgrounds or racecourses. There are many such places of public entertainment throughout the State which technically should be licensed, but which have in fact never been licensed and were never intended to be licensed. The power of exemption will make it possible for the Act to be administered according to its terms. A further amendment is designed to clarify the existing exemptions in the principal Act in respect of churches and places of public worship, and of public entertainment conducted by or for the purposes of a religious body, or a university, college or school. More adequate control over the conduct of public entertainment is included in the principal Act. The Minister is empowered to cancel a licence if he is satisfied that the proprietor of the place of public entertainment is not a fit and proper person to hold the licence or that offences are habitually or frequently committed against the principal Act, or against any other Act or law in the place of public entertainment. Further, the Minister is empowered to seek an order preventing the conduct of public entertainment in contravention of the principal Act, or any other Act or law. The Bill empowers the Minister to grant a Sunday permit for the conduct of public entertainment of a kind prescribed in section 20 to the proprietor of an exempted place of public

entertainment. At present these permits can only be granted in respect of a licensed place of public entertainment. Finally, the Bill provides for the appointment of a chief inspector of places of public entertainment and provides for the licence fees to be fixed by regulation.

The provisions of the Bill are as follows: Clause 1 is formal. Clause 2 provides for the new Act to come into operation on a day to be fixed by proclamation. Clause 3 makes some necessary amendments to the definition section of the principal Act. It also inserts a new subsection providing that the provisions, which are to be repealed by the Bill, dealing with entertainment tax, are to be deemed never to have had any operation or effect. Clause 4 repeals portion of section 4 of the principal Act dealing with entertainment tax. Clause 5 inserts new section 4a in the principal Act. This new section enables the Minister to grant exemptions from the provisions of the Act in respect of ovals, sportsgrounds and racecourses. Clause 6 repeals and re-enacts section 5 of the principal Act. The existing provision has not proved easy to interpret. The new provision follows substantially the same principles as the existing provision without, it is hoped, raising the same difficulties of interpretation. The new section grants an absolute exemption from the operation of the Act in respect of a church or place of public worship. It also provides that a licence is not required for the purpose of entertainment conducted by, or solely for the purposes of, a religious congregation, body, or denomination, or a university, college, school or other educational institution. Of course, if a theatre or hall belonging to a church, university or school is used by an outside body for public entertainment not strictly connected with the church, university or school, then the theatre or hall would have to be licensed for the purposes of that entertainment.

Clause 7 provides that licence fees for places of public entertainment are to be prescribed. The present remission of four-fifths of the licence fee for places of public entertainment owned by councils or institutes established under the Libraries and Institutes Act is retained. Clause 8 increases the fee payable on submission of plans for a place of public entertainment to $15. Subsection (2a) which provides for an additional fee on approval of the plans is removed. Clause 9 repeals and enacts new sections 16 and 16a of the principal Act. Provision is inserted in new section 16 empowering the Minister to cancel a licence if the proprietor of a place of public entertainment has committed an offence against the principal Act or is not a fit and proper person to be the proprietor of a licensed place of public entertainment or if offences against the principal Act or any other Act or law are habitually or frequently committed in the place of public entertainment. In the event of the cancellation of the licence, the proprietor may appeal to a local court of full jurisdiction. New section 16a empowers the Minister to seek an order preventing the conduct of a public entertainment where the Minister is satisfied that the entertainment would involve a breach of the law. Clause 10 provides for regulations to be made in connection with the employment of theatre firemen. Clause 11 makes a number of amendments to section 20 of the principal Act. The power of a court to cancel a licence on convicting the proprietor of an offence against the Sunday entertainment provisions is removed as this power will now be exercisable by the Minister under section 16. Provision is inserted in subsection (4) enabling the Minister to grant a permit under the section to the proprietor of an exempted place of public entertainment. A provision is inserted requiring payment of a fee of $5 for a permit in respect of Sunday entertainment.

Clause 12 increases the fee payable for a permit to conduct public entertainment on Good Friday and Christmas Day to $5. Clause 13 empowers the Minister to appoint a chief inspector of public entertainment and such inspectors of public entertainment as he thinks necessary for the proper administration of the Act. It is felt that the increasing complexity of the administration of the Act justifies the appointment of a chief inspector. Clause 14 repeals the provisions imposing an entertainment tax. Clause 15 makes a consequential amendment in view of the repeal of the entertainment tax provisions. Clause 16 repeals section 31 of the principal Act. This section provides that there is to be no appeal from a decision of the Minister. In view of the fact that new section 16 confers a right of appeal from a decision of the Minister to the local court, section 31 becomes inappropriate. Clause 17 removes the present statutory schedule of fees for licences. As I have previously mentioned, these fees are in future to be prescribed.

The Hon. R. C. DeGARIS secured the adjournment of the debate.

MISREPRESENTATION BILL

Adjourned debate on second reading.

(Continued from March 7. Page 3611.)

The Hon. R. C. DeGARIS (Leader of the Opposition): Yesterday when I was speaking

on this measure I pointed out that, in my opinion, the Bill goes somewhat further than the Misrepresentation Act existing in Great Britain. I cautioned members that we should examine the matter very carefully, and I hope that in that examination we are not too hurried, because there are matters in the Bill deserving very close attention. I mentioned that section 2 of the English Act parallels clause 4 of the Bill before us, while section 4 of the English Act parallels clause 8 of the Bill. I shall quote from Cheshire and Fifoot's *Law of Contract* (second Australian edition) in which the question of the English Act is dealt with. I quote from page 398:

The United Kingdom Misrepresentation Act 1967 is a far-reaching measure which gives effect to certain recommendations relating to the law of innocent misrepresentation contained in the Tenth Report of 1962 of the English Law Reform Committee, although certain provisions do not follow precisely the terms of that committee's suggestions.

I said yesterday that, if any honourable member wants to follow this matter through, he should look at the tenth report of the English Law Reform Committee and that he should read the recommendations of that committee. The report continues as follows:

The main changes effected in the law were as follows:

(1) The Act confers a right to rescind a contract for innocent misrepresentation notwithstanding that the misrepresentation has become a term of the contract, or that the contract has been performed (s. 1). This right extends to contracts for the sale or disposition of land or an interest in land, as well as to personal property contracts, and to that extent is wider than that recommended by the Law Reform Committee.

Therefore, the existing legislation in Great Britain, which does not go as far as our Bill does, went further than the recommendations made by the Law Reform Committee in Great Britain. The report continues:

(2) A representee suffering loss through misrepresentation is entitled to sue in damages if the misrepresentation would have been actionable in damages had it been made fraudulently, unless the representor establishes that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true (s. 2 (1)). In effect, therefore, a new cause of action in damages for non-fraudulent misrepresentation is given, and this could include negligent misrepresentation.

(3) Where a representor is entitled to rescind a contract for innocent misrepresentation, the court or arbitrator is, in order mainly to mitigate any hardship, given power to award damages instead of rescission if of opinion that this would be the more equitable course (s. 2 (2)). Damages may be so awarded whether or not the representee is liable to damages as under paragraph (2) above, but any award or damages thereunder is to be taken into account in assessing this new head of liability (s. 2 (3)).

(4) Any contractual provision excluding or restricting any liability on the part of a contracting party for misrepresentation prior to contract, or any remedy available to the other party by reason of such misrepresentation is to be of no effect except to the extent that in any proceedings arising out of the contract, the court or arbitrator allows reliance on it as being fair and reasonable in the circumstances of the case.

That parallels that situation in relation to clause 8. The report continues as follows:

This provision will to some degree inhibit the contracting-out of liability for non-fraudulent misrepresentation. It does not precisely follow the recommendation in that connection made by the English Law Reform Committee, which was that such contracting-out should be inoperative unless the representor could show that, up to the time the contract was made, he had reasonable grounds for believing that the representation was true.

That reference deals with an explanation of the English Misrepresentation Act. The report continues:

The new Act has been the target for some sharp criticism by English commentators, particularly on the ground that the construction of certain provisions gives rise to doubts and difficulties. It is believed, however, that in its practical working the Act will prove a sound remedial measure, and therefore the application and implementation of its provisions can but be watched with sympathy and interest in Australia.

From that, one can obtain an appreciation of the English legislation, which, we know, has been under fairly strong criticism from many commentators. However, I still return to the point that in this Bill we are going a step further and making innocent misrepresentation a criminal offence. This is indeed an extremely serious matter that should concern honourable members in this Council. There are many other quotations to which I would like to refer, the first of which is contained in volume 30 of the *Modern Law Review,* of July, 1967, which includes certain comments made by G. H. Treitel and P. S. Atiyah. I agree with some of the comments made regarding the English legislation. The following appears on page 369, under the heading "Misrepresentation Act, 1967":

This Act, which is based on the Law Reform Committee's tenth report, makes some improvements in the law as to the effect of misrepresentation on a contract and as to certain more or less closely related matters. To this extent, the Act may be welcomed, but it is also open to serious criticism. Some of the reforms are

enacted in a manner which is quite extraordinarily tortuous and obscure. Others are based on policy decisions which are at any rate questionable and seem to have been reached without adequate discussion. And the Act has altogether failed to simplify the law. It has left in force many of the distinctions which existed before and has superimposed its own structure upon them. The resulting state of the law is almost incredibly complex. It is indeed fortunate that the Act will be largely superseded when the Law Commission codifies the law of contract.

This follows closely what I said in my opening remarks. We are here codifying a certain part of common law in contracts into a different court; we are approaching it in a different way. Only one section is being handled, and we are making a criminal offence out of misrepresentation which, in many instances, is quite innocent.

In clause 8, which follows section 4 of the English legislation, one will see that the court has a discretion in the matter of deciding what is fair and reasonable. In allowing the court to decide what is fair and reasonable, I think this Parliament is dodging its responsibility. If this Parliament is going to codify the law, it must state what it means and not leave the matter to the courts to decide in each case what is fair and reasonable regarding misrepresentation. I refer now to page 383 of the *Modern Law Review* where, dealing with section 4 of the English legislation, the following appears:

The operation of the section is entrusted entirely to the discretion of the court. This discretion is an exceptionally wide one, for it enables the court not merely to uphold or reject the exclusion clause, but to uphold it "to the extent (if any) that the court finds fair and reasonable in the circumstances". On the face of it, this confers a quite remarkable power of remoulding the clause on the court with absolutely no guidance as to the factors to be considered by the court in exercising its discretion. The court could, for example, rewrite an exclusion clause which precludes an award of damages by limiting the damages to a figure which the court thinks reasonable. It could rewrite a comprehensive exclusion clause by upholding it in so far as it precludes rescission, but condemning it in so far as it precludes an award of damages.

It can be seen from this that we have handed over complete discretion to the court to decide what is fair and reasonable. In an exclusion clause, in my opinion, Parliament in codifying the law is just dodging its responsibility of telling the court what it wants done. I commend these two volumes, the second Australian edition of *Law of Contract* and *The Modern Law Review,* to any honourable member who wants to study this matter. However, I stress the fact that I consider it quite wrong that in codifying this law we are taking innocent misrepresentation and creating such a case as a criminal offence and then reversing the usual onus of proof by permitting a person a defence by proving that it is an innocent misrepresentation.

As far as I can see, in the Misrepresentation Act in Great Britain there is no criminal offence. What happens there is that the court has a right to determine damages, if necessary, or a rescission of the contract, if it feels it necessary, or both or either of those two things. This Council must consider carefully the ramifications of moving in this field in codifying this part of the common law on contracts and creating, as I have said, in cases of misrepresentation a criminal offence.

There are one or two matters of some concern to me in the Bill itself to which I should like to draw the attention of the Council. I have already dealt with a part of clause 4, but I turn now to subclause (5) of that clause, which reads:

Where a body corporate is guilty of an offence under this section—

and do not forget that this includes also innocent misrepresentation—

each member of the governing body of the body corporate who knowingly authorizes, suffers or permits the commission of the offence shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

The words "knowingly authorizes, suffers or permits" appear to govern the whole clause. The transfer of possible responsibility in these cases to members of a board of directors seems to me to be going too far. It does not appear at all in the English legislation, which of course does not make it a criminal offence, as I see it. Nevertheless, it must be a disturbing aspect of this legislation to anyone reading it. Then I draw attention to clause 8, the exclusion clause, which provides:

If any contract (whether made before or after the commencement of this Act) contains a provision that would, but for this section, exclude or restrict—

(*a*) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made;

or

(*b*) any remedy available to another party to the contract by reason of such a misrepresentation,

that provision shall be of no effect except to the extent (if any) to which, in any proceedings arising out of the contract, the court may allow reliance on it as being fair and reasonable in the circumstances of the case.

I point out that this is open completely to the interpretation of the court. If we are to codify this law, we should be specific in the directions we give the court.

Another matter that concerns me is the position (some of my lawyer friends have told me I need not worry about it, but I intend to raise the point) where, in the normal course of business, a correction is made. A misrepresentation has been made quite innocently and a correction has been made—for instance, in a motor car sale or a sale from a shop: is this *prima facie* evidence, under this legislation, of misrepresentation as a criminal offence? If it is, what will it do to the normal course of business in our community, where 99 per cent of these cases are corrected with good feeling between the parties? These are the sorts of things in this legislation that concern me.

Another problem concerns the non-revelation of all the facts. Let us suppose no revelation of all the required facts has been made: does that constitute misrepresentation? Alternatively, if there has been a partial revealing of the facts, does that constitute misrepresentation? As I have said, there are several matters of concern. I am prepared at this stage to support the second reading but I must admit that there are many aspects of this Bill that I have found rather perplexing. Perhaps my attitude will change as other honourable members with far more knowledge of these things than I have add their weight to the debate. I hope the Bill is not hurried through the Council, because there are matters here of grave importance to all of us.

The Hon. F. J. POTTER secured the adjournment of the debate.

COMPANIES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from March 7. Page 3613.)

The Hon. L. R. HART (Midland): When I first came into this Council in October, 1962, the current Companies Act was in its Committee stage in this Chamber. At that time I wondered how anyone other than a person versed in company law could understand such a massive piece of legislation. The 1962 Bill contained 399 clauses, plus 10 schedules, and occupied 400 pages. The Act covers 172 pages in the Statute Book. The immensity of the 1962 Bill can be gauged by the fact that the Minister in charge of it at that time sought leave to have his explanatory notes incorporated in *Hansard* without his having to read them. I must point out, however, that each honourable member was supplied with a detailed explanation of each clause showing not only the new provisions in the law but also the exact way in which the sections of the existing Act had been amended.

It is unfortunate that this practice of providing honourable members with detailed explanations is not followed more often, as it would no doubt expedite the passage of much of our legislation, especially the more voluminous Bills. I think every speaker so far has stated that this is essentially a Committee Bill. That indicates that a much closer scrutiny will be given to its clauses later. It has also been stated that one aim is to bring about uniform company legislation throughout Australia. If this can be achieved, it will be a very commendable move, but the same sentiments were expressed regarding the 1962 legislation. In his second reading explanation the Minister said that, when the 1962 Act was enacted, it was expected that a comprehensive revision Bill would be introduced within four to five years to incorporate the improvements and modifications that experience of the operation of the legislation would show to be necessary. Major amendments have been introduced, but the general revision has taken more than twice the time expected, which indicates the complex nature of the legislation.

My comments this afternoon will be of a general nature. A considerable part of the debate has hinged around the need for small companies to submit their affairs for audit. One can readily see the need to protect shareholders and, perhaps more important, to protect creditors who may trade with private companies. I believe that the requirements under the present Act give a protection which, in the main, has been sufficient to protect prudent operators. Some people are prepared to take undue risks in order to trade with companies whose finances are very shaky. I do not think that the mere action of requiring a company to have an audit will stop the hungry investor from going out to obtain business and taking risks in relation to his investments.

History has shown that the greatest risks to the investing public are in relation to public companies, which are, under- the present legislation, required to submit their accounts for audit. It seems to me that if we are to retain a semblance of uniformity between this legislation and that of other States, we will have to watch the form their legislation takes. However, I believe that, in the requirement of audit for small private companies, we are already out of step.

Section 14 of the principal Act, which deals with the formation of companies, provides that any two or more persons may form a proprietary company. In other words, two persons may, by taking out a $1 share each, form a limited company, and the total liability of the members of that company would be the $2 subscribed. I believe that the shareholder equity in a company should bear some relationship to the amount of capital (usually borrowed) used in the operation of the company.

If such a company is wound up, all that the subscribers would tend to lose would be the $2 they had subscribed to the company's capital. If creditors are to be given some form of protection other than an audit, the amount of subscribed capital should bear some relationship to the amount of working capital the company would use or the amount of working capital that would be required for the company to operate. There is some precedent for this as, under the Industries Development Act, the Industries Development Committee requires an applicant for a Government-guaranteed loan to subscribe about one-third of the amount to be borrowed. I believe there should be a higher lower limit to the amount to be subscribed in the formation of a private company.

The amount of subscribed capital need not be in the form of fully-paid shares: it could be in partly-paid shares issued to adults. Should the company go into liquidation, the uncalled capital could be recovered from the adult shareholders and appropriate legal action taken to recover it. This would mean that any creditors of the company would feel reasonably secure knowing that the company would have capital to offset against credit that might be advanced to it. I believe that the situation of forming companies could be summed up in the Gilbert and Sullivan opera *Utopia Unlimited.* A song, rendered by Mr. Goldbury (and this is obviously the English version) goes as follows:

Some seven men from an association
(If possible, all peers and baronets),
They start off with a public declaration
To what extent they mean to pay their debts:
That's called their capital: if they are wary
They will not quote it at a sum immense.
The figure's immaterial—it may vary
From eighteen million down to eighteenpence.

They then proceed to trade with all who'll trust 'em,
Quite irrespective of their capital
(It's shady, but it's sanctified by custom);
Bank, railway, loan, or Panama Canal.
You can't embark on trading too tremendous—
It's strictly fair, and based on common sense—
If you succeed, your profits are stupendous—
And if you fail, pop goes your eighteenpence.

As other honourable members have said, this is largely a Committee Bill, because many matters in it should be dealt with in depth in Committee. With some reservations, I support the second reading.

The Hon. H. K. KEMP secured the adjournment of the debate.

SWINE COMPENSATION ACT AMENDMENT BILL (DISEASES)

Adjourned debate on second reading.

(Continued from March 7. Page 3602.)

The Hon. C. R. STORY (Midland): I support the Bill. In his second reading explanation the Minister said that, because of the amendments made by this Parliament to the Foot and Mouth Disease Eradication Fund Act before Christmas, it was necessary to amend two Acts, one of which is the Swine Compensation Act. I think it would have been better to name the diseases in the first instance in one of the Acts. As we are removing "swine fever" from the interpretation clause, it should be incorporated in the interpretation clause in the Foot and Mouth Disease Eradication Fund Act. Under the new arrangement several of these diseases, which from time to time are declared to be dangerous diseases, will be nominated and proclaimed. As the Swine Compensation Act was primarily set up to deal with swine fever, when swine fever is taken out of the Act it should be incorporated into another Act. I believe that the matter is fully covered by an agreement between the States and the Commonwealth. I am sure that the Minister will say whether the Commonwealth Government will be making a major contribution toward compensation if we have an outbreak of any of the diseases mentioned in the Foot and Mouth Disease Eradication Fund Act.

The Foot and Mouth Disease Eradication Fund Act Amendment Bill extended the definition of "foot and mouth disease" to include rinderpest, swine fever, African swine fever, rabies, Newcastle disease, fowl plague and blue tongue. I believe that swine fever should be included in the Foot and Mouth Disease Eradication Fund Act. I have no objection to this Bill, which simply means that the administration of the principal Act is largely transferred from Parliament to the Administration. From time to time the Minister's advisers will recommend that diseases be proclaimed under the Act and that other diseases be excluded from the operation of the Act.

Over many years the pig industry in South Australia has contributed to the Swine Compensation Fund. The industry has given generous amounts to provide for research, and out of the fund it has set up a very good research piggery at Northfield, which I believe cost more than $65,000. The Agriculture Department is administering the research being done there. I wonder whether we should not include a disease as important as swine fever in the Foot and Mouth Eradication Fund Act because, if one of the larger States dominated the scene, South Australia could easily miss out unless it had an agreement with the Commonwealth. I am sure the Minister will agree that our pig industry should not be put at a disadvantage in relation to other sections of primary industry.

The Hon. T. M. CASEY (Minister of Agriculture): I thank the honourable member for supporting the Bill. As he said and as was said in the second reading explanation, this Bill was introduced to ensure that there would be maximum flexibility in the administration of the principal Act. The need for flexibility applies equally to the Cattle Compensation Act. The matter is administered by the Commonwealth and the States. I assure the honourable member that, if a disease breaks out, these matters will be covered. In the second reading debate on the Foot and Mouth Disease Eradication Fund Act Amendment Bill it was said that rinderpest, swine fever, African swine fever, rabies, Newcastle disease (in its classical virulent form), fowl plague and blue tongue would be included within the extended meaning of "foot and mouth disease". I think that that covers the situation that the honourable member referred to.

Bill read a second time and taken through its remaining stages.

CATTLE COMPENSATION ACT AMENDMENT BILL (DISEASES)

Adjourned debate on second reading.

(Continued from March 7. Page 3603.)

The Hon. C. R. STORY (Midland): I support the Bill. The principal Act comes into the same category as does the Swine Compensation Act. Some of the diseases that were available for compensation now come within the scope of the Foot and Mouth Disease Eradication Fund Act. Section 4a (2) of the principal Act provides:

The Governor may from time to time by proclamation declare that any disease proclaimed as such by a previous proclamation shall cease to be a disease for the purposes of this Act. Any such disease may subsequently again be declared by proclamation to be a disease for the purposes of this Act.

I do not know why it is necessary to alter this. It seems fairly cumbersome and hard to understand, but what we have in place of it is even more difficult to understand, because the amendment will make the provision read as follows:

The Governor may from time to time by proclamation declare that any disease shall cease to be a disease for the purpose of this Act and upon the publication of that proclamation that disease shall cease to be a disease as defined in subsection (1) of section 4 of this Act.

That seems slightly complicated to people who have about the same standard of education as I have when they have to read it and try to understand what it means.

The Hon. T. M. Casey: Don't write yourself down. You know what it means.

The Hon. D. H. L. Banfield: It works out all right.

The Hon. C. R. STORY: I know what it means because I have the benefit of the Minister's experience and he can explain it to me, but I do not know that everyone outside will understand. I cannot see why it is necessary to change the wording when the previous wording seemed to do all the things the new wording does, but it now takes more paragraphs to tell us about it. It is complicated and very wordy. Then we have to insert a new subsection (3), which is also quite wordy.

The Hon. T. M. Casey: It sounds more straightforward than the other one.

The Hon. C. R. STORY: The other one is rather difficult. When it was last before the Council we amended the Cattle Compensation Act in order to define cattle more clearly. I hope the Government knows what it is doing on this. This fund really belongs not to the Government but to the people who have contributed to it.

The Hon. T. M. Casey: Which includes me, I might add.

The Hon. C. R. STORY: The Minister has a vested interest, and I am glad he has declared it; that is the proper thing to do. Over the years some of these primary producers' funds are bound to be considered by some departmental and Ministerial heads (although I am not suggesting the present one) as Government funds when in fact they have been subscribed mainly by primary producers. Large funds have been built up, and if every section of the community were as prudent in putting away a little for a rainy day as these people are forced to do we would

not have the problems existing at present in some parts of the community. If people had contributed a few years ago to health funds in the same way, inflation would have been very much lower than it is today. I support the measure.

The Hon. T. M. CASEY (Minister of Agriculture): I thank the honourable member for his support. I am not a legal man, nor do I profess to be able to interpret these things. These provisions have been drawn up by the Parliamentary Counsel, and the honourable member can ask these people to explain these matters to him. I am quite satisfied about it. As the Minister in charge of administering these Acts, I am aware that this money belongs to the producers. As I said by interjection, as a producer myself I have had to contribute. The honourable member need have no fear that funds of this nature will not be treated in the proper way.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—"Proclamation of disease, etc."

The Hon. C. R. STORY: I am at a loss to know why we have altered so radically the wording, which seems to do exactly what was required of it. We have not taken anything away and we are still doing these things by proclamation, but it has taken another 20 or 30 lines to do it. Can the Minister explain this?

The Hon. T. M. CASEY (Minister of Agriculture): The whole purpose of the measures being debated today is to give flexibility to the Acts. I have been assured that the reason for this interpretation is that a major outbreak of disease can be proclaimed under the foot and mouth legislation and compensation is readily payable. If the disease dies down, it can be removed from that category. In the event of a small outbreak, compensation could be payable under the Cattle Compensation Act. So, a major outbreak can be proclaimed under the foot and mouth legislation, but if for some reason a small outbreak occurs the Cattle Compensation Act could be used. This gives the flexibility so essential to the administration of these matters.

The Hon. C. R. STORY: Can I take it that if the outbreak is small, isolated to districts such as Mypolonga, it would come under the Cattle Compensation Act and therefore the producers of South Australia would have to contribute for that compensation paid out, whereas if it were larger and took in five of the swamps along the river it could be declared under the foot and mouth legislation and would come under the Commonwealth Act? The State would be at a tremendous disadvantage if it lost its percentage quota as proclaimed under the foot and mouth legislation. We might miss out, and this is why I am keen to see that this is spelt out in appropriate words. If a certain number of cattle has to be destroyed in this State, even if it is only 20 or 30 beasts, it is done for the common good and, therefore, it should come within the ambit of the Commonwealth legislation and attract a Commonwealth allocation.

The Hon. T. M. CASEY: I could not agree more with the honourable member that the Commonwealth Government should contribute when these outbreaks occur. However, that Government does not look at the matter in the same light. It will enter into a matter such as this only when the disease is so widespread that it could spread to other States or, indeed, throughout the Commonwealth. I agree that we do not want to see in this country an outbreak such as that which occurred in the United Kingdom recently. If there is a small outbreak in a State, it is that State's responsibility to eradicate it.

Clause passed.

Title passed.

Bill read a third time and passed.

PHARMACY ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from March 7. Page 3602.)

The Hon. M. B. CAMERON (Southern): This is a short Bill, most of the clauses of which are self-explanatory. Clauses 1 to 5 need no attention by Opposition members. Clause 6 will be watched with interest, as it provides that regulations will be promulgated regarding the types of premises in which the business of pharmacies may be carried out. I hope that in this respect the board will not be too fussy and the stage is not reached in which the requirement will be beyond the resources of a person running what may not be an extremely profitable business, which is the situation in some areas. Although I understand that this will not be the case, it will be interesting to see just what the regulations will require.

Clauses 7 and 8 introduce a new method of issuing certificates for registering chemists, and clause 9 relates to the same procedure. There has been some doubt under the old Act regarding who is a registered chemist, and this point

is cleared up. Clause 9 enacts new sections 21, 22 and 23. Status is given to oversea graduates and other people who may have been trained in other States or territories of the Commonwealth. This principle was introduced into another Act by a recent amendment, and it is a sensible provision.

Clause 10 has caused me some concern, as it restricts to chemists the people who may own a pharmacy. Although this may be desirable, I have given thought to what the position would be when a person carrying on the business of a registered pharmacy dies and passes the pharmacy on to another person who may not be a registered chemist. Section 31 of the principal Act which deals with this matter to some extent, provides as follows:

> Upon the death of any registered pharmaceutical chemist carrying on business at the time of his death, it shall be lawful for his executor or administrator to continue the business for the benefit of the estate of the deceased for a period of six months only, unless the business is continued under the management of a registered pharmaceutical chemist.

The Hon. A. J. Shard: I think that is the key.

The Hon. M. B. CAMERON: I understand so. However, it will be a clumsy process for a chemist's widow to run the business. If such a woman wished to carry on the business for some time she would not be able to wind up the estate if she was the executor. She would have to carry on as executor because, as soon as the estate was wound up and she became the owner of the pharmacy, she could no longer carry it on. A widow may be holding on to the business for her son, who may be studying pharmacy, or for someone else. In those circumstances, she would have to carry on the business as part of the estate. Chemists will in future have to be careful to ensure that eventualities such as these are covered in their wills.

Under section 31a of the principal Act, a number of other people are able to carry on the business of a pharmacy. I can understand the reason for this provision, as some concern has been expressed that people other than chemists may own a shop and may influence the registered person in charge of that shop regarding his attitude towards the sale of drugs and other items. Although this is unlikely, it could happen in these days of drug abuse. This provision merely ensures that this sort of practice will not occur. Persons who do not own a business do not have the same interest or concern in it as do the owners thereof, and they certainly do not face possible loss of registration, as a chemist will in future. It will be difficult for people who inherit chemist shops to carry on the businesses. However, having examined the Bill, I cannot see any way around the matters I have raised.

The Hon. A. J. Shard: I will try to get an explanation for you, but I think the point is covered.

The Hon. M. B. CAMERON: I thank the Chief Secretary for that interjection. Clause 11 amends section 26a of the principal Act, which defines a friendly society. Apparently, this definition was not clear in the principal Act. Clauses 12 to 20 are self-explanatory. One problem has come to my notice. A registered chemist is the person who operates a business, and there will be many occasions during the day when the registered chemist will be absent from the pharmacy. I have been handed medicines by a person other than a registered chemist because the latter has been absent having a meal. This may become more prevalent when Friday night shopping is introduced in this State. I wonder whether the Chief Secretary would consider introducing an amendment to provide that such a shop may not remain open unless a registered chemist is in attendance.

The Hon. A. I. Shard: I have given an explanation of the essence of the Bill and have indicated that a registered chemist should be in attendance all the time.

The Hon. M. B. CAMERON: It is not clear in the terms of this Bill that he must be there all the time. It is important in this day and age when drugs are causing such grave problems that the chemist should be in attendance constantly supervising. In the handing out of prescriptions there is always the chance of a mistake occurring. I understand that in these days there are people who, under the supervision of a chemist, make up prescriptions, and there is always the chance that he may not be in attendance all the time.

The Hon. A. J. Shard: We cannot control human nature.

The Hon. M. B. CAMERON: Someone unregistered could make up a prescription, and difficulties might arise. I have had experience of this in a case where an unregistered person prescribed a dose of a tablespoon instead of a teaspoon of drugs for a young child. This would not have occurred had a registered chemist been in control of the business at that time. With those few remarks, I support the Bill.

The Hon. G. J. GILFILLAN secured the adjournment of the debate.

STATUTES AMENDMENT (EXECUTOR COMPANIES) BILL

Adjourned debate on second reading.

(Continued from March 7. Page 3607.)

The Hon. R. C. DeGARIS (Leader of the Opposition): As the second reading explanation states, there are four statutory executor companies carrying on business in South Australia —Bagot's Executor and Trustee Company Limited; Elder's Trustee and Executor Company Limited; Executor, Trustee and Agency Company of South Australia Limited; and Farmers' Co-operative Executors and Trustees Limited. These companies have been operating for many years in South Australia. I believe the youngest is Farmers' Co-operative Executors and Trustees Limited, which began business soon after the end of the First World War. The Act governing the operation of these companies in South Australia has not been amended in the meantime, although discussions have been going on for some years about this legislation. At one stage there were long odds that this Bill would appear in Parliament this session. However, I am pleased it has reached this Council for approval.

The trustee companies operating in South Australia have not achieved all that they required under this legislation. Nevertheless, many amendments in this Bill are of benefit to them. The most important amendment, from the point of view of these companies, is the right to establish a common fund. This will be not only of assistance to the companies but also a distinct advantage to the estates that the companies are handling. In other words, the risks of investment will be spread over several investments, which is of some importance to the estates being handled by these companies. The Bill has been investigated and reported on by a Select Committee in another place. It does not cover every matter that the companies wanted it to cover but it is an improvement in some circumstances on the present legislation. Therefore, I support the second reading.

Bill read a second time and taken through its remaining stages.

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from March 7. Page 3609.)

The Hon. F. J. POTTER (Central No. 2): I support the second reading of this Bill, which is a straightforward measure designed primarily to tidy up certain deficiencies in the existing Act. The Administration and Probate Act is one of those measures on our Statutes which usually remains unaltered for some years and which only occasionally calls for examination. Apparently, one of the main reasons that has stirred the Government into action is the doubt whether the Public Trustee has the necessary power to incorporate in his common fund some of the moneys that come into his hands for investment from sources other than deceased estates.

For many years the courts have been in the habit of making orders for trust moneys of one kind or another, perhaps arising from judgments resulting from injuries where widows and orphans are involved or from workmen's compensation payable in similar circumstances. Clause 3 makes it clear that the judgments of the courts referred to cover all courts in the State, not only the Supreme Court. Clause 4 gives the Public Trustee power and authority to invest all moneys received by him (and requiring investment) in a common fund, which can be pledged by him to borrow up to $1,000,000 on security thereof; this is only an upgrading in the value of money, because the limit has been $200,000 for many years.

The Public Trustee's charges, which should properly be fixed by regulation rather than by Rules of Court, will come before this Parliament if there is any problem about them. In many ways, the Public Trustee's charges are analogous to those made by a business corporation for its services. The only difference is that the Public Trustee Department is a Government department but, in the fixation of its fees, I am sure that it will examine the charges prescribed in other situations and in the Supreme Court rules, and this should not present any difficulty.

Bill read a second time and taken through its remaining stages.

ADJOURNMENT

At 5 p.m. the Council adjourned until Thursday, March 9, at 2.15 p.m.