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

Clauses 47 and 48—agreed to.

Clause 49—Duty on shares in foreign company on death of shareholders:

Mr. McDONALD: This is perhaps the most important clause in the Bill. It provides that where a foreign company carries on business here the estate of a shareholder who dies is liable to the payment of duty on such a proportion of the value of his shares as the assets of the company in this State bear to the total assets of the company. The existing position is unsatisfactory from the Government's point of view, because the shares of a man in a foreign company are supposed to be domiciled where the company has its headquarters and register. Unless reciprocal provisions are made with other countries, a shareholder will still pay duty on the whole of his shares in say, Victoria, and will also pay a certain amount of duty in Western Australia. Queensland has legislation similar to this, and in the case of some large pastoral company doing business in Queensland and all the other States with its head office in Adelaide, a shareholder would pay duty on the whole value of his shares in South Australia, but would also pay duty on the assets in Queensland, in Western Australia and in any other State which adopted such legislation. And in the case of mining companies, where all the assets are held in this State and the shares are domiciled in England, then apparently duty would be payable on the shares in England according to the English death duty, and duty would again be payable on all the assets of the company in Western Australia because the assets are in this State. So, certain classes of people would have to pay, if not double duty, at all events much more duty than is paid by other people. I wish to deal at some length with this section because it is so very important.

Progress reported.

House adjourned at 6.13 p.m.

Legislative Council,

Wednesday, 5th September, 1934.

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

PAPERS—FIRE BRIGADES BOARD.

Dismissal and Reinstatement of H. P. Phillips.

HON. H. SEDDON (North-East) [4.35]: I move—

That all papers dealing with the dismissal and re-instatement of H. P. Phillips, of the Victoria Park Fire Brigade Station, by the Fire Brigades Board, be laid on the Table of the House.

On motion by the Honorary Minister, debate adjourned.

MOTION—ROYAL PREROGATIVE OF PARDON.

Disqualification of Hon. E. H. Gray, M.L.C.

Debate resumed from the previous day on motion by Hon. H. Seddon—

That, in the opinion of this House, the free pardon granted to the Hon. Edmund Harry Gray, insofar as it professes to remove the disqualification incurred by him under Section 184 of the Electoral Act, is of no force or effect, inasmuch as it is not a proper exercise of the Royal prerogative of pardon.

HON. E. H. GRAY (West) [4.37]: It is a very painful duty I have to perform today. First of all I thought that, from the point of view of good taste, it would be better for me to leave the Chamber whilst the debate was proceeding, and allow it to go on in my absence. I therefore sat in the gallery. When I saw how the debate was unfolding, and as Mr. Seddon outlined his remarks, I felt I would be a coward to go on sitting in the gallery, and that my place was in my seat where I could defend my honour. I am here not only to defend my honour; there are other things to think of besides that.

Hon. J. Cornell: Your honour has not been questioned.

Hon. E. H. GRAY: The paltry sum of £2,000, to which reference has been made—

Hon. J. Cornell: I rise to a point of order. Mr. Gray's honour has not been brought into question during the debate.

The PRESIDENT: That is not a point of order. I would ask members to recollect that Mr. Gray is on his defence. His position is a somewhat difficult one, and I ask members to hear him in silence.

Hon. J. Cornell: So long as he keeps within bounds.

Hon. E. H. GRAY: I do not suppose there is a member of Parliament in the British Empire who has been placed in the position in which I find myself. I look upon it as my duty to my family, and my duty to my dead father and mother, to defend myself. I listened with interest to Mr. Seddon's remarks regarding the law. I am totally opposed to the opinion he expressed. The ethical standard of the law in this country is not maintained by its law courts. God forbid that their standard should be judged by the Barristers' Board and members of the legal profession. The legal profession, that can admit Mr. Hughes to their fold, contends that it represents the ethical standard and the sanctity of the law; it does nothing of the kind. The ethical standard of the people is maintained not by lawyers, who of necessity must in course of time be appointed, or the best of them, to the positions of judges of the Supreme Court. My experience of the last few months satisfies me that when a person gets into a court of justice, he breathes a different atmosphere from that to which ordinary people are accustomed. The standards are altogether different. That which we look upon with horror in our daily lives—I mean those of us who try to do what we can in the community—is accepted in courts of justice as a commonplace thing. I would look with horror upon such a thing in my daily life. That is my opinion of the atmosphere of a court of justice. I was so bewildered in the Supreme Court by the atmosphere of it that I could not understand it. I could not understand how it was possible for me to be placed in the witness box, as I was, and called everything from a perjurer to a scoundrel, in nice terms by the counsel for the prosecution, and when a common informer took my place in the box, counsel for the defence was reprimanded for daring to attack him. In order to clear my mind upon the question, I went to see a man in a high position, one who has been appointed to dispense justice. I put the position before him, not with the idea of brazening it out and undermining the course of justice, but with an honest desire to find out why such a thing was possible. The whole position was explained to me, and a different light is now thrown upon it in my mind. This gentleman explained the matter very clearly. He was sympathetic towards me and the trouble through which I was passing. He gave me some helpful advice and explanations as to how the laws were administered. My view was that it was impossible to get natural justice in a court of law. That is what was said to me by the gentleman I have mentioned. It is the duty of the police, and the responsibility rests upon them, to preserve law and order. When they fail to take action, and a common informer takes it upon himself to see that the law is administered, directly such common informer steps into a court of justice, he is, by tradition of the law, protected along every step of the road. I asked why that was, why I should be exposed to the attacks of unscrupulous counsel, although it is the job of counsel to endeavour to destroy the case for the other side. This gentleman explained that it was necessary in law to support every common informer, so that in the event of serious crimes being committed, such as murder, violence, robbery and the like, the common informer might be protected. This man Hughes, who is trained in the law, took advantage of that situation, and that is why he has been protected throughout every step he has taken in the courts. I say again that Mr. Seddon's views regarding the ethical standard of the law are incorrect, and that those standards are not necessarily maintained as a result of what we know of the administration of justice. Most people have their ethics, taught to them by their religious teachers, their school teachers and their social reformers, and most people in the course of their activities try to live up to certain moral standards. Therefore it cannot be said that we can accept the administration, ethics, and conduct of the law and the necessary precautions that judges have to take, in common with counsel, in order to get at the truth. I want to give members an outline of the genesis of this trouble. I have been advised by some hon. members to refrain from participating in the debate, but as very few

of them appreciate the genesis of the matter, I desire to give some particulars to the House. The prosecution by Mr. Hughes, acting as a common informer, was the culmination of a vindictive persecution instituted against me because of my long association, in an honorary capacity, with various bodies actively engaged in raising funds for public and social services, and also owing to my vigorous opposition to that individual because of his extravagant, greedy grasping of public funds, and his system of imposition on the credulity of the public. There are men in this Chamber who know my attitude on this matter. In common with Mr. Clydesdale, I opposed, years ago, in every possible way, the manner in which sweeps and other undertakings were being conducted. The people were being taken down. If anyone likes to tie himself to the chariot wheels of Mr. Hughes, he can go free; but if he should dare to oppose his activities, that man has such wonderful power—I do not know where he gets it—that he can wield his vindictiveness effectively against those who object to his filching funds from unsuspecting people. I did not take my action under the lap. Mr. Hughes bragged in the court of what he had done for Trades Hall. I did not say anything about that. The Fremantle and Midland Trades Hall officials of that time, the mental after-care authorities, girls' clubs, and various hospitals throughout the State required funds, and did not care how the money was obtained. They cared little how the public were taken down so long as they could get £300 or £400. It did not matter a jot to them how the money was raised. During the court proceedings, it was shown how Hughes had fleeced the public, owing to the manner in which he had conducted his sweeps. As was indicated in court, the general expenses incurred by an honorary committee in conducting activities of that description usually ran from 3¼ to 5½ per cent. The big carnivals run by the "Daily News," with which I was associated as a member of the committee, resulted in raising about £12,000, and that was done at a cost of between 3¼ and 4¾ per cent. for general expenses. According to the figures supplied by Mr. Hughes, so far as I could understand them, the disclosed expenditure represented 56½ per cent. Because Mr. Clydesdale, I and others dared to oppose a system of raising money along those lines, we have been subjected to all this persecution. I do not desire to enter a plea in this House because I have been working for charities. I would not raise that plea in order to escape my responsibilities. I do not want any credit for it because, fortunately, the desire to assist in such undertakings is instinctive with me. I do not know that anyone should desire credit because of the possession of such qualities. We should be thankful that we have them, and, for such as I have, my parents are to be thanked. I realise I have bad qualities as well, but I do not know where they came from. My good instincts, I know, have been inherited from my ancestors and I am always sorry for anyone who is handicapped by traits of selfishness, cruelty and all the evils to which human flesh is heir. Those who have had the advantage of a proper home training under good parents have an ordinary chance in life to do the right thing as the natural thing. That being so, I do not wish to give myself any credit for possessing a desire to help in social service. I am only sorry for those who are not similarly situated. In continuation of the campaign of persecution, I was disgracefully slandered in every possible way from every platform occupied by Hughes during the latest West Province election. Not only was I slandered from the platform, but in the weekly Press as well. If members desire to know what was said in the Press, they can read the reports for themselves. Members may ask why, if I have been slandered, I have not taken legal action. What protection is there in that course for a man who is without money? Again, it is useless instituting libel proceedings in the Supreme Court against an indivdual who has no money. One might be successful in gaining a verdict carrying substantial damages, but what is the good of such a verdict when one cannot secure the money from his opponent, who has either no money or has taken steps to hide what he has? A substantial verdict would resolve itself into a hollow victory, because one would probably have to pay £200 or £300 for costs. I have not that amount of money to spare. There are others, apart from Hughes, against whom proceedings could be taken for libel, and they deserve to be placed in that position. So it was that from every platform I was slandered. They ridiculed my charitable work, and the plan of attack centred on my association,

in an honorary capacity, with various activities. For instance, they ridiculed the firewood scheme that I instituted at Fremantle, a scheme that benefited thousands of men. They said I was crawling to the lumpers for their votes. Every activity with which I was associated was ridiculed from the public platform. If what was included in the pamphlet, which was the basis of litigation, was libellous, compared with what was said about me, it was like a baby chicken to an elephant. It is impossible for any man to serve for six years on the Prison Board, for instance, without making enemies. I have not been on that board for two or three years, or I suppose I should have lost my seat there, too, although my services were in an honorary capacity. It was impossible for me to act as sole distributor of relief funds for four years, and not make enemies. Some of those individuals who come under that category comprise the majority of Hughes's election committee. His agent was a gaolbird and associated with the crooks of the underworld. During the progress of the election campaign, I was warned by a crook, through a third party, that if I persisted in my campaign on behalf of the Labour candidates, they would frame me. That information came from Hughes himself, through his agent. The price of silence on my part was freedom from persecution. In my opinion, that was blackmail. When I received that information, I laughed and ignored it. If I had taken the advice of people not so impetuous as I am, I might have avoided the trap that was set to get me. In order to explain the necessary atmosphere, I desire to describe the operations of the relief committee at Fremantle in granting assistance to individuals during the first year of our activities. We had a large committee. This phase is intimately associated with Hughes's vendetta. The big committee had a wonderful organisation for collecting funds, but they had no one to undertake the work of administering relief. There were two men only who were game to take it on. That was four years ago. I will never forget those days. There was dire poverty and a rush for relief. Methods had to be adopted by the Government because of the army of crooks who came forward to secure more than their fair share of the funds available. They had to fix the seven-day period to cope with the situation. The committee had ample funds at their disposal. The Rev. Eric Nye was placed in charge of the relief granted to single men, and he operated from the Immigrants' Home. Together with another reverend gentleman, I was entrusted with the granting of relief to married people at the port. The minister who was associated with me had had a long experience in social service activities. He came to work with me for two or three mornings and then went on strike. He said, "I can't do it, and I won't do it." I was left to do the job with no assistance at all. I did not mind it; as a matter of fact, I rather liked it. For nearly 12 months, and certainly until the end of the first winter, I worked seven days a week and had my meals in the streets of Fremantle. The distress was appalling and the applications for relief came from all sorts of people. There were applications from the very best type of citizens, and from sinners, crooks and prostitutes, and I think it was the prostitutes who frightened the parson. Not many people will understand that. I do not suppose we will ever experience a period comparable with the first six months of the depression. All sorts of men had to appeal for assistance; some were in rags, some were well dressed, but all were starving. The reward for the work that I undertook then was bitter persecution, carried on with relentless severity. When the attempts by some people to secure more than their fair share of the funds available were frustrated, schemes were hatched well in advance to secure my destruction at the elections. That is no extravagant statement. The plans were well laid, but I am happy to say that the citizens' committee who represented all sections, including Nationalists, Labourites and business people without fixed political opinions, recognised my work. I was not opposed at the election, and I am in this Chamber now as the unanimous choice of over 8,000 electors of the West Province, an honour of which I am proud. The pamphlet that became the trap and was the basis for legal proceedings against me, was not written by me. I had nothing whatever to do with it. I have been campaigning during elections throughout Australia for the past 34 years. I have participated in practically every election except when I was on the land and I did not have time at my disposal. I have participated in every State and Federal election

and have also stood for Parliamentary honours. I adopted a policy that, in ordinary circumstances, I agree would constitute a fatal mistake for any candidate. My friends in the Labour movement at Fremantle, at a time when I had to put up a big fight against Mr. L. B. Bolton, who is now a member of this House, told me that, in view of the way I was fighting the election, I was helping and practically electing my opponent. I refused to make any attack upon my opponent. As a matter of fact Mr. Bolton was regarded as a very strong man and the people of Fremantle reckoned that he was going to clean me up. Still we were on very friendly terms, and I occasionally drove with him in his car. A few days before the election, however, he said to me that it looked as if we were on too friendly terms, and after that I walked. I mention this merely to show the spirit and the manner in which I conducted my elections. I never believed in slinging mud at any of my opponents and resolved that if I could not win decently I had no right to be returned. The peculiar circumstances surrounding the last West Province election created an unusual atmosphere. When one has a viper against him the only course to pursue is to fight. With regard to the pamphlet in question, if I had had the preparation of it I would not have drafted it in the way in which it appeared; I would have seen to it that it contained the whole facts, and another four lines added to it would have made it and its distributors unassailable from the legal point of view. I would have included in it that which would have condemned Hughes for all time. Audited statements were available, and why the pamphlet was published in the form in which it appeared I do not know. At that time I thought it was too generous to Hughes, and that is my considered opinion to-day. We did not libel him: in fact we were too generous to him by hiding the bigger facts, the facts which would have damned him for all time. I, with others, took part in the distribution of the pamphlet. Certain circumstances arose which made it difficult to distribute it and that was why I assisted in the distribution. If what was contained in the pamphlet had been published in a newspaper, an offence would not have been constituted under the Electoral Act, as far as I was concerned. I ask members not to forget that. If the contents had appeared in a registered newspaper and we had sold that newspaper, I, as the seller or distributor, would not have been liable. Unfortunately, it was a pamphlet. Then an elaborate prosecution was staged in the lower court by Hughes as a common informer, and later he brought an action in a civil court for damages. In the latter court, despite Hughes' efforts to prove that his character had been ruined by the distribution of the pamphlet, the jury assessed the damages at only £100. This amount had to be divided among the four defendants, and so it came to £25 in each case. This figure, I contend, was nothing but comtemptuous damages. With all due deference to the judge, I should like to draw the attention to the sharp difference between his summing up and the jury's verdict. The judge explained to the jury that damages could be awarded and that they could be exemplary, ordinary or contemptuous. This is where I violently disagree with his summing up. He told the jury that that was not a case for contemptuous damages. I consider the learned judge was wrong there, because if ever there was a case in which a judge did not know very much about the plaintiff and the business he had been engaged in, the manner in which he had battened on the people and the fact that he had ruined a poor old man who had been in business, it was this case. The jury, however, must have known something about Hughes because they assessed the damages at £25 for each defendant. I have given a short history of the manner in which I came to be associated with this business, and I say that to proceed to carry out the punishment to its finality would be an outrageous miscarriage of justice and a slur on my character. I was advised to seek a pardon from the Governor. The application was made in due form, and naturally, I am very grateful to the Governor in Executive Council for having acceded to the request. I want members to understand what my feelings have been during the last few weeks, the humiliation to which I and the members of my family have been subjected. We were not able to go to a public entertainment without seeing people reading a particular newspaper which has been doing its utmost to drag me into the gutter. That newspaper actually bracketed my name with the names of the murderers Coulter and Treffene. Hon. members

can understand my feelings. I can assume a fairly cheerful countenance and ever since these proceedings began I have endeavoured to do so, but I cannot say other than that the tactics of the "Mirror" newspaper towards me were despicable and rotten, and if I have to suffer through this affair that newspaper will be brought to account. I cannot let them get away with what they have done. Can members imagine my feelings on finding a newspaper associating me with murderers? Even Mr. Miles the other evening—though I know he did not do it purposely—brought in the Bennett case.

Hon. G. W. Miles: I had no idea that——

Hon. E. H. GRAY: No, but the public would say "what the devil has this man Gray done"? Then Mr Baxter referred to people who had been sued for making false declarations. How can such cases be comparable with mine, an innocent victim of circumstances over which I had no control?

Hon. G. W. Miles: May I make a personal explanation? I assure Mr. Gray that I had no idea of associating with his case the case to which he referred. I quoted something that happened 20 years ago, a letter which I wrote and which was published in the "Pilbarra News." My desire was to emphasise the point I made about the deficit and there was no need for me to quote the whole of the letter. I was sorry for it after I had done so. My point was that all Governments were associated with deficits.

Hon. E. H. GRAY: Still, Mr. Miles's remarks are read by the public either in the Press or in "Hansard," and all will wonder what I have done. Perhaps some will consider that I have committed a very serious crime. All these things are outrageous and absolutely unfair to me. Certain people have set themselves out to bring about my political assassination, and I have had to fight them with all my strength and resources. This controversy has degenerated into a rotten party issue for political purposes in order to hamper the Labour party at the Federal elections.

Hon. J. Cornell: If the hon. member goes further along those lines he will forfeit the respect of the House.

Hon. E. H. GRAY: Yesterday I asked for an adjournment until to-morrow to enable me to make a considered statement, but that request was refused.

Hon. J. Cornell: The hon. member could have moved an amendment.

Hon. E. H. GRAY: I was astounded at the refusal. The request I considered was a fair one, and might have been acceded to. I have no complaint to make against the daily Press except that they seem to be afraid of Hughes. I say that deliberately. There have been any number of paragraphs in the newspapers, and the "Daily News" particularly has given Hughes columns of publicity, and put his case forward, but never has there been anything said explaining the history of the case from my point of view and the facts regarding Hughes.

Hon. J. Cornell: Hughes is a new bogey man.

Hon. E. H. GRAY: Hughes is the bold bad wolf and should be slain. The duty of the Press is to expose as far as possible conspiracies or evils in our public life. They have failed to do this in respect of Hughes: they will not refer to him at all because they are afraid that he will take them to the Supreme Court. I should like to say a few words about the Electoral Act. As a Bill, it was introduced on the 4th December, 1907, late in the session, when a contentious Land and Income Tax Bill dominated the proceedings. There were only two or three speeches on the second reading, and these were made on the 6th and 17th December of that year. The speakers were Mr. Drew, the present Chief Secretary, and Mr. M. L. Moss, and both spoke against the defamatory clauses. I cannot imagine what happened then, as the Bill, considering the importance of it and the drastic alterations and additions it was making to the Electoral Act of the time, was rushed through. How then can it be said that it was carefully considered? Mr. Drew spoke strongly against the defamatory clauses and Mr. Moss referred to them from the legal point of view, and pointed out the danger of those clauses. Yet when the Bill went into Committee, one defamatory clause seems to have been overlooked and was passed. This, too, in spite of the warnings from Mr. Drew and Mr. Moss. Mr. Moss spoke on the defamatory clause, No. 194, in Committee again; and it was negatived on the voices. The danger of that provision being in the Act at all was recognised. So far as I am able to learn, no provision of such a character is contained in any similar Act of the British Dominions. I have that information on high legal authority. However, I wanted to make certain

on the point by looking up the statute here. That the clause in question was passed in mistake, during a late sitting close to Christmas, does not make the Act any the less legal. I have learned a good deal of law during the past few months. I am given to understand that if it were possible to challenge the Act, there is in existence an Imperial Act which would over-ride it. I have no hesitation in saying that a mistake of that nature could not possibly occur at the present time, because our leaders and officers are too vigilant; and that remark applies equally to Mr. Baxter and Mr. Drew. However, the mistakes did happen at that time. Attention was concentrated upon contentious measures, as I think Mr. Hamersley, who was here then, will recollect. A great deal of the time of the House was taken up by contentious measures, and this important measure was given only a passing glance, so to speak. At any rate, the attention given to it was by no means adequate to its importance. The measure was rushed on the statute-book, and it has taken 27 years for someone to avail himself of that archaic provision.

Hon. J. Cornell: I tried to get the Electoral Act amended, but the hon. member said it was all right.

Hon. E. H. GRAY: Mr. Cornell did not try to amend this particular section. I admit that under the statute I have committed an offence. The law is unjust, but it is the law. In the circumstances which I have tried to explain to the House, that unjust law should not, I submit, be allowed to inflict the punishment prescribed. Let me impress upon hon. members that I am not the only member of the House who is in danger. If any other member had been innocently involved in legal trouble as I have been, I would adopt the same attitude as I am taking now; I would stand by the member and try to get him out of the trouble. The sword that has been hanging over my head for three weeks is also hanging over the heads of other members of this Chamber. The next victim of the arch-conspiracy will be Mr. Holmes. That hon. member has made himself liable, through his activities in connection with the State steamers, to be unseated, simply owing to the weakness of the Constitution Act. I hope the common informer will stay his hand. But the danger is there that on the information of a common informer Mr. Holmes may have to vacate his seat.

Hon. J. J. Holmes: Let him come on. All I have done is to take a ticket on the State steamers.

Hon. E. H. GRAY: The hon. member had something to do with the transport of cattle by the State steamers. Further, it is stated on reliable authority that every member who has borrowed from the Agricultural Bank is in danger of losing his seat.

Hon. A. M. Clydesdale: You and I will have plenty of mates.

Hon. E. H. GRAY: Mr. Parker, who made a speech on this matter the other day, knows that he has broken the Electoral Act.

Hon. H. S. W. Parker: In what way?

Hon. E. H. GRAY: In the way the hon. member conducted his election. And North-West members are also in danger. I have seen various members break the Electoral Act quite innocently. I look upon Mr. Parker as an esteemed friend.

Hon. H. S. W. Parker: In what way did I break the Act?

Hon. E. H. GRAY: In the way the hon. member conducted his election. Under the existing Act, which is archaic, it is easy to fall into trouble. I stand here to-night and say that I am absolutely innocent of any offence from the aspect of natural justice. I trust hon. members will remember that fact before casting their votes.

HON. H. S. W. PARKER (Metropolitan-Suburban) [5.23]: I have to express my extreme regret that occasion has arisen for this motion to be placed before the House. On an earlier occasion I said that as the Cabinet had taken such an extraordinary attitude in recommending the exercise of the Royal prerogative, it was the duty of members to express their views on the subject. This evening we have heard what Mr. Gray said by way of personal explanation. The hon. member started off by declaring that there was no natural justice in a court of law. I would like to point out to him that a court of law only carries out what Parliament directs it to do. Parliament is the highest court in the land, and the judges are there to interpret the laws made by the Houses of Parliament. In order that the courts may not become too technical, certain classes of cases are entrusted to jurors. Juries consist of our fellow-citizens going

about the streets the same as ourselves, men drawn from different walks of life. Unfortunately for Mr. Gray, he has had to appear before a jury in a libel case. Those jurors decided certain facts, and I do not see how the hon. member can complain of not having received natural justice. It may be that he has not received natural justice, but he has received the verdict of the jury according to the law as laid down by Parliament. Mr. Gray has for many years been a member of Parliament, and perhaps it was his duty to rectify things. How he would do it I do not know. Neither do I know what he means by natural justice. We have courts of equity which also temper the laws as far as possible. However, it is Parliament that deals with those matters. The hon. member has spoken of a common informer. From my knowledge of the law a person who takes direct action is not called a common informer, and I would like to remind the hon. member of the fact that it is a daily practice of the Government he supports, of the previous Government, which I supported, and in fact of every Government, I suppose, throughout the British Dominions to employ informers, and moreover to employ common informers of a not very high type. The common informer is never looked upon with a great deal of respect, but Governments employ him daily. I have had occasion to make stringent remarks in the courts about a common informer who came along and gave evidence of how he secured a bottle of beer from an unsophisticated individual: the common informer gets part of the fine. The practice of employing common informers is a very bad practice, because it encourages a poor type of individual to come along and sometimes give perjured evidence in order to secure some benefit from the fine inflicted. Never until this evening have I heard it suggested that in this particular matter which we are discussing there was any common informer. There was a man who felt himself aggrieved, and he set the law in motion. The matter was heard, and the magistrate came to a decision, rightly or wrongly. One gentleman was fined. He decided to appeal, and then decided not to go on. It is best known to himself why. I do not know why he did not go on, and certainly it does not concern the matter before us now. At a later date the hon. member was charged with a similar offence, and the magistrate came to a certain conclusion. The hon. member said the election was fought by a viper, and that one had to use similar methods against a viper. He also stated that before the pamphlet was published, it was amended in various ways, upon advice. I gather that when he handed out copies of that pamphlet he knew full well that some question had been raised about it, whatever the question might be. However, this debate is not a debate on the merits or demerits of a charge made against the hon. member. That does not come into it in any shape or form. That is how I view it. I view it as a question of how the House regards the exercise of the Royal prerogative so as to relieve a member of Parliament from the responsibilities of an act of which he has been found guilty by a court of law. I am not using "guilty" in the sense of any criminality; no one suggests there was anything criminal in Mr. Gray's action. But I certainly think it is essential that we voice our opinions and express our protest in no uncertain terms as to the action taken by Cabinet in recommending His Excellency to exercise the Royal prerogative. Under the English Constitution, which we follow, from the dark ages right through, kings have had a personal prerogative. It has been curtailed by Parliaments from time to time, and it is always insisted that the natural law should be followed, which is that the person who is offended is the only person who can pardon the offender. That is the natural law. And that is followed in the general law, that the King can only pardon where the Crown is the prosecutor. There is a difference of opinion as to whether in this instance the Royal prerogative was rightly exercised in law. In my opinion the Royal prerogative was not correctly exercised by Cabinet through His Excellency, for I submit that this was a private prosecution, and the hon. member himself said the prosecutor was a common informer, not the Crown at all. However, this House is not the place in which to test that question. The Constitution provides that if the King wrongly exercises his prerogative of pardon, the courts are available in which to have that question tested. There are many ways in which that question can be tested, and I think quite recently it was very prominently

brought before members of this House, and one member in particular who can realise whether that question can be tested. The courts have full power to deal with matters of that sort and that, I submit, is the proper way in which this question should be tested. It cannot be tested in this House. The Royal prerogative has been exercised, and this House must act accordingly. It is recognised in our own Constitution, through the Royal warrant issued to His Excellency, that he can exercise the Royal prerogative on or after he has had the advice of Cabinet in some instances, and at least one Minister of the Crown in other instances. In the present case we find that Cabinet advised His Excellency to exercise the Royal prerogative. What I think we should protest against is the way in which Cabinet did act. I have had opportunity for perusing the file in another place, and naturally I presume that file is complete. There is on it a letter from the offender's solicitors enclosing a form of pardon. In that letter the solicitors go farther and say that if there is any question, Cabinet should consult their own legal advisers. There is nothing on the file to show they have consulted their own legal advisers and the only form of a pardon on that file is the one that is sealed and signed by His Excellency. So we must come to the conclusion that the solicitors sent along the pardon and that, without further reference, Cabinet recommended His Excellency to sign it, and His Excellency did sign it. That does not seem right. Then we read in the Press that the Premier would make a complete statement vindicating what Cabinet had done. I have been anxiously awaiting that statement, hoping there would be some good explanation afforded. Unfortunately no explanation has been forthcoming so far, except that from the Chief Secretary. The Chief Secretary had the most unenviable task that, I suppose, any Minister has had for many years past; he had to endeavour to explain away a matter which has no explanation. And he is not a gentleman who is going to come along here and tell untruths for the purpose of making an explanation. Consequently, he was left with nothing to say except that, when a Bill was before Parliament 27 years ago, certain clauses crept in which should not have crept in. The hon. member concerned said the Bill was hastily put through, but in the next moment he said it was after an all-night sitting. I do not know which is correct, but if members will look up that Bill, they will find that those particular clauses were specially inserted in the Bill and had never been in any othere electoral legislation. At the same time, the Bill set out clearly and distinctly that the Criminal Code, which up to that date had dealt with electoral offences, was to be disregarded entirely, and that a new code was put in dealing exclusively with electoral offences. In England, if a candidate publishes defamatory matter concerning another candidate, and if the one who publishes the defamation is elected, he can be unseated and cannot stand again for the same borough, in some instances for life and, as a rule, for seven years. Personally, I have not found, certainly not in English law, anything where a supporter of a candidate, or a member of Parliament, defaming a candidate, can be unseated. That, I think, is peculiar to our own Electoral Act. But we have that special section in it, and, having that special law, surely the people it most concerns are the people who should know it. And whether they know it or not, if they commit a breach of it, they must put up with the penalty. It is entirely wrong from an ethical point of view that a man in a high position should be relieved of responsibility for his action, while a man in a more lowly position should pay the penalty for a breach of the law. An unfortunate individual comes into the city and parks his truck in Hay-street. He has to pay a £2 fine, although he is totally ignorant of the laws in every way. Possibly members of Parliament may be able to park their cars where they like; I do not know, but I am not going to risk it. However, that is the ethical position. I feel somewhat strongly on this matter, and I also regret that I am not in another place where, I think, this motion would be more appropriate. For this Chamber does not make or unmake Governments. We have nothing to do with the personnel of the Government; it is the privilege of another place to express their views on the right and wrong of actions by the Government, and if the majority of members agree that an action of the Government was wrong, we all know what the next procedure is. If members of another place do not think the action of the Government wrong, well, the Government carry on, and the next appeal is an appeal to the people, which the Constitution provides shall be every three years. We

have now come to this deadlock, that we cannot do anything. Another place may be able to do something, and if there is the necessary number in another place, and if the people think the Government have done wrong, the responsibility is then theirs. There is another way in which this matter can be dealt with, a way which I will not by any means support. There is the inherited power of Parliament to watch the conduct of its members. And, as was mentioned by Mr. Cornell last night, a member of the Federal Parliament was once expelled. I am not suggesting for one moment that the case under consideration would warrant such an action here. It may be that this House has power to take such action, but it would be a very foolish and wrong action to take.

Hon. J. Cornell: And two wrongs would not make a right.

Hon. H. S. W. PARKER: What the hon. member did is not a matter for expulsion from this House. Yet this is the only remedy left in the hands of this House, if it be a remedy. In this instance I do not think such an action is warranted. If any such motion were moved, I would strenuously oppose it. The reason why I mention that is to show the hon. member that, in my point of view, and I think in the view of all members of the House, this is not a question which concerns him personally, but one that purely and simply concerns the action of the Cabinet. It has nothing to do with the hon. member, who merely happens to be the victim. Again, it has nothing whatever to do with the person who took the action against him. I do not care two straws whether he has got his £25 from the hon. member, or whether he never gets it. That has nothing whatever to do with the question. An offence has been committed by a member of Parliament and has been given due consideration through the courts, two courts, and he has been condemned for his action by both those courts. Yet Cabinet come along and deliberately give him a pardon for the purpose of permitting him to sit in this House and for no other reason at all. That is an exercise of the Royal prerogative wrong in ethics, and in my opinion it is wrong in law, because this was a private matter. Unfortunately, we can do nothing beyond recording a protest. I rose to express my views, and also to register my protest at the action taken by Cabinet.

HON. G. W. MILES (North) [5.45]: In my opinion, the exercise of the Royal prerogative of pardon by the Government has been illegal. They might have been justified in remitting a fine, but I contend that Cabinet and the King's representative had no power to interfere with the Constitution of this House. History records the broad powers exercised by Kings in olden times, and how those powers were curtailed, first by Magna Charta, then in the time of Charles II., and again in the reign of William. I consider that the Lieut.-Governor, in acting on the recommendation of Cabinet, has exceeded his duty. He has done more than the King could do. I disagree with both the legal opinions expressed regarding the pardon granted to Mr. Gray. In the Statutes of Western Australia, page 651, there is an Act of 1876 to amend the law concerning the remission of penalties. The preamble reads—

> Whereas by divers Acts and Ordinances penalties are made payable in whole or in part to parties other than the Crown, and the said penalties cannot, so far as they are payable to other parties, as aforesaid, be remitted or pardoned by the Crown where no express provision has been made for that purpose by the Act or Ordinance imposing the same, and it is expedient that the Crown should have in all cases power to remit all penalties imposed: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows, etc.

The preamble gives the Government power to remit fines and penalties, not, as Mr. Parker said, only when the Crown is a party to the cause.

Hon. J. Nicholson: There is an operative part declaring that the penalties may be remitted.

Hon. G. W. MILES: Yes. For my own satisfaction, I have obtained legal opinion on the question.

Hon. H. S. W. Parker: I was speaking only of the Royal prerogative.

Hon. G. W. MILES: The legal opinion I have obtained reads—

> Mr. Gray was convicted of an offence under the Electoral Act which involved loss of his seat in the Legislative Council. Since then he received pardon under the Seal of the State of Western Australia (*vide Gazette*, 24/8/34). A Royal pardon purges him of his offence and has the general effect of removing any disqualification attached to conviction (Hay *v.* J. J. Tower, Div. 59, L.J.M.C. 79).

Hon. J. Nicholson: That is what Mr. Parker and I said.

Hon. G. W. MILES: The opinion continues—

> Even such a pardon cannot remove a disqualification if constitutional rights are involved.

That is the point I take; the Government cannot interfere with the Constitution.

Hon. H. S. W. Parker: There is no disqualification in this case; he is only prevented from sitting.

Hon. G. W. MILES: The opinion continues—

> Mr. Gray was convicted under the Electoral Act, which is part of the Constitution (52 Vic., No. 23), and although such Act has been amended and coded it is still a part of the Constitution. By that Act, after conviction, Mr. Gray is incapable of sitting as a member. Mr. Gray represents the people. Both the Crown and the people are interested in his seat, the Houses (Legislative Assembly and Council) being a safeguard and constitutional check upon the Crown.
>
> The Crown has a prerogative of pardon; no one has any doubt that it may remit fines, forfeitures or penalties, but it could only pardon offences from which it could profit, and where other rights were involved, the prerogative did not attach. This was thought to have caused an unnecessary restriction upon the prerogative of the Crown, and in 1876 an Act (39 Vict. 20) provided that the Governor may remit fines or penalties due to His Majesty, although the whole or part may be payable to some other party.
>
> This Act was affected by the Justices Act, 1902, which has been amended by various Acts (consolidated by Act 1902-1926). Section 170 provided that the Governor may remit the whole or any part of any fine, forfeiture or costs imposed by a conviction whether any part is payable to any person other than His Majesty or not.
>
> The fine, forfeiture or costs imposed by the conviction may be remitted, but the disqualification was not imposed by the conviction; it was consequential by reason of an Act of Parliament, an Act which is part of the Constitution. Obviously the Acts above mentioned, 39 Vict. 20 and Justices Act, 1902-1926, do not apply.
>
> The question must, therefore, be answered upon a construction of the prerogative.
>
> It was thought that the age-old quarrel of the Crown and the people was settled by Magna Charta.. It was not so. The Petition of Right was considered to have again settled the quarrel. It also failed in part. The Act of Settlement settled the matter, and those three Acts, or what is left of them, are the Bible of the British Constitution.
>
> The Crown's rights are restricted; it cannot interfere with the representation in Parliament. Only Parliament by a new Act can do so. Acts are made by Crown and people through their representatives. Mr. Gray by existing Acts has lost his seat. The seat is vacant. The Crown by itself cannot refill it by a pardon; only Parliament (Crown and people) can do so.

It is the duty of the House to pass the motion. I congratulate Mr. Seddon on the able manner in which he presented his arguments. It has been said that the pardon was suggested or prepared by a firm of solicitors. There is nothing on the file to show what the Crown Law authorities thought of it. If they approved of it and advised the Government that they had power to act in this way, I consider that their advice was wrong. It has been said that the Crown Law authorities were of opinion that the Lieut.-Governor should act on the advice of Cabinet. If such advice was given, it was certainly erroneous. As Mr. Holmes mentioned last night, on page 181 of Instructions to Governor the following appears:—

> In the execution of the powers and authorities vested in him, the Governor shall be guided by the advice of the Executive Council, but if in any case he shall see sufficient cause to dissent from the opinion of the said Council, he may act in the exercise of his said powers and authorities in opposition to the opinion of the Council, reporting the matter to Us without delay, with the reasons for his so acting.

If the Governor did not enjoy that discretion, he would be merely a rubber stamp for the Ministry. The Lieut.-Governor had power to refuse to grant the pardon, and in my opinion he should have obtained legal advice before acceding to the wishes of the Government. If he was not satisfied with the legal advice available to him within the State, he could have referred the question to the Home authorities.

Hon. J. J. Holmes: He is instructed to refer it to the King.

Hon. G. W. MILES: Yes, definitely instructed. Reference has been made to the disabilities Mr. Gray would have suffered had a free pardon not been granted. One of the reasons advanced in support of granting the pardon was that otherwise Mr. Gray would lose £2,000. Do members come here merely for the sake of the salary they are paid? I maintain that service in this House constitutes a high honour. It was an insult to Mr. Gray to mention that reason, because it infers that he could not earn anything outside Parliament. I believe that he could earn a living outside

Parliament. Much sob-stuff has been talked and much has been said about the sympathy Mr. Gray deserves. No one regrets his unfortunate position more than I do. Still, I believe he could earn at least half of the £2.000 in the four years, and if members of both Houses wished to show their sympathy, they could contribute 5s. per month each to make up his salary. That would be preferable to tinkering with the Constitution. The Government, in my opinion, have exceeded their duty and this House should pass the motion. If the motion be carried, it will be necessary to take further action. If a proposal were submitted to declare the seat vacant, it might be ruled out of order. But we cannot stop half-way. Other action must inevitably be taken. If the motion is carried, and the other motion is brought forward, and disagreed with, I say it will be the duty of the House to disagree with the ruling and to put through the motion declaring the seat vacant. It would then become the duty of the President to issue a writ. I do not know what the procedure would be then, whether the matter would go through the Electoral Officer or not. We would probably find ourselves in the position of being stalemated, if the Government refused to go on with the election. If we get that far we shall have done our duty, and will have shown the people of the State that we have some respect for the Constitution and the electors. We shall be protecting the rights of the people. I hope the motion will be carried. When we get as far as I have indicated, if there are any further hurdles we will take them when we come to them.

HON. E. H. H. HALL (Central) [6.1]: I wish briefly to enter my protest against the unwarranted interference with the laws of the country as evidenced by the recent action. This afternoon we heard from Mr. Gray very serious accusations against the courts of justice. This unfortunate prerogative has been exercised and this pardon granted largely because of the fact that we have a local Governor. That will probably be seized upon by those who favour the idea of bringing a Governor from overseas, so that he may be more independent when things are put to him by Cabinet, as was done in this case. Whether it be in good taste or bad taste to comment upon the action of the Lieutenant-Governor, I think we must remember that we are sent here to represent the people. Right through my Province, and when I come to Perth, I find the action of the Government in a previous case which had to do with a member of this Chamber, universally condemned. On that occasion they obtained Parliamentary sanction for what they did. A few members of this House thought the Government were wrong. When on top of that comes this case, I wonder whether members of Cabinet are aware of the feeling of uneasiness that has been created in Western Australia. This House should go as far as it can in assuring the people that members of this Chamber at any rate are prepared to do their utmost to carry out that which has been handed down to us from the Motherland, and to ensure that there shall not be one law for one class of person, and another law for another. I listened with pleasure to the very able speech delivered by Mr. Nicholson, and to that delivered this afternoon by Mr. Parker. Both members have told us there are certain things we may not do. We have been assured that if we go to the fullest extent we can by this motion, members will make themselves ridiculous. I have wondered in whose eyes we shall be made ridiculous. We may appear ridiculous in the eyes of a few constitutionalists. Each of us should remember that we are sent here to represent the people. As far as I can gather the people expect that this House will take very serious notice of this unwarranted interference with the natural course of the law. I attended a University debate the other evening at Fremantle between the Adelaide and Sydney University graduates. The subject of the debate was "Democracy versus Dictatorship." One of the undergraduates said that the present-day democracy reminded him (paraphrasing the old motto enunciated by Abraham Lincoln) that democracy as at present carried out was "government of the people by the politicians for the politicians." Actions of this kind by the Government are holding our political institutions up to jibes, cheap sneers and jeers such as that. If we fail at the time of crisis, such as we in common with the rest of the world are going through, to hold the confidence of the people, what then? Mr. Gray made a most unwarranted and unjustified remark when he said this House was taking a party view of the matter. I feel that very keenly. In common

with other members I say most sincerely that Mr. Gray stands personally in the very high esteem of us all. Only a few weeks ago I briefly referred to this very danger, and was sharply rebuked by interjection by Mr. Holmes. I said it appeared to me that this democracy which we so desired to see tried out was a travesty on democracy. It was not a dictatorship of one man but was certainly a dictatorship by Cabinet. I did not know how soon my remarks would be justified. And this is not the only occasion when that has been so. Parliament consists of two Houses, and this House is part of Parliament. We all know what the outcome will be of the motion of censure upon the Government in other place. The Legislative Assembly being a party House, and responsible to the Government in power, there can be only one result from such a motion. I am of opinion after six years of Parliamentary experience that when a matter like this comes before members of this Chamber they have always shown a desire to deal with it in a non-party spirit. There is nothing personal, neither is there anything of a party nature, influencing members in this debate. It is my duty to try to prevent any Government from upsetting the decision which has been arrived at by a court of justice. I shall support the motion.

HON. J. CORNELL (South) [6.10]: When I rose last evening Mr. Nicholson's amendment was before the Chair. Speaking to the motion I would remind members that last night I suggested there was a middle course that could be taken. This House has not seen fit to adopt the suggestion. It has resolved by a very emphatic vote of 15 to eight that the motion as it now appears on the Notice Paper shall not be tinkered with. It has resolved that all the words after "House" shall stand. We have now reached the stage when no amendment is possible. That being so, I find myself in this position, that in order to enter my emphatic protest against the wrongful use of the prerogative I must square up to the issue and vote for the motion.

HON. H. SEDDON (North-East—in reply) [6.11]: I should like first of all to express my appreciation of the manner in which the motion has been dealt with by various speakers. They certainly showed their appreciation of the circumstances which called it forth, and of the issues at stake, as well as the position taken up by this House. The House has been compelled to adopt that position by the action of the Government. I regret the statement of Mr. Gray that in his opinion the motion was introduced for the purpose of "rotten political propaganda before the Federal elections." I wish to make every allowance for the very strong feeling under which Mr. Gray must have been labouring, but it would have been wiser for him not to have made that reference. I did my best to dissociate any appearance of political propaganda or of any personalities from the motion or my remarks in support of it.

Hon. J. Nicholson: I think almost every member gave that assurance.

Hon. H. SEDDON: Yes, but as the statement was made it was necessary for me to refer to it. What the House has taken exception to is the wrongful exercise by the Government of the Royal prerogative. I asume that the statement of the Chief Secretary expressed the views of Cabinet. By this motion Cabinet is called to task for the action taken by His Excellency. Amongst the papers laid on the Table in another place there is a document containing certain remarks. It is headed "Minute paper for the Executive Council No. 1552." It says—

> I recommend Cabinet to advise His Excellency the Lieut.-Governor in Council exercising the powers conferred upon him to do certain things.

This is signed "J. Willcock, Minister for Justice." On it are printed, "Approved by His Excellency in Council, and entered in the minutes of the Executive Council accordingly. (Signed) L. E. Shapcott, 21st August, 1934. Clerk of the Executive Council."

Sitting suspended from 6.15 to 7.30 p.m.

Hon. H. SEDDON: Prior to the tea adjournment I had read the gist of the paper relating to the decision of Cabinet, which definitely fixed upon the Government the responsibility for the action of the Lieut.-Governor. It is important to stress that point, because I shall have reason to refer to it later on, inasmuch as the gravest objection I see is to the Constitutional aspect that has been introduced. The case presented by the Chief Secretary on behalf of the Government has already been dealt with by previous speakers, but there are one or

two points to which I shall make reference. The Chief Secretary stated that, in his opinion, the House could not, with a due sense of responsibility, carry a motion of the description now under discussion, and he suggested that the course proposed to be followed was calculated to bring ridicule upon the House, seeing that it was a matter that should be referred to a judicial tribunal for determination. The Chief Secretary also said I was not justified in assuming that the Lieut.-Governor had not referred the matter to a judicial tribunal, that in carrying the motion the House would censure the representative of the King because of a Constitutional act, and that if this House should do so, it would be something most people would not believe until it had been published to the world. Mr. Nicholson, in the course of his speech, also questioned the advisability of passing the motion, and questioned also the attitude adopted by the House. Members did not accept the amendment moved by Mr. Nicholson, but I was pleased to note that in his amendment he stressed very severely the ethical aspect of the situation. I could see that his anxiety was lest the House should adopt a course of action it could not logically follow up. However, members have reached a decision on that point. I want to place the position before the House as it appeals to me, in order that various factors may be taken in their proper perspective. With that object in view we must get down to the elementary. We must first of all recognise that Parliament is directly concerned and Parliament, under the British Constitution, consists of three distinct parts. Under the British Constitution itself there is the Crown, the Lords, and the Commons. In this State we have the Crown, which really comprises at present the Lieut.-Governor sitting in Executive Council, the Legislative Council, and the Legislative Assembly. Cabinet constitutes the Executive Council and is answerable to Parliament, by whose confidence it exists. It is these three parts that constitute the whole, and, consequently, each of the three parts has definite rights and a definite sphere in which to function, in order, first of all to pass laws, and secondly, each has its responsibilities with regard to administration. In common with other members, I am aware that the Lieut.-Governor, who was appointed by His Majesty, acts on the advice of his Ministers, but, as pointed out by other members, His Excellency has certain powers delegated to him for which he is answerable, through the Imperial Government, to His Majesty. The Acts of the Executive Council are subject to the approval of Parliament, and if action is taken to which Parliament takes exception, the Executive Council must answer to Parliament. This House, therefore, has a right to question an action of the Crown if it has reason to believe that the Crown has not acted in accordance with the law or public interests or justice. Particularly has it a right to oppose any interference with the rights of the Legislative Council as part of the Constitution, or in regard to the constitution of the House itself, as a part of Parliament. These aspects were entirely ignored by the Chief Secretary in presenting the case for the Government. It is these aspects that are causing me and members of the House concern. As previous members pointed out, Mr. Gray is the unfortunate cause of the action that has been taken, and it is the extent to which that action was carried by the Executive Council that concerns the position of this House and also the representatives of the people. The history of Parliamentary Government is, briefly, a story of the gradual transfer of and limitation upon the powers of the Crown from the Crown to the people, through their representatives in Parliament, constituted in certain ways. Throughout the ages to the present day we have had a steady move in that direction. By this present action it has remained for an Australian Governor, on the advice of one of his Ministers in Executive Council, to set the clock back by restoring to Parliament, by the exercise of the Royal prerogative of pardon, a man who had lost his right to sit there. That is the right for which this House is fighting. Under our Constitution, the people are the only persons who can place a man in Parliament. That is their special right. I would ask, because so far the question has not been answered, under what principle can the exercise of the Royal pardon be extended to usurp those powers, for that is what the pardon sets out to do. I shall read the notification from the "Government Gazette" of 24th August last. It is headed with a reference to His Excellency, the

Lieut.-Governor's commands, and sets out, among other things—

> Now know ye that we do grant the said Edmund Harry Gray our Free Pardon for the disability or incapacity of being chosen or of sitting as a Member of the Legislative Council of the Parliament of the State of Western Australia caused or created by Section 184 of the said Electoral Act, 1907, on the conviction of the said Edmund Harry Gray as aforesaid.

That is definitely laid down, and that constitutes a most serious interference with the rights of this House and those of the electors. The Chief Secretary naturally questioned the capacity or qualification of a layman to express an opinion on what after all may be described as the intricacies and contortions of the law. I quite expected the Chief Secretary to adopt that line of argument, but it was distinctly unfortunate for him, because we have already had experience of legal opinion, and we recall where legal opinions have led some people. I do not know that the legal fraternity have any monopoly in——

Hon. A. M. Clydesdale: Landing people.

Hon. H. SEDDON: Perhaps so, but I was going to refer to the infallibility of their opinion. I have a distinct recollection of a member of this House, standing in the place that I occupy to-night and on a legal point, causing a Bill to be thrown out. He was a layman. I have an equally vivid recollection of the same gentleman quoting two ponderous and weighty legal opinions that, it transpired, had been given by a prominent King's Counsel; yet those opinions were diametrically opposed to each other.

Hon. J. Cornell: I could give you something along the same lines in connection with a libel action at Kalgoorlie.

Hon. H. SEDDON: It is unnecessary for me to remind members of the severe mental strain to which they were subjected by various clauses in the Mine Workers' Relief Act, and the equally ponderous amendments introduced with a view to making it a workable measure. In those circumstances, for the Leader of the House to take the point respecting the qualifications of a layman to criticise the application of a law with regard to what are really the principles on which our Constitution is founded, was hardly apropos in this instance. Mr. Miles quoted legal opinion this evening in contradiction of another legal opinion expressed by a member of this Chamber. That opinion was that the exercise of a Royal prerogative of pardon in this instance was entirely wrong and an improper use of that important privilege of the Crown. We were assured by one legal member of this Chamber that a matter of this description should be settled by the judiciary. I certainly think that is the proper sphere in which it should have been dealt with. Therefore I consider that very contention is in itself a condemnation of the action of the Government in taking this matter out of the sphere of the judiciary and dealing with it in the manner they did. In the next breath that hon. member pointed out that this House that made the machinery whereby the law operated, could not of itself make the machine function in dealing with this matter where the Royal prerogative of pardon has been exercised. We are the makers of the law, and yet this House, which is one of the important parts of the Constitution of the State, cannot, so we are informed by our legal members, of itself approach a court of justice and have the question of the exercise of the Royal prerogative of pardon tested in the way it should be, in that court of justice. This House is seeking a constitutional way whereby another section of the Parliament can be subjected to judicial determination as to the constitutionality of its action. We have been assured that there is no course we can adopt, and yet any person, a common informer, can take action that this House cannot take. I cannot imagine a more absurd state of affairs, or one that reflects more upon our constitutional position than the conditions I have outlined. I am pleased to know that in the legal opinion expressed by the Chief Secretary it was admitted that so far as the sections quoted were concerned, they were generally correct. That is interesting because it confirms the attitude taken up by this House. We are dealing with questions of principle rather than questions of contortion of the law. I use that word for want of a better term. In the volume of Halsbury to which I referred, the limitations of the prerogative are set out. I have previously quoted the conditions under which the prerogative is exercised. It is pointed out on page 405, paragraph 613—

> A pardon is usually granted on the advice of the Home Secretary to whose notice the matter is brought either on a recommendation to mercy by the judge when passing sentence, or on petition by the criminal himself or his friends on his behalf. On the consideration

of any petition for pardon having reference to the conviction of a person on indictment or to the sentence (other than sentence of death) passed on a person so convicted after the 18th day of April, 1908, the Home Secretary is empowered, if he thinks fit, at any time either to refer the whole case to the Court of Criminal Appeal when the case must be heard and determined by that court, as in the case of an appeal by a convicted person, or to refer any point arising in the case, with a view to the determination of the petition, to that court for their opinion thereon, and the court must consider the point so referred, and furnish the Secretary of State with their opinion thereon accordingly.

I have read that because from the remarks of the Chief Secretary, although he was careful to say that the decisions of the Executive Council must be kept secret, I deduce from the remarks he made that nothing in the direction of the steps indicated was undertaken. That is the conclusion I have arrived at. The Chief Secretary chastised me for assuming that, but there has been no evidence of any course of action by the Lieut.-Governor along the lines I refer to. It seems that as those are the conditions under which the Royal prerogative is exercised in the Old Country, at the very least we would have expected the Governor to adopt similar action before taking so important a step as the granting of a free pardon. It has been suggested that the exercise of the prerogative by the Governor is quite possible, even in a case such as the present one. I have indicated as far as the English laws are concerned that there are distinct and definite limitations. Is it then contended that His Majesty, by delegating his powers to a Colonial Governor, can thereby increase those powers so that the deputy has greater powers than has His Majesty the King himself; because it appears to me that is the only interpretation that may be read into certain statements that have been made regarding the statutes that may be applied to the present position. I should like to read a further extract from Halsbury, and point out how the position stands with regard to that aspect of the case. In the same volume of Halsbury, page 423, paragraph 650 says—

The Crown may not, however, make laws contrary to the fundamental principles of the British Constitution or exempting persons from the general laws of trade or the authority of Parliament, or granting exclusive privileges to individuals; and every colony is subject to the paramount authority of the Imperial Parliament.

I contend that the powers of a Colonial Governor in no way exceed the powers available to His Majesty. Personally I agree that this matter should have been dealt with by the judiciary. We have been told that this House cannot test the constitutionality of the prerogative of Parliament because it cannot get into the courts, although its powers have been encroached on and even though the Constitution is in peril. Until we can get there, or until the matter is dealt with by the courts, I contend that this House is justified in taking any measures that it deems desirable, even though those measures may involve the breaking of entirely new ground in order to assert the rights of the House. Until this is done, we are justified in resisting the action of the Executive Council in stretching the powers of the Royal prerogative to trespass on the rights of the people. By so doing the Executive Council has taken upon itself a responsibility which its members themselves would have been the first to condemn had similar action been taken by any other person or any other party. It has been suggested that the House, by taking further action, may hold itself up to ridicule or place itself in a false position. In reply to that, I would say that there are conditions under which the House of Parliament is justified in taking such action, and taking the risk of such action, if thereby it can safeguard the rights of the people and preserve the privileges of Parliament, and the proper retention of each section of the machinery of Parliament in the Constitution. In the course of his remarks Mr. Gray referred to the fact that sufficient time had not been given him to make his considered statement. The hon. member is aware that this matter has been before the House for a considerable period, and I contend that if he wished to make a considered statement he had ample time in which to prepare it. In any case, there is legislation pending which must be dealt with, but the constitution of this House has undoubtedly been affected, and therefore it is necessary, before legislation is passed, that this motion be disposed of, and the House take whatever steps that may be considered desirable to safeguard its privileges and the rights of the people. In these circumstances I feel that I must ask the House to support the motion as being the only way in which it can effectively lodge a protest against what I regard

as an entirely unprecedented use of the Royal prerogative of pardon.

Question put, and a division taken with the following result:—

Ayes	19
Noes	4
Majority for	15

AYES.

Hon. C. F. Baxter	Hon. R. G. Moore
Hon. J. Cornell	Hon. H. S. W. Parker
Hon. L. Craig	Hon. H. V. Piesse
Hon. C. G. Elliott	Hon. H. Seddon
Hon. J. George	Hon. A. Thomson
Hon. E. H. H. Hall	Hon. H. Tuckey
Hon. V. Hamersley	Hon. C. H. Wittenoom
Hon. J. J. Holmes	Hon. H. J. Yelland
Hon. W. J. Mann	Hon. E. H. Angelo
Hon. G. W. Miles	(*Teller.*)

NOES.

Hon. A. M. Clydesdale	Hon. W. H. Kitson
Hon. J. M. Drew	Hon. G. Fraser
	(*Teller.*)

Question thus passed.

Personal Explanation.

Hon. J. J. Holmes: I wish to make a brief statement, by way of personal explanation. Mr. Gray, when addressing the House this afternoon, intimated that I was the next member upon whom the axe was to fall for some breach of the Constitution or of the Electoral Act—I do not know which. The statement was made, presumably, to intimidate me. I invite Mr. Gray, or any other person, to proceed forthwith; and if I were found guilty of any offence I would not ask for a pardon to be granted, nor would I expect a pardon, and neither would I accept a pardon if it were offered to me.

BILL—SOLDIER LAND SETTLEMENT.

Received from the Assembly, and read a first time.

House adjourned at 8.3 p.m.

Legislative Assembly,

Wednesday, 5th September, 1934.

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

QUESTION—HOSPITALS, NORTH-WEST.

Mr. WELSH asked the Minister for Health: What amount was paid by the Government during the financial years 1931-32, 1932-33, and 1933-34 to each of the undermentioned hospitals:—(a) Onslow, (b) Roebourne, (c) Derby, (d) Broome?

The MINISTER FOR HEALTH replied: (a) £300 per annum, (b) £300 per annum, (c) £300 per annum, (d) £700 per annum.

QUESTION—AGRICULTURAL HOLDINGS, SOUTH-WEST.

Mr. BROCKMAN asked the Minister for Lands: 1, What is the number of abandoned holdings in the Sussex electorate? 2, Are they available for leasing by other settlers; if so, whence can such leases be obtained? 3, What is the average area of pasture on these abandoned holdings? 4, What is the number of holdings still occupied in the Sussex electorate? 5, What is the average area of pasture on these occupied holdings?

The MINISTER FOR LANDS replied: 1, 161. 2, They are available for leasing by approved applicants. Leases are for one year, rent payable in advance, with proviso for maintenance of improvements and top dressing, and insurance of cottage if occupied. Applications should be submitted to the local manager, who will forward them with his recommendations for Trustees' decision. 3, Approximately 70 acres. 4, Number of occupied group holdings in Busselton Agricultural Bank district, 550. 5, Approximately 70 acres.