the House, they will rally round him and help him to get through his work. They will do everything to assist him.

The Chief Secretary: Except pass the Bills!

Hon. J. NICHOLSON: They may not pass the Bill, but the one great benefit of this House which should be recognised is that some of us here are not bound by any party ties, and we exercise an entirely independent judgment. As a result of that independent judgment there is obtained the fullest possible consideration that could be given to any measure brought before the House, whether by a Liberal Government, a Labour Government, or any other kind of Government. The same consideration which I have always been prepared to give to measures brought before this Chamber I am prepared to give in the future.

Hon. G. Fraser: You will need to increase your consideration.

Hon. J. NICHOLSON: I am prepared to give the same consideration, and no words of warning or anything else will make me depart one iota from the path I consider to be the path of duty. Subject to any criticism I have offered or reservations I have made, I support the motion.

On motion by Hon. W. J. Mann, debate adjourned.

House adjourned at 8.55 p.m.

Legislative Assembly,

Wednesday, 25th August, 1937.

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

ADDRESS-IN-REPLY.

Presentation.

Mr. SPEAKER: I wish to announce that in company with Mr. Hegney, the member for Middle Swan, and Mr. Rodoreda, the member for Roebourne, I attended upon His Excellency the Lieut.-Governor and presented the Address-in-reply to His Excellency's Speech. His Excellency replied in the following terms:—

I thank you for your expressions of loyalty to His Most Gracious Majesty the King and for your Address-in-reply to the Speech with which I opened Parliament.—(Signed) James Mitchell, Lieutenant-Governor.

QUESTION—COAL MINING INDUSTRY, NATIONALISATION.

Mr. WILSON asked the Premier: In regard to the following resolution which was advocated by a deputation to the Hon. M. F. Troy, the then Acting Premier, in Perth, on 8th July, 1937, and which was favourably commented upon by him in his reply—"That we, the citizens of Collie, believe the time is long overdue for the nationalisation of the coal mining industry, and the establishment of a national power scheme at Collie, and request the Government to appoint immediately a commission to inquire into (a) the practicability of both schemes, and (b) the estimated cost"—1, Was this question brought before Cabinet by the then Acting

Premier? 2, Do the Government agree with the purport of the request? 3, Have the Government taken steps to appoint a commissioner with the necessary qualifications required for such an undertaking? 4, Has such a commissioner been appointed? If so, who? 5, If no finality has been reached in regard to Nos. 3 and 4, will he state an approximate date when the commissioner will be appointed?

The PREMIER replied: 1, Yes. 2 to 5, The matter will be dealt with by Cabinet at the earliest opportunity.

QUESTION—PUBLIC SERVICE, SUPERANNUATION.

Mr. NEEDHAM asked the Premier: 1, Is it a fact that the Government have recently approved of the payment of a pension at the rate of £1,000 per annum to one retired public servant while they have refused to pay anything to another retired Government officer? 2, Is he aware that the Hon. P. Collier was reported in the "West Australian" newspaper of 30th January, 1936, as having stated at Nedlands the previous evening that a civil servants' superannuation scheme was already lying on a table in his office? 3, Is he aware of the existence of such a scheme as that to which Mr. Collier was reported to have referred? If so, is it his intention to lay the papers in connection with that scheme on the Table of the House?

The PREMIER replied: 1, No. 2, Yes. 3, The fullest data relating to this and other proposals are being collected for consideration.

QUESTION—COMMONWEALTH ROYAL COMMISSION ON BANKING.

Mr. TONKIN (without notice) asked the Premier: Will he make representations to the Federal Prime Minister to have copies of the report of the Commonwealth Royal Commission on Banking made available for members of this House?

The PREMIER replied: Yes.

BILLS (9)—FIRST READING.

1, Mortgagees' Rights Restriction Act Continuance.

2, Financial Emergency Act Amendment.

3, Land Act Amendment.
Introduced by the Minister for Lands.

4, Nurses' Registration Act Amendment.
Introduced by the Minister for Health.

5, Fair Rents.

6, Jury Act Amendment.
Introduced by the Minister for Justice.

7, Municipal Corporations Act Amendment.
Introduced by the Minister for Works.

8, Growers' Charge.
Introduced by Mr. Boyle.

9, Employment of Counsel (Regulation).
Introduced by Mr. Sleeman.

MOTION—RAILWAY SERVICE, SUPERANNUATION.

To Inquire by Select Committee.

MR. NEEDHAM (Perth) [4.42]: I move—

That a select committee be appointed to inquire into the liability of the Government under the provisions of the Superannuation Act, 1871, to pay superannuation to persons employed in the railway service of this State as from the 8th August, 1871, to the 17th April, 1905.

I gave notice of this motion because I desire to have an expression of opinion from the House on a subject which has engaged the attention of hon. members for some considerable time. This is not the first occasion on which the subject has been discussed in this Chamber. Members are well aware of the fact that for some years now there has been a determined agitation to try to get this question settled one way or the other. I know that for two or three years the question has been prominently before members of Parliament, and that some of them have attended meetings and heard the claims which the railway men are making. There has been a committee of railway men and ex-railway men in existence for some years, and the committee have taken every possible constitutional step to prove that their claim for superannuation under the Superannuation Act 1871 is valid. So far they have not met with success, and I am for the time transferring that agitation from the platforms of this country to the Parliament of this country. I ask hon. members to bear with me while I put the claim of these men before them. When I have done so, I shall ask them to

support the motion I have moved. Most of these men are wages men. They claim that in accordance with the provisions of the 1871 Act they are as much entitled to superannuation as any man on the salaried staff, and with that contention I unhesitatingly agree. In putting this motion forward I am not desirous of blaming any Government, either in the present or in the past, nor am I endeavouring to harass or desirous of harassing or embarrassing the Government of the day. Neither do I want to reflect on any Government that have had to handle this question. I am simply desirous of putting the men's claim before this Chamber so that Parliament itself may express an opinion as to whether the claim is right or wrong. I am asking the House to appoint a representative committee which will hear evidence from all parties concerned and, having heard that evidence, present its report to this Chamber. I have given this matter very serious consideration and, while I will not attempt to be dogmatic in any statement I make, I am convinced, notwithstanding arguments to the contrary, that the men's claim is a just one. Their claim is based on the 1871 Superannuation Act. I have it here. Perhaps many hon. members have not seen it. Let me quote the salient part of this measure on which the claims of these men are based. The Act is entitled, "An Act to regulate superannuation and other allowances to persons having held civil offices in the Public Service under the Colonial Government. It was assented to on the 8th August, 1871. Section 1 reads as follows:—

Subject to the exceptions and provisions hereinafter contained, the superannuation allowance to be granted after the commencement of this Act to persons who shall have served in an established capacity——

Hon. C. G. Latham: That is where the trouble comes in. Those words "established capacity" are the trouble.

——in the permanent Civil Service of the Colonial Government, whether their remuneration be computed by day pay, weekly wages or annual salary, and for whom provision is not otherwise made by legislative enactment in force at the time of the commencement of this Act or hereinafter to be passed, shall be as follows, that is to say:—To any person who has served ten years and upwards and under 11 years, an annual allowance of ten-sixtieths of the annual salary and emoluments of his office. For 11 years and under 12 years, an annual allowance of eleven-sixtieths of such salary and emoluments. And in like manner a further addition to the annual allowance of one-sixtieth in respect of each additional year of such service until the completion of a period of service of 40 years, when the annual allowance of forty-sixtieths may be granted, and no addition shall be made in respect of any service beyond 40 years: Provided that if any question shall arise in any department of the Public Service as to the claim of any person for superannuation under this clause it shall be referred to the Governor in Executive Council whose decision shall be final.

That is the section in the Act which governs the situation without equivocation or qualification. The words are distinct—"Day pay, weekly wages, or annual salary." These men contend, and I agree with them, that the wages man employed in the railway service of this State between the date on which this Act was assented to—the 8th August, 1871—until the 17th April, 1905, when the first Public Service Act of this State became operative, are just as much entitled to superannuation as any man on the salaried staff. During recent years attempts have been made to evade the meaning of these words by substituting the words "supervisory position." There is nothing in the Act to which I have just referred which mentions "supervisory position." There is nothing in the Act to convey that men who had worked in a menial position in the Government service and established a claim to superannuation, should not receive it. Let me at this juncture quote the opinion of the late Septimus Burt, on whose interpretation of the words "established capacity" the claims of successive Governments have rested. On that interpretation Governments have, during past years, taken action, and it is that interpretation that I would contest this afternoon. I would endeavour to prove that the interpretation given by that eminent legal gentleman is a very narrow one indeed and is entirely opposed to the spirit and the letter of the Superannuation Act of 1871. The Opinion reads—

The question raised in these papers seems to me to be this: Is John Roach, a railway-line repairer or a permanent-way man, as he may be called, entitled to claim a superannuation allowance under the provisions of the Superannuation Act, 1871 (35 Vict., No. 7).

This Act is virtually a copy of the Imperial Act, 22 Vic., c. 26, but omits any definition of "service in the permanent civil service" such as is contained in Section 17 of the 22 Vic., c. 26. By Section 1 of the Superannuation Act, 1871, the allowance may be granted to "persons who shall have served in an estab-

lished capacity in the permanent civil service of the Colonial Government, whether their remuneration be computed by day pay, weekly wages or annual salary." The scale of allowance is then enacted in the same section by these words, "to any person who has served ten years and upwards and under eleven years, an allowance of ten-sixtieths of the annual salary and emoluments of his office." From the language of this portion of the section it would seem that the persons contemplated are persons receiving an annual remuneration though computed by day pay, weekly wages or annual salary. The allowance is to be reckoned on the annual salary, etc., of his office. This portion of the section, I think, refers to officers whose pay is voted annually by the Legislature, although it may be computed at so much a day, per week, month, or year. But be this as it may, the person entitled must hold some office in the permanent civil service. The allowance is based on the annual salary of his office. In the words of the early portion of the section, he must be a person "who shall have served in an established capacity" in the service. Unless this means in some office, I am at a loss to understand the words "in an established capacity." Throughout the Act (see Sections 6, 9, 10, 11) reference is made to "loss of office," "duties of his situation," "public office or situation under the Crown," "retiring from office," "abolition of office," "office to which he is appointed," "his former office," etc. It is clearly contemplated that the persons to receive the allowance must be persons who have held office, or in other words, "served in an established capacity," and been appointed thereto. All appointments to offices being made by the Governor-in-Council—and no office is held without an appointment—we must see whether a claimant for the allowance holds an office to which he has been appointed by the Governor-in-Council. I think it is impossible to say that a line repairer or permanent-way man, any more than a railway guard, porter, engine-driver, fireman, cleaner, and such like (whose pay is voted in a lump sum on the Estimates) holds an office under the Crown. Whether or not men of this description are appointed by the Governor-in-Council, they are not appointed to offices within the meaning of the Act.

I am therefore of opinion that John Roach is not entitled to claim any allowance for his past services under the Superannuation Act, 1871. I may be permitted to add that it was apparently contemplated by the framers of the Act that some difficulty might arise as to the claims of persons in some of the departments of the service, and consequently it was enacted in a proviso to the first section of the Act that if any such question should arise, the decision of the Governor-in-Executive-Council should be final. A similar proviso is also to be found in the Imperial Act, 22 Vic., c. 26, which makes the decision of the Commissioners of the Treasury final upon the same question. Section 12 of the local Act also provides that no person shall have an absolute right to compensation for past services or to any superannuation or retiring allowance under the Act.

That is the opinion of Septimus Burt, giving his interpretation of the words "established capacity." I have already stated that that interpretation is narrow and in direct opposition to the spirit and letter of the Act in question. That Act states, "whether their remuneration be computed by day pay, weekly wages or annual salary." The decision of Septimus Burt, or rather his interpretation of the words "established capacity," is that upon which all Governments have acted. It should be borne in mind also that the Act itself uses the word "person," which is broad enough at all events. I for one must at once admit that I am not endeavouring now to pit my own opinion as a layman against the opinion of such an eminent counsel as was the late Septimus Burt, but I intend later on to quote the opinions of other eminent counsel in contradistinction to the interpretation placed on the words "established capacity" by Mr. Septimus Burt. Let me now take the railway service as a whole. No part of it can work without the other parts. The ticket collector at the gate at the station entrance is of just as much importance to the railway service as is the engine-driver or the station-master. That was recognised by the framers of the Act. There is no doubt at all about that. The man on the footplate is just as important to the service as is the Commissioner of Railways himself, and right throughout the system, if any one section is not operating, the system must fail. That is the reason why I claim that the wages man is just as much entitled to superannuation as is the man in a salaried position. I am going further; I am claiming that every man who worked in the railway service of the State from the time of the passing of the Act of 1871 until the passing of the Public Service Act in 1905 was entitled to superannuation, provided he had given 10 years of service and provided also that his conduct had been good. There must be nothing against him in the department on the score of inefficiency, dishonesty or disobedience. So long as his character was good and his service was good, once he had served 10 years under the 1871 Act, he automatically became entitled to superannuation. When a man has been in a position for 10, 20 or 30 years, and has given entire satisfaction, if he is not in an established capacity, I do not know what

"established capacity" means. I wish further to point out that a definite contract had been entered into with these men when they were engaged, and, furthermore, I contend that when superannuation was not paid, that contract was broken and dishonoured. It may be as well at this stage to read one of the rules operating in connection with the employment of men in the railway service. I believe that the rule is still in existence. It will prove conclusively that a definite contract had been entered into, and that the contention that the wages men could be dismissed at a moment's notice is not based on fact. Rule 20 reads—

> At least one month's notice is required from every person before quitting the service of the Railway Department; and any person failing to give such previous notice will forfeit all pay then due, and, if a regular servant, be liable in addition to punishment by the magistrates for breach of contract as a servant. A month's notice or pay will be given to any servant on his dismissal, except the dismissal be for intoxication, disobedience of orders, negligence or other gross misconduct such as would render him liable to be immediately discharged. This rule does not apply to labourers employed by day or hour, as in respect of them no notice will be given or required.

There is a definite rule indicating a definite contract. Again, when those men were employed they received a document couched in language such as this—

> Government Railways of Western Australia, May 7th, 1897.
> Memorandum, The Station-master, Perth.
> To Carriage Cleaner W. H. Ing.
> Ministerial approval has been given to your permanent appointment at 6s. 6d. per day, dating from 19/4/97.

There are many such documents in the possession of men whose claim for superannuation has been either ignored or rejected. Claims for superannuation made by wages men have been refused on the ground that they were not salaried officers, while claims by salaried officers have been rejected because they were not employed in an established capacity. This savours of the double-headed penny. A salaried officer is refused superannuation because he was not in an established capacity, and a wages man is refused because he was not on the salaried staff. I invite members again to scan carefully Section 1 of the Act of 1871. By so doing, they will see that there is no such qualification, good, bad or indifferent. The language is plain: in fact, it is the plainest language I have seen in any Act of Parliament. The late Mr. T. A. L. Davy, formerly member for West Perth and Attorney General, and the late Mr. McCallum, when Deputy Leader of the House, I am given to understand, agreed that the railwaymen had a claim and that the claim was just. They considered that the men were entitled to a pension from the point of view of equity, and Mr. McCallum said that had the question been properly handled in 1904, the existing position would have been different. I am prepared to admit that a lapse of years between the passing of the Public Service Act, which came into force on the 17th April, 1905, until the recent agitation commenced, has certainly had an injurious effect on the men's claim, but I desire that this phase be borne in mind, namely, that for many years after 1904, men in the railway service were not dismissed when they reached the age of 65. They were allowed to continue work so long as they were physically and mentally fit to carry out the duties of their respective positions. In later years it has been ordained by Governments that these men should automatically retire from the service when they attained the age of 65, irrespective of what their physical or mental condition might be or their ability to carry out the duties they had been performing for years. That action, I dare say, precipitated the agitation to try to secure the benefits of the 1871 Act. Ever since I have been in this Chamber I have taken a stand against the action of the Government in automatically retiring men from the railway service or from any service when they attained the age of 65, because I know, and members know, that many of those men are capable of doing their work at 65 and for many years afterwards. At any rate that might have been a factor in connection with the lapse of years to which I have referred. But that is not an argument against the claim that these men are putting forward. I have already pointed out that if a man is not in an established capacity after 10 years of service, he never will be. There is nothing in the 1871 Act stipulating appointment by the Governor-in-Council or payment of wages or salary from any particular source. I wish to stress that point. I believe that when some of these applications for superannuation were presented to the Appeal Board, the question as to what fund should pay the salary or wages has been a vital question. That question should not arise. There is nothing in the Act on which I am basing my claim for support of the motion, and on which the men are basing their

claim, stipulating as to where the funds should come from, or what part of Consolidated Revenue the wages or salary should be paid from. I hope that when members are discussing the motion they will remember that feature. On the 13th October, 1936, I introduced a deputation to the Premier on this matter. I have before me his reply. During the interview the question of the cost of granting the claims arose. I confess that I am not in a position to say what the cost would be, but the matter was referred to at the deputation. In justice to the Premier (Hon. J. C. Willcock), let me give his statement, that if the claim of the men were just, the question of expense would not stand in the way. The Premier promised the deputation that he would consider the matter and submit it to Cabinet and forward a reply. He sent a reply to the Railway Officers' Union, a copy of which was forwarded to me to hand to the men who constituted the deputation that day. It would be well to read the reply of the Premier. I shall be compelled to quote from many documents, a procedure I do not like, but it is necessary, so that members may know the exact position, that I place before the House all the information at my disposal. This is the reply from the Premier to the deputation—

Railway Servants and Superannuation. I have to acknowledge your letter of the 2nd December regarding this matter.

In reply to that letter and to previous correspondence received from you, I desire to inform you that the Government, after obtaining necessary reports, has given very careful consideration to the question of the policy to be applied regarding the treatment of claims for superannuation by railway servants retired from service.

From an examination of the reports obtained, it is manifestly clear that continuously over many years past the legal advisers of various successive Governments have acted upon a policy which those Governments have approved and follow, the fundamental factor of which is to assure unto the railway servant who has been at some time during his period of service employed on wages, the same treatment in regard to superannuation as the law requires in the case of other classes of public servants. For example, the Public Service Appeal Board has decided more than once that a foreman carpenter employed in the Public Works Department on wages does not qualify for pension; therefore, a foreman employed in the Railway Department on wages shall not qualify for a pension. Also the said policy includes another fundamental factor in that the disqualification imposed against Public Service officers by Section 83 of the Public Service Act shall be similarly imposed against railway servants.

I will show later where that particular phase of the reply is somewhat misleading.

The said policy, therefore, when applied to concrete cases has worked out as shown in the following examples, namely:—

(a) Where a claimant was serving in a salaried staff office on the 17th April, 1905, and thereafter without any break served continuously in a salaried staff office until retirement, then provided he had reached 60 years of age before retirement, and had served in the salaried staff office at least ten years, his claim for pension has been allowed in respect of the whole of his service as a salaried staff officer.

(b) Where a claimant prior to 17th April, 1905, had been serving in a salaried staff office for less than ten years, was serving in a salaried staff office on the 17th April, 1905, continued to serve in a salaried staff office after the said date for a further period sufficient with the prior service in a salaried staff office as aforesaid to aggregate at least ten years' service in a salaried staff office, was then reduced to wages, served on wages for a time, subsequently was re-appointed to a salaried staff office and thereafter served in a salaried staff office until his retirement at 60 years of age or over, the claimant has been allowed pension in respect of the service in a salaried staff office before the 17th April, 1905, and immediately following such date until he was reduced to wages but not in respect of his service in a salaried staff office following re-appointment to such office made after the said date.

(c) Where a claimant prior to 17th April, 1905, had served in a salaried staff office for an aggregate period of at least 10 years, but on the said date was employed on wages and not as a salaried staff officer, then, if he was employed in the railway service subsequently and retired at 60 years of age, the claimant has been allowed pension in respect of that service as a salaried staff officer which he served prior to 17th April, 1905, but all other subsequent service as a salaried staff officer has been excluded.

(d) Where a claimant prior to 17th April, 1905, has served as a salaried staff officer for less than ten years, and on the 17th April, 1905, was not serving as a salaried staff officer but as a wages man, the claimant has not been allowed any pension.

(e) Where a claimant has throughout his employment in the Railway Department never been employed at all as a salaried staff officer, the claimant has not been allowed any pension.

It is true that, following upon the decision of the Public Service Appeal Board in Kay's case, some claimants were allowed pension who otherwise would not have been allowed pension, but the result has led to much confusion and been most unsatisfactory in view of the

difficulties and misapprehension which have arisen through an effort to continue the long-established policy reasonably and justly to the railway servants as a whole analogously with the legally defined policy applicable to other Public Service officers.

The Government, therefore, has decided that the already established policy is the most reasonable and satisfactory, and that it should still be applied to claims for superannuation by railway servants when such claims are being submitted to the Governor-in-Council for consideration.

Reducing the said policy to a simple and unambiguous formula, therefore, it can be understood that claims for superannuation by railway servants will be inquired into and receive consideration only—

(a) When the claimant establishes that he was holding a salaried staff office as a salaried staff officer on the 17th day of April, 1905; or

(b) When the claimant establishes that, although he was not holding a salaried staff office as a salaried staff officer on the 17th day of April, 1905, he had prior to that date held a salaried staff office as a salaried staff officer for an aggregate period of at least ten years.

This formula will apply to all pending claims and to all future claims; and, when claimants establish that they come within such formula, and only then, will consideration be given to the amount of pension, if any, to be allowed to the claimant.

The above policy, of course, relates entirely to the manner in which the Governor-in-Council will be advised to deal with claims for pension when the same are submitted to him.

I now come back to the reference in the Premier's letter to Section 83 of the Public Service Act. As there may be some confusion in the minds of members concerning the purport of that section, I will read it. The section is called "Superannuation," and reads—

The provisions of the Superannuation Act shall not apply to any person appointed to the Public Service after the commencement of this Act, and nothing in this Act contained shall be deemed to confer on any person whomsoever any right or privilege under the said Act.

It is clearly seen by that section that all claims for superannuation ceased from the moment that Act became law, and that such claims could not be made by any person who entered the service after the passage of that Act. The Act also lays down that all those who were in the service prior to its passage were not affected by its being passed. The Public Service Act and the Act of 1871 stand alone, Section 83 of the Public Service Act dealing with all future appointments to the railway service, as from the 17th April, 1905, and the 1871 Superannuation Act dealing with all persons appointed to the railway service from the 8th August, 1871, until April, 1905. The letter of the Premier leaves out entirely wages men, and that is the point I am particularly making. Wages men should not be left out. They are just as much entitled to superannuation as is the salaried officer. It must not be thought I am raising the question of wages men versus salaried men, for nothing of the kind is in my mind. I am actually putting forward a claim for both. Let members look at the conditions laid down in the 1871 Act. From the time when it was passed, a man with ten years' service was to be entitled to superannuation, the amount increasing as the years of service increased. The Act of 1871 is based on the English Superannuation Act of 1859, No. 22 Vic. Section 2 of the English Act is similar to Section 1 of the Western Australian Act. The English Act, however, contains, in Section 17, a definition of "civil servants," and they alone are entitled to superannuation. That definition would appear to exclude people such as those for whom I am speaking tonight. It has been suggested in some quarters, and by some persons in authority, that that particular feature is contained in the 1871 Western Australian Act. I invite members to read that Act. They will find no such section in it. The Superannuation Act of 1871 contains nothing of the kind. Our Act is more comprehensive in respect to the claims of railway men in this State who were in the service prior to the passing of the 1904 Public Service Act. The relevant section of the Western Australian Act is Section 1, where persons, not officers, are referred to. The Railway Service Act of 1887 has a bearing on the question. Section 2 of that Act gives the Commissioner of Railways power to appoint and dismiss such railway servants as are mentioned in the schedule of the Act. It may be of importance that I should read that section. It gives the Commissioner of Railways power to appoint and dismiss a certain class of railway servants, and was assented to on the 22nd July, 1877. In the schedule

it sets out the class of employees who can be appointed and dismissed by the Commissioner, and, amongst others, mentions inspectors of permanent way, gangers, platelayers, stationmasters, station inspectors, travelling inspectors, ticket clerks, booking clerks, goods clerks, guards, porters, gate-keepers, locomotive foremen, running foremen, drivers, firemen, cleaners, mechanics and labourers. There again we have further proof. The contention was that a recognised wages man in the service was one who could apply for superannuation, provided he had complied with the provisions of the 1871 Act. I come to further definitions of the words established "office" and "civil service." The definitions I shall quote are from the "New English Dictionary." Those definitions are as follow:—

"Office" means a position or place to which certain duties are attached especially one of a more or less public character; a position of trust, authority or service under constituted authority; a place in the administration of government, the Public Service, the direction of incorporation, company, society, etc.

"Civil Service" is a collective term for all non-warlike branches of the public administrative service of the State, including the diplomatic intercourse, the working of the post office and telegraphs, the educational institutions controlled by the State, and the collection of the revenue; also the body of servants of the State employed in any of these departments.

Webster's Dictionary, published in 1928, provides the following definitions of "civil service," and "establish":—

"Civil Service" is defined as all service rendered to and paid for by a State or Nation other than that pertaining to military, naval, legislative and judicial affairs; all branches of the public administrative service which are not military or naval.

"Establish" means to appoint or constitute for permanence as officers, laws, regulations, etc.

Prior to the passing of the Public Service Act of 1904, railway employees were considered to be civil servants under the 1871 Act. It is because of that that I quote those definitions of "civil service." I have already quoted the opinion of the late Mr. Septimus Burt and his interpretation of the word "established." I also intimated that I had in my possession opinions expressed by other eminent counsel. Here is one that was provided by the present Leader of the National Party in this Chamber. I refer to Mr. Norbert Keenan, K.C. He was asked to give his opinion on this question and he provided it in the document from which I will quote.

Hon. W. D. Johnson: What was the date of the opinion?

Mr. NEEDHAM: The 12th February, 1929.

Mr. Withers: That is too recent.

Mr. NEEDHAM: I will not quote the whole of Mr. Keenan's opinion, but I shall place portion of it before members as follows:—

In the matter of the Superannuation Act, 1871; and

In the matter of the Public Service Act, 1904; and

In the matter of the Public Service Appeal Board Act, 1920; and

In the matter of certain persons engaged in the service of the Government railways on the wages staff prior to the year 1904, and whose services have continued in such services for 10 years and upwards.

Opinion.

In this case certain persons entered the employ of the Government of Western Australia prior to the year 1904 and were engaged on what is commonly known as the wages staff of the Government railways, and remained so employed for considerably more than ten years' continuously.

The wages staff means those who receive, or are entitled to receive, pay for the services rendered by them at the end of each week, and who can legally determine their employment by a week's notice or whose employment can be legally determined by a week's notice, subject to any right of continuous employment during good behaviour if such employment is available.

The question for my advice is divisible into two parts—First: Do these persons come within the class for whose benefit the Superannuation Act, 1871, was enacted; that is to say: Are they persons who have served in an established capacity in the permanent Civil Service of the Western Australian Government? Secondly, if these persons do come within such class, are they entitled to pension; that is to say: If the Government refuse to grant them pensions, can they compel the Government to do so by legal action?

Now it has been the practice in the past to construe the words "in an established capacity" in the permanent Civil Service to mean, and mean only, persons whose salaries appeared on the Annual Estimates presented to Parliament, so that, in fact, the Vote might be reduced by the particular sum if for any reason Parliament considered that any such person was deserving of such a penalty.

Thus surveyors in the employ of the Public Works, whose remuneration was voted by Parliament when the Annual Estimates were

passed, were held to be within the class of civil servants to whom the Act of 1871 applied.

On the other hand, surveyors doing exactly the same work in the employ of the Public Works Department, but whose salaries were paid out of loan moneys were held not to be within the Act, on the ground that they held no permanent office, and also that their remuneration was not voted by Parliament when the Annual Estimates were passed, but only included in a lump sum voted for a particular work by Parliament when dealing with the Loan Estimates.

In the case given in illustration, it may be sound to contend that the surveyor employed and paid in connection with a specified work the cost of which is defrayed out of loan moneys is not a person employed in the permanent Civil Service, but only in connection with that particular work; but the distinction between persons whose salaries appear as items in the Annual Estimates, and those whose salaries are voted in one large comprehensive sum does not in my opinion deserve acceptance.

There remains the fact that one engaged on a wages staff is removable at a week's notice so far as his legal contract of service is concerned, whereas those engaged on an annual salary are removable only by whatever might be held to be reasonable notice, terminating their engagement.

It has been sought to deny the wages staff any pension rights on the ground that, for the reason above set out, the wages staff are not employed in the permanent Civil Service.

But the relevant section of the Act sets out amongst the persons entitled to the benefits of the Act those civil servants whose remuneration is computed either by day or weekly wages, or by annual salary. It is clear, therefor, that no distinction between those employed by day wages, or weekly wages, and those employed on an annual salary was contemplated by the Act.

So far, therefore, as the words of the Act, are concerned, in my opinion those words warrant the grant of a pension just as much to a wages man as to one paid for his services by an annual salary.

The next question is whether this position was in any way affected by Section 83 of the Public Service Act, 1904.

That section provided that the provisions of the Superannuation Act, 1871, should not apply to any persons appointed to the public service after the commencement of the Act.

It is stated in the facts on which this opinion is founded that the persons concerned all entered the service of the Government in the Railway Department prior to 1904.

But even if this were not so, by Section 5 of the Public Service Act, it is enacted that, unless otherwise expressly provided, the Act should not apply amongst others to officers or persons appointed by the Commissioner for Railways under the Government Railways Act, 1904.

It is clear therefore that the answer to be made to the first inquiry submitted is that the persons with whose case we are dealing, come within the class for whose benefit the Superannuation Act, 1871, was enacted, and that the Governor-in-Council is, by the terms of the said Act, authorised to grant pensions on the scale set out to such persons, if he chooses to do so.

Mr. Cross: Then why did not Mr. Keenan remedy the position when he was a Minister of the Crown?

Hon. C. G. Latham: That is an insolent interjection.

Mr. NEEDHAM: I am not concerned with Mr. Keenan in his capacity as a Minister of the Crown at any time, as Leader of the National Party or as member for Nedlands. All I am concerned about is the legal opinion that he provided in respect of the matter I am presenting to the House. I suggest that his opinion is just as much to be considered on this matter as that given by Mr. Septimus Burt, whose interpretation of the words I have referred to was accepted for so long. There is another opinion from a second eminent legal mind. I refer to Mr. Justice Burnside, who has also gone to his reward. At one time that gentleman held the office of Crown Solicitor and as such he gave his opinion of the interpretation to be placed on the words "permanent civil service." His opinion is worth reading, particularly with regard to his interpretation to be placed on the words "established capacity"—

> The construction to be placed upon the words "permanent Civil Service" was dealt with by me on some previous papers relating to a person who had been employed for 10 or 11 years as a locker at one of the Customs stores at Fremantle. There I expressed the opinion that the word "permanent" used in connection with the words "Civil Service" was intended, in my opinion, to distinguish it from those special or temporary services which the exigencies of the service from time to time call forth. I take it that a person employed, say, as Captain Dawson was, to make a special survey of the Swan River, or any other person engaged upon a work outside the curriculum of the ordinary Government departmental work, should not be in the permanent Civil Service, the permanent service being, in my opinion, constituted of these departments and branches necessary for the ordinary administration of the Government.
>
> The words "established capacity" have a correlative meaning and are intended, in my opinion, merely to emphasise the words "permanent Civil Service." In this connection the words of the Public Service Act indicate that

the persons employed for two years and upwards are to be considered in the service for the purpose of the Act, and hence all persons for whose individual employment in the permanent service special provision is made by Parliament and all other persons employed for two years and upwards in the permanent service, whether they are individually or collectively referred to in the Estimates would, in my opinion, be employed in an "established capacity." The questions are, in my opinion, of little importance as the rights conferred do not arise until after 10 years' service, at the end of which time both the capacity and the service will have become settled. The only questions of any importance that can arise are those relating to abolition of office, and as they arise they are dealt with on their merits by Executive Council.

There again is another person whose legal opinion is worthy of respect. I come now to the third legal opinion I desire to refer to, for it is entirely opposite to the interpretation placed on the words "established capacity" by Mr. Septimus Burt. This opinion emanates from a former Premier of the State and a King's Counsel, who is still practising. I refer to Sir Walter James. In the course of his opinion, which was given on the 4th January, 1929, he said—

> An "engine-driver" obviously occupies an established and permanent capacity in connection with the management and conduct of railways as there must always be "engine-drivers," and an engine-driver is, I think, employed in the Civil Service.
>
> (a) Although the Commissioner of Railways appoints and dismisses engine-drivers, he does so on behalf of, and as the delegate of, the Governor, and Section 68 of the Railways Act (No. 23 of 1904) expressly states that persons appointed by the Commissioner of Railways shall be deemed to be in the service of the Crown.
>
> (b) By Section 55 all the receipts of the railways are paid into Consolidated Revenue, so that the engine-drivers' wages would be paid out of that revenue.
>
> (c) Section 15 expressly provides that the Superannuation Act shall not apply to the Commissioner of Railways.
>
> The definition of a "civil servant" is: An official of a Government not belonging to the defence forces, or not being one of those officials whose office is created by special legislation, as, for instance, a judge.

That is all I will quote from the opinion of Sir Walter James, but what I have quoted goes to prove my contention that the interpretation placed by Mr. Septimus Burt on the term "established capacity" is not accepted by the other legal gentlemen whose opinions I have quoted. I have here a number of cases that I will place before the House to prove that decisions have been given in favour of men who were not on the salaried staff. Here is an extract from a "Statement of the General Secretary on the Administration and Interpretation of the Superannuation Act":—

Mr. W. E. Newton had, at the date of transfer to the Commonwealth, served four or five years as a labourer at 7s. 6d. per day, and was paid from the item "Extra Labour"; his occupation, or office, was attendant in charge of the lavatories, etc., in the post office, in which position he continued to serve under the Commonwealth until 1915, completing in all 18 years' service. Mr. T. Jackman was employed as a labourer at 9s. per day in the same department, his duties being those of a watchman. He had been employed for five years under the State, and continued in the same occupation for a further 16 years under the Commonwealth. At retirement in 1915 and 1917 respectively, the Commonwealth Government, on the advice of the Commonwealth Crown Law authorities, decided that both officers were entitled under the Constitution to be retired on a pension as provided by the State Superannuation Act, 1871, and the usual request to the Premier of this State for concurrence in the payment of the proportion of the allowance due by the State was submitted.

In Jackman's case, which may be quoted to cover both, the Commonwealth Government was informed in reply that "the Governor in Council had decided to disallow Jackman's claim for superannuation allowance under the Superannuation Act, 1871, on the following grounds: That on Mr. Jackman's transfer to the Commonwealth Government he was not serving, nor had he served in any office position or capacity to which pension rights attached, he being merely a labourer temporarily employed; Section 84 only relates to existing and accruing rights of transferred officers." This reply was submitted to the Commonwealth Crown Solicitor, who affirmed his previous opinion that Jackman came within the meaning of Section 1 of the Superannuation Act, 1871, and that the General-Governor in Council, not the Governor in Council of the State, was the constituted authority to determine whether or not the pension should be granted. The Commonwealth Attorney General, on this advice, recommended that an Order in Council be obtained, and that after approval a copy, together with the Crown Solicitor's opinion, be forwarded to the Prime Minister's Department for the information of the Premier of Western Australia. The pension payable was £73 3s. 9d. per annum, £10 14s. 10d. of which was chargeable to the State. The subsequent action is made clear by the Order in Council which is hereunder reproduced in full.

Order by His Excellency the Governor-General.

Whereas Section 84 of the Constitution of the Commonwealth of Australia provides that "when any department of the Public Service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth." and fur-

ther provides that "any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights and shall be entitled to retire from office at the time and on the pension or retiring allowance which would be permitted by the law of the State if his service to the Commonwealth were a continuation of his service with the State, and whereas the Postal Department of the State of Western Australia, being a department of the Public Service of the said State, became transferred to the Commonwealth of Australia on the 1st day of March, 1901—

Now I propose to skip four paragraphs of this document, which then continues as follows:—

And whereas a question has arisen as to whether the Thomas J. Jackman is a person who "served in an established capacity in the permanent Civil Service," within the meaning of Section 1 of the Superannuation Act, 1871, of Western Australia, and whereas Section 70 of the Constitution of the Commonwealth provides that "in respect of matters which, under this Constitution, passed to the Executive Government of the Commonwealth all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a colony, or in the Governor of a colony with the advice of his Executive Council, or in any authority of a colony, shall vest in the Governor-General, or in the Governor-General in Council or in the authority exercising similar powers under the Commonwealth, as the case requires."

Now we come to the essential judgment—

Now therefore I, the Governor-General, acting with the advice of the Federal Executive Council, in pursuance of the powers conferred upon me by Section 70 of the Constitution of the Commonwealth of Australia, and Section 1 of the Superannuation Act, 1871, of Western Australia, do hereby decide that the said Thomas Jackman did serve in an established capacity in the permanent Civil Service of Western Australia within the meaning of Section 1 of the Superannuation Act, 1871, of Western Australia, and is entitled pursuant to Section 84 of the Constitution of the Commonwealth of Australia to be granted a superannuation allowance as prescribed by Section 1 of the Superannuation Act, 1871, of Western Australia.

And in accordance with that decision, a superannuation allowance at the rate of £73 3s. 9d. per annum from and inclusive of the first day of November, 1917, in respect of his service in the Postal Department of Western Australia and in the Postmaster General's Department of the Commonwealth of Australia, was granted to the said Thomas Jackman. That was given under the hand of the Governor-General and the public seal of the Commonwealth on the 21st August, 1918. Here is a case where the laws of the State and the Commonwealth clashed, and so under the Commonwealth Constitution the Commonwealth law was supreme, but the point to be borne in mind here is that there was a man engaged as a labourer, and who at no time had been on the salaried staff. But it was decreed that he had been in an established capacity. The Governor-General in that case did not come to that conclusion without having had legal opinion. Here again we find that the legal opinion of the Commonwealth was entirely at variance with the legal opinion expressed in Perth. I have quoted three legal opinions from men in our own State. Of course the Governor-General-in-Council was advised by the Commonwealth Crown Law Office. Now there is another quotation which I wish to make. It refers to a judgment recently delivered in Victoria in a case between Shugg and the Victorian Railways Commissioner. The judgment was that of Mr. Justice Gavan-Duffy. I do not intend to delay the House by reading the whole of the judgment, but I wish to read salient points because they have a bearing on the case we have under discussion. In this Victorian case the plaintiff pleaded that he had been an officer of the Railways, or at all events an employee of the Railways. The defendants, the Victorian Railway Commissioners, contended that though he was in fact employed by the Government on railway work he was not an officer or employee holding office in the Railway Department. Here is a paragraph from the judgment—

The course of the plaintiff's employment on the Railways is not in dispute. It is shown that in 1879 he was employed in the Way and Works Branch at 6s. 6d. per day during April and May, and subsequently during September, October, November and December. He was apparently not employed in 1880, but was again employed in the same branch at the same wage in 1881, during July, August, September and December; in 1882 during May, July, August, September, October, November and December; and in 1883, this time at 7s. per day, from January to November both inclusive. In 1884 he was employed from March to December both inclusive in the Rolling Stock Branch heaving coal on piece rates. This work he continued in 1885, being put on wages of 8s. 6d. per day as a coal heaver in February. He returned to the Ways and Works Branch in October, and remained continuously working in that branch until the end of 1888, which is as far as the exhibit carries the matter. In fact, he appears to have remained in that branch until his retirement in 1918.

There was a man definitely on wages and definitely not on the salaried staff. The judgment continues—

The contention of the plaintiff may be put shortly by saying that by showing he was employed in the Railway Department at the relative date he has done all that is necessary to bring him within Section 72. The defendants say that is not sufficient; there were two classes of persons then employed, one the permanent staff, the other consisting of employees, casual, supernumerary, whatever they might be called, but at any rate not permanent. It was not contended that a person doing work similar to that done by the plaintiff might not be a permanent employee and within the section, but merely that as a matter of fact he was not.

The judgment continues—

The plaintiff's rights must depend on the meaning of Section 72, and not on what anybody thought that section meant.

Further, the judgment proceeds—

In 1898 the plaintiff was apparently invited to become a permanent employee, and after complying with the requirements of the Act, 767, was so appointed and afterwards so described in the defendant's records, but this is some evidence of nothing more than that he was regarded by the Commissioners as not holding a permanent position before, and I attach no importance to it. The general conclusions I draw are these:—That a distinction of some kind was made in the Railways Service in November, 1883, between permanent and non-permanent employees, that it is impossible to tell from the evidence where and by what discrimination the dividing line was drawn between the two at any specific period before November, 1883, or what their respective rights were. The evidence suggests that the plaintiff was regarded as a non-permanent employee, but perhaps it is sufficient to say that he has certainly not established that he belonged to the class regarded as permanent.

Now for the practice of the department. The judgment continues—

How far the practice of the department before 1883 is material at all depends on an examination of Section 72 of Act 767, and to that I now turn. That section reads:—

> Every officer and employee holding office in the Railway Department at the time of the passing of this Act shall be entitled to compensation or retiring allowance to be computed under the provisions of Act No. 160 and have his rights, privileges and immunities saved to him as if this Act had not been passed, but shall for the purposes of this Act be deemed to have been appointed by the Commissioners without other or further appointment.

I tried to get a copy of this Act, but was not successful. However, Section 72 of that Act may be compared with Section 83 of our Public Service Act of 1904, as having the same meaning. Then here we find that a Victorian judge decided that a man who by no stretch of the imagination could be held to have been on the salaried staff, but was in fact working in a menial capacity, was entitled to compensation. The further we go in an examination of this case the more proof have we that the interpretation of the words "established capacity" was extremely important. It may be contended in the arguments that will be used against this motion that already there is in existence an appeal board, a statutory body, to which the men can appeal, and that it is not right to make an appeal to a court from the decisions of that body.

Hon. C. G. Latham: Was there ever a case like this before the Privy Council?

Mr. NEEDHAM: Not any of the cases to which I have referred, but I believe one did go to the Privy Council. It may be contended that this Parliament should not constitute itself a court of appeal against the decision of, say, Mr. Justice Dwyer, who is chairman of the Appeal Board in this State. I do not desire in any way to bring about that state of affairs, or to reflect on any decision of His Honour in that capacity, but I contend that in any decision he gives, it is given as chairman of the Appeal Board, and not as a judge of the Supreme Court. In asking Parliament to appoint a select committee, I am not attempting to make Parliament a court of appeal from the decision of a judge of the Supreme Court. It is well known, however, that Parliament is the highest court of appeal in the land, but I contend that Mr. Justice Dwyer's decision was given entirely as chairman of the Appeal Board, and not in his judicial capacity. The Act under which the board is constituted sets out that there shall be no appeal from the decision of the board. That may be so, but I think we will find as we go along something will have to be done as far as this phase of the question is concerned. The opinion given by Mr. Septimus Burt was not a judicial opinion, nor was the decision of Mr. Justice Dwyer on the Miller case a judicial opinion. The former was only a legal opinion and the latter simply the decision of Mr. Justice Dwyer as chairman of the Appeal Board under the amended Public Service Act of 1932. Neither of those decisions was a decision in a judicial sense. At times cases are carried on from one court to another. There is the right of appeal in the first place from a decision of the Supreme

Court to the Full Court. But in the cases under review, after a man has gone before the Appeal Board there is no appeal allowed. That to my mind is wrong. I claim that every citizen should have the right to put his case before the Parliament of this country, and that is the stand I am taking. I am asking Parliament to arrive at a decision one way or the other on the matter. I go further and say that if the 1871 Act were administered as it should be, there would be no need for appeal boards. The only person to decide whether or not a pension should be paid is the Governor-in-Council; there should not be an intermediary board, and that is an aspect of the case I want the House to consider seriously. We have cases that went before the Appeal Board in which pensions were claimed. They were rejected. Other claims went before the Appeal Board and were granted, but still, although they were granted, they have not yet been paid. There are the cases of Kay and Walker, both of which were successful. They made their applications to the Appeal Board and that tribunal decided in their favour. Those men, however, have not yet had their pensions paid. Then there were the cases of Miller and Heaton, which were rejected. If the decision of the Appeal Board is final, as the 1932 Act stipulates, how is it that the decision of the board in the cases of Kay and Walker has not been honoured. That is a phase of the situation which, I hope, will be explained by the Premier or the Minister for Justice when replying to my remarks. So long as a case has gone before the Appeal Board, and has been decided in the applicant's favour, it should be honoured by the Government. The Public Service Act was amended in 1932 to give the railway men a chance to go to the Appeal Board. It is true that a section of the amending Act sets out that the decision of the board shall be final. I want to know how it is that the successful applicants for pensions have not yet received anything. There is another feature to which I must refer before I conclude, and to my mind it is the strangest feature of the lot. There is a Pensions Board and I find that that board has taken upon itself the right to make certain decisions irrespective of what the Appeal Board may do or say. A few days ago I asked questions in this House something like the following:—Is the Pensions Board a statutory body: if so, by what statute was it created; how and by whom were the members appointed; and what are the names of the present members? The answers I received were that the Pensions Board was not a statutory body, and then I was given the names of the members of the board. Here is a copy of a letter written by Mr. Tomlinson, the Secretary for Railways, to Mr. James Crawford, of North Perth, and dated the 29th July, 1937. It reads—

> Further to my letter of the 29th ult., your application for superannuation has been considered by the Pensions Board, and I am directed to inform you it is intended to recommend the Governor-in-Council to disallow your application. When considering your application the Pensions Board was bound to recommend the disallowance thereof, for the reason that the policy adopted and published by the Government on the 24th December, 1936, directly affects your application and definitely excludes it from favourable consideration by the Governor-in-Council. Under the said policy your application could only be considered if on the 17th April, 1905, you were holding a salaried staff office as a salaried staff officer in the Railways. Your record of service in the Railways shows you were not employed in a salaried staff office as a salaried staff officer prior to 1921.
>
> In these circumstances, an appeal by you to the Public Service Appeal Board will not affect the decision of the Government, whatever the decision of the Public Service Appeal Board may be because the determination of the question whether or not your employment in an established capacity is not material to the consideration of your application inasmuch as consideration by the Governor-in-Council of your application is excluded by reason of the said policy which has been adopted by the Government.

That, to my mind, is a very serious state of affairs. It puts up a body that has no authority, that was not authorised by this Parliament, to sit in judgment and give its decision on a case independently entirely of a statutory body appointed by this Parliament, namely the Public Service Appeal Board. That is not right. The member for Subiaco also asked some questions relating to the Appeal Board. The hon. member wished to know if the board had ever given a decision in favour of wages hands. The answer was in the negative. The answer, however, was wrong because wages men have been successful, as I have instanced to-night. It is true that by the time they got their superannuation, they were put on the salaried staff, but their employment did not change: they were doing

the same work for years after. One of the questions I asked in this House in connection with the Pensions Board was as to how and by whom the members of it were appointed. I was informed that they were appointed by regulation under the Public Service Act. This is the regulation, No. 134—

Applications for superannuation allowance under the Superannuation Act, 1871, shall be made on such form as may from time to time be prescribed by the Commissioner. The permanent head shall report on the services of such officer and supply such further information as the Commissioner may deem necessary. The Commissioner shall, after obtaining the advice of the Crown Solicitor and of the Under Secretary for Law, inquire into the merits of such claim. The Treasury officers shall, when requested by the Commissioner, compute the amount of pension payable.

Sitting suspended from 6.15 to 7.30 p.m.

Mr. NEEDHAM: Before the tea adjournment I was pointing out the objectionable features of the letter written to an applicant by the Secretary to the Commissioner of Railways, setting out the decision of the Appeal Board and referring him to the Pensions Board. That letter, on the face of it, has made confusion worse confounded. It may be asked, why should these men receive superannuation? They have been in constant employment for many years, and now, at a time when the country is not as prosperous as one would like to see it, why should the question of superannuation be raised on behalf of these men while there are still numbers of unemployed? If economic troubles have overtaken the State, it is not the fault of these men, who consider they have a right to superannuation. They were not the cause of any economic disaster that has occurred during the last few years. Therefore that argument will not stand at all against their claim, provided the claim is just. It may also be objected that the question of superannuation is general, and that everyone on retiring from employment should receive a pension. That is something I have advocated for years, but I do not want the question of general superannuation to side-track the particular claim now being made. I want this claim to be decided on its merits, and I believe I have this afternoon submitted evidence which justifies an inquiry to discover whether or not the men's claim is just. The motion I have moved is not a demand for superannuation, but is a request for an inquiry, so that evidence can be adduced to prove the genuineness of the claim and also to establish that an injustice has been done to these men in years past. That is all I ask, and that is the proposal I put before hon. members. The cost, naturally, in the event of superannuation being granted will be a big matter. Earlier in my remarks I stated that I was not in a position to estimate what the cost of superannuation would be; nor am I in a position to state accurately the number of men affected. I venture to say that a phase for the select committee to consider is when the payment would start. I suggest to the Premier and Ministers that they should not take any alarm at all at the question of cost, but that they should view the matter, as the Premier himself said when replying to a deputation which waited on him, in the light of the right or the wrong of the particular case. Whatever the cost may be, we have to bear in mind that it will be a diminishing cost. Most of the men affected have now reached an age when, in the ordinary course of events, they will soon pay the debt of Nature. It would take only a few years to wipe out the cost, in view of the fact that by then many of those men will have gone to their reward. Taking it by and large, after all, the cost would not be as insuperable as it might appear at the first blush. I have taken up more time than I had intended, but I have done so in order to place the fullest possible information before honourable members to assist them in coming to a decision. I submit the motion for the favourable consideration of the House, fully confident that the claim these men make contains all the elements of justice and equity.

On motion by the Premier, debate adjourned.

MOTION—DELINQUENT YOUTH.

MR. RAPHAEL (Victoria Park) [7.37]: I move—

That in the opinion of this House the Government should give immediate consideration to the problem of delinquent youth and to the advisableness of the establishment of a reformatory, home, or farm to be conducted by the Government, but not to be under the control of the prison authorities.

I claim that the subject of this motion is of such grave moment to the morals of the country that it cries out for immediate attention from the Government. We know that from time to time in this city of Perth meetings have been held, sponsored in the main by those whose business in life it is to try to designate the path that our youth should follow. Let me explain that by "delinquent youth" I mean both the masculine and the feminine gender. The religious section of our community have held public meetings to bring under the notice of the Government the deplorable conditions existing among young men and women who get off the narrow track of decency. We must realise that to a large extent the young men and women in Western Australia who have committed some small offence have had to contend with unemployment and depression during the past few years. Their parents have not had the wherewithal to provide them with even the necessaries of life, and they have grown up in homes that have known want. We are all aware that a hungry stomach is one that a man tries to feed. In many cases these young people have been driven to commit offences by necessity. To think that a young person who has been found guilty of what I may term a minute offence should be held up as a criminal and be branded all his life as an inmate of Fremantle Gaol is deplorable. The Government have had brought to their attention dozens of such cases. In particular there is the case of a young railwayman 19 years of age who stole at the instigation of his step-father. After he had been in Fremantle Gaol for a time, the case was taken up by certain gentlemen, and I supported a deputation that waited on the Minister concerned. The Rev. Andrews-Baxter told the Minister that he had been prepared to guarantee that this young man's future life would be free from any further trouble such as had occurred. The Minister asked, "Are you now prepared to guarantee that this young man's character will in the future be what it ought to have been in the past?" The reverend gentleman's reply was an excellent one, and might form the basis of an argument in support of the motion. Mr. Andrews-Baxter said, "I am not prepared to give that guarantee after you have put him for one month into your school of training for thieves." That is the whole trend of the motion. New South Wales has what is known as the Emu Plains Prison Farm. On my last visit to the East, the Government of New South Wales did me the courtesy to take me out and let me inspect this reformatory prison. First offenders, mostly young men, are put on the Emu Plains Farm; and the authorities claim that at least 90 per cent. of reformations result there. That is a wonderful record. The young men in question are not permitted in any way to come in contact with hardened criminals. Western Australia has the Seaforth Boys' Home, the Swan Boys' Orphanage, and the Fremantle Prison. The two former institutions are for youngsters who get into trouble. In my opinion, some of those cases should never have gone before the courts. Perhaps the suggestion may seem drastic, but I feel that the cases I have in mind would be much better dealt with if the sergeant in charge of the police station were permitted to give such youngsters a strapping.

[Resolved: that motions be continued.]

As I was saying, it would be better for many youthful offenders if, instead of being brought before the police court, they were, with the consent of their parents given a strapping by the sergeant in charge of the police station in their district.

Hon. P. D. Ferguson: That method is not popular now.

Mr. RAPHAEL: I do not know; I have never had experience of it. The position is that some of these young people steal no more than a pennyworth or three pennyworth of goods on occasion. A warrant is issued for their arrest and they are haled before the court. If they are not given a severe sentence, their respect for the court is not perhaps as great as it should be and they subsequently commit further crimes. I consider that a good strapping would have a more salutary effect upon them. Many parents on rations have to pay fines in respect of offences committed by their children and, they can ill afford the cost. They are being continually harassed by the department for the payment of the fines and they endeavour to meet their obligations in order to keep their children from being sent to an institution. Not very long ago a magistrate, whose opinion should be listened to by the Government, claimed that the institution to which he was forced to send children was not a fit and proper place for the delinquent youth of this State. Despite the fact that the magistrate refused to give judgment that a particular child should be sent back to the

Seaforth Boys' Home, the department stepped in, put the offender in the Roe-street lock-up and eventually sent him to the home. Surely that is going beyond the law. The law states that an individual must appear before a magistrate or justices of the peace and be sentenced. Yet we find the Child Welfare Department stepping in, going over the magistrate's head and sending a boy to a home which the magistrate claimed was not a fit and proper place for him. We know that the Minister took the trouble to go out and have a look at this place and he was quite satisfied that it was a fit and proper place to which to send young people. From past experience, however, we know that when an inspection of an institution is to take place, preparations are made to receive those engaged in the inspection, and conditions are far different when the visit is made than they are during the other days of the week when there is no inspection. I have had more than one case brought under my notice of young men who have escaped from the home because they would not stand the treatment they received there. I claim that the Government should not send delinquent youths to such institutions. There should be an institution with specially trained officers to take charge of those young people and try to guide them in the right direction. What is needed is a farm where they will not be under the iron heel of prison warders. Incidentally I have nothing against the conditions of the Fremantle gaol, nor against the treatment prisoners receive there, but I am concerned about the stigma which youthful delinquents have to bear forever afterwards of having been inmates of the Fremantle prison. The Government have not made very much effort to provide a decent home for the delinquent young women of this State either. They are housed in the Old Women's Home in Fremantle and are not living under the best conditions there. We know that in many cases they have contagious diseases and no matter what is done to prevent it, contact is made with the old women, who have to run the risk of contracting the diseases. At the Emu Plains farm to which I referred a number of small huts was constructed and each young man had one of these places to himself. A distance of 10ft. separated each hut. The young men were placed in their huts at night and during the week-end were allowed to receive visits from their friends. This contact with their home life prevented them from becoming embittered. At the Fremantle gaol, Mr. Speaker, as you know——

Members interjected.

Mr. RAPHAEL: Well, most of us should know at any rate. I notice the member for Canning laughing. I know he has been there. I have had the job on more than one occasion of getting a man released from that gaol and have had the pleasure of riding with him from the prison gate, so I at any rate know the conditions which exist there. When the men receive a visit from their friends they sit in a little room with a table between them and the warder listens the whole of the time to the conversation. If there were a prison farm at which these young men and women were permitted to see their relatives undisturbed at the week-end I suggest that, at the expiration of their term of imprisonment, they would return to society with a different outlook from that which they have to-day.

Mr. Thorn: Is there not a prison farm at Pardalup?

Mr. RAPHAEL: That is for the old and hardened criminals as well as first offenders, the same as is the case at the Fremantle gaol. It is not for first offenders alone. If the hon. member had read my motion he would have seen that I wanted the establishment of a reformatory home or farm not under the control of the prison authorities. I am aiming at the appointment of specially trained men and women to look after youthful delinquents, and the establishment of a home where they would not be subject to the iron discipline obtaining in ordinary prison life. That is the sole aim of my motion. If such a place were established it would go a long way to reforming these young people. The statistics I have supplied regarding New South Wales can be verified and if cures can be effected there, so can they be effected in this State. I know that the Government are crying out for finance. Funds are needed for the Perth Hospital and for many other purposes, but I consider that a lot of the money granted by the Lotteries Commission for various purposes to-day could be applied much more profitably to finance a scheme such as I have suggested. I hope the Government will agree to the appointment of a committee to investigate the position and that money will be found by some means or

other in order that curative measures might be adopted in respect of the delinquent youth of our State.

On motion by Minister for Employment debate adjourned.

BILL—AGRICULTURAL BANK ACT AMENDMENT.

Restored to Notice Paper.

MR. PATRICK (Greenough) [7.55]: I move—

That, under the provisions of Standing Order No. 419 (a), the Bill for "An Act to amend the Agricultural Bank Act, 1934, and to restrict the effect of the statutory charges created by certain Acts, the administration of which has been transferred to the Commissioners, and for other purposes relative thereto," be restored to the Notice Paper at the stage which it had reached in the previous session of Parliament.

This motion deals with a very important Bill that was carried to the second reading stage last session. Since that time the membership of the House has not altered, so that I do not consider it necessary nor do I intend to make another second reading speech on this occasion. The importance of the Bill to the farming industry justifies its being placed back on the Notice Paper.

Question put and passed.

MOTION—RAILWAY PROPERTY.

Power to Rate.

MR. SAMPSON (Swan) [7.53]: I move—

That in the opinion of this House the Road Districts Act should be amended to provide power for Local Authorities to rate property from which the Railway Department is in receipt of revenue in the form of rent, whether such property is rented to railway employees or otherwise.

The lack of power on the part of local authorities to impose rates on properties such as those referred to is a very vexed question. It relates to the insistence on a principle which cannot fairly and morally be supported. The matter has been discussed at length at several conferences of road boards and always members have expressed the desire that consideration should be given by the Government to the matter. The principle expressed in the motion is one which it is claimed, and justly claimed, should receive the approval of Parliament. There is no question of referring to any particular Government; the matter has extended over several years. Indeed, it is not within my knowledge to say when the position was other than it is at present. The question is an equitable one and calls for equitable treatment. Section 221 of the Road Districts Act deals with what shall be rateable property. It begins—

All land shall be rateable property within the meaning of this Act save as hereinafter excepted, that is to say—

(1) Land the property of the Crown and used for public purposes or unoccupied.

(8) Land declared by the Governor or by any unrepealed Act passed before or after the commencement of this Act to be exempt from rates.

Subsection 1 indicates that the land is the property of the Crown, and there is therefore statutory authority to prevent its assessment by local bodies. Subsection 8, of course, applies, and this particular exemption stands because the Government have not taken action to exempt the land. There are certain well-defined exemptions, but there is no need for me to refer specially to them. I wish however, to refer to Commonwealth Law Reports, Vol. 1, 1903-4, page 406, as follows:—

The Executive Government of the Commonwealth or of a State is not bound by statute unless the intention that it shall be bound is apparent.

I am putting that forward because I feel that I should state the case fairly, and show under what statutes and orders the Government have probably taken the opportunity to refuse to give consideration to certain cases. Section 79 of the Government Railways Act reads—

No rate, tax or assessment shall be made, charged or levied upon any Government railway unless the contrary is expressly provided in any Act.

Those quotations support the action of the Government, but do not establish the equity. They simply establish the law on the question, and that is a matter which I desire members to consider. The whole position, as indicated by the quotations, makes it clear that the Road Districts Act as it stands should be amended. There was a case that has become famous in connection with certain railway cottages at Merredin on which the Railway Depart-

ment did not, nor does today, pay rates. The case was first heard before a magistrate and later was taken to the Full Court where it was held that the land was being used for railway purposes and that the Commissioner of Railways and not the defendant was the owner of the land within the meaning of Section 5 (2) of the Road Districts Act, 1919. The appeal failed. In the argument submitted, R. S. Haynes and Co., for the appellant, stated—

> The business of a railway is to carry passengers and goods for reward. Not only the actual railway, but all lands and buildings such as stations, goods-sheds, etc., which are necessary to carry on the railway efficiently, are within the exemption. The land in question, however, cannot be said to be part of a railway, or used or kept for railway purposes. The employees were not bound to live in the quarters on such land, although indirectly the Railway Department derived a benefit from their being near the railway.

In spite of the decision of the Full Court, it could well be held that the right to rate the land on which those cottages were erected did exist. The person by whom rates are due is the owner, and the definition of owner is very interesting. Section 5 of the Road Districts Act, "Interpretation," contains the following:—

> (1) (b) A Crown lessee or a lessee or tenant under a lease or tenancy agreement of land which in the hands of a lessor is non-rateable land within the meaning of this Act, but which in the hands of such lessee or tenant and by reason of such lease or tenancy is declared by this Act or any other Act to be rateable land for the purposes of this Act.

Actually it is not declared by this Act or by any other statute to be rateable land, but it is a Crown lease, and it is leased to a tenant under a lease or tenancy agreement of land. That, again, assists to establish the fact that the land, although non-rateable, should be subject to assessment. Everybody must admit that the local authorities provide certain facilities, and that without those facilities, the rental value of the houses in question—certain railway cottages at Merredin having an important relation to this motion—would be a negligible quantity. Those cottages would certainly not produce any payment of rent worth considering unless the facilities were provided by the local authority. It is unfair that the Government should shelter behind the different Acts of Parliament that enable them so to shelter. They do not pay rates, but they accept the full gross rents as paid to them by their tenants.

Mr. Marshall: That is very problematical. If the property were rated, in all probability the rents would be raised proportionately.

Mr. SAMPSON: I understand that the rentals charged are consistent with those that would be chargeable under a private landlord. While it might be said that the railway employees occupying those cottages are engaged in public work, no one would question that their wages are affected by the fact that a home is provided, and justly so. To give consideration from the standpoint of justice, surely the local authorities that provide everything possible for road boards to provide should be paid the rates that in ordinary circumstances would be payable. The Railway Department, a Government utility, receives certain benefits from different road boards. Other road boards than Merredin are affected. I believe there is a case of certain property in Narrogin, and possibly there are similar instances in other places. It is not intended that this motion should be limited to a consideration of any special property. It is the principle that the present and past Governments have failed to recognise about which I am concerned, and in connection with which I am anxious to have a change brought about. The notable instance of the non-payment of rates to which reference has been made is the case in which the Merredin Road Board took action under legal advice against the Railway Department relative to the rating of certain cottages in the Merredin district. The Road Boards Association solicitors held that the rent of the cottages was undoubtedly taken into account in fixing the remuneration of the railway employees. Although the Merredin Road Board held that the railway employees had benefits conferred upon them by the activities of the local authority, judgment was given in favour of the Railway Department. I am inclined to think that the old adage, "The King can do no wrong," and "Whatever the Government do is right," must have applied and must have influenced the judgment given.

Mr. Stubbs: Was that a Supreme Court judgment?

Mr. SAMPSON: First of all the case was dealt with by a magistrate and then by the Full Court. Sympathy for the road board was shown by a number of local authorities, but this, of course, has no legal effect. The

moral effect is an acknowledgment by other local authorities, who, in a majority of cases, were not concerned with similar problems, and yet felt that the unfairness that was meted out by the Government through the Railway Department was deplorable and should no longer be allowed to continue. Apart from railway cottages, railway lands are often leased or rented to outside people. The local authorities hold that in such instances the property should be subjected to the customary rates. I would be surprised if any member could find any just reason to take a different view of the matter. Road boards generally are in a particularly difficult position to-day. Consideration which was extended to them by Governments in past years has disappeared. No longer are annual grants payable to road boards; consequently their only revenue, except in special cases, is the collection of the amounts due under the assessments.

Mr. Marshall. They have been relieved of a big responsibility through the medium of the Main Roads Board.

Mr. SAMPSON: The tendency with most road boards and most local authorities is for rates to be increased. That is necessary under the conditions in respect to traffic. The roads to-day, because of the motor traffic, must be better constructed than was necessary some years ago. One would imagine that Governments would give some consideration to the great needs and difficulties of the road boards, but unfortunately, if they have thought of these things the thought has not been translated into action. In certain districts ratepayers, whoever they may be, occupiers or owners, are paying rates which are higher in amount by reason of the fact that rates are not collected from railway lands. The Railway Department frequently rents lands, but the department itself does not pay rates. Although that is true, the conscience of the department is not clear in this connection. This is proved by the fact that when portion of railway land in different townsites is leased to people, a condition is added to the lease that the amount which would be levied as rates by the local authority shall be levied on the lease, and that the lessor shall pay such rates. I am advised that this is now the regular practice of the Railway Department. Whilst it can see no virtue in paying what it should pay of itself, it nevertheless has a realisation of what others should pay, and very properly insists that they should pay. You, Sir, having surveyed life for so many years must agree that the Railway Department, or that section of the Government service, is not the only one that insists upon moral and upright behaviour on the part of others. They can readily see what course should be adopted, and yet remain, if not callous, at all events quite unmoved so far as it is possible to gain any impression of their reactions. I am with the department in that condition, which is a very proper one. It would be unfair for someone say at Meekatharra or at Wiluna to lease a portion of railway land and fail to pay any rates upon it. It would mean that the ratepayers of the district, the landowners or lessors of land, would have to pay an additional amount in rates because the Railway Department had failed to make this condition. They could say it was an act of the Government and that therefore no rates must be charged. It is a source of some satisfaction that whilst the department cannot appreciate an obligation which exists on its own part, it is thoroughly awake to what others should pay. It is a very equitable act so far as it goes. I hope the department will recognise the principle fully and will take a 100 per cent. view of it. Since this is so good a thing to do in the case of the ordinary occupant of that type of land, I hope the department will take a fair view and will urge upon the Minister for Works the necessity for amending the Road Districts Act.

The Minister for Works: It was passed by Parliament.

Mr. SAMPSON: Yes. Parliament has passed many Acts which have subsequently been found to be defective. This one is definitely defective.

The Minister for Works: I would not reflect upon Parliament if I were you.

Mr. SAMPSON: I would not say a word against Parliament.

The Minister for Justice: You are proud of it.

Mr. SAMPSON: I am sorry the point was not raised during the passage of the legislation through this Chamber. It is never too late to mend, or to right a wrong. I am sure that, so far as the Minister is concerned, if this were a personal matter he would not go to sleep without having rectified it. It is remarkable that to be in a Government is more or less to find it

impossible to think along lines of equity where revenue is concerned.

Mr. Tonkin: You are speaking from experience.

Mr. SAMPSON: I am speaking from experience of my own and the judgment I have gained of the hon. member. I think he would take the same view, and might take it with more equanimity than would the ordinary member. I think he is prepared to take a view in monetary reform which might cause a good deal of embarrassment to other people.

Mr. Tonkin: You are losing track of the point.

Mr. SAMPSON: The request is a reasonable one. That must be the main argument, and is the main argument upon which I base the submission of this motion. Local authorities have heavy problems to face. We should not shelter ourselves behind a statute, or avoid doing our duty by them and playing the game. We ought to do what is fair and right. I hope the Government will determine to do this. An acknowledgment by the Government in the form of an amendment of the Act would remove a well justified complaint, which is State-wide. The motion was considered on different occasions by the Road Boards Association at their biennial conference, and was carried unanimously. These men are honorary and public-spirited workers, who have given very deep thought to matters relating to local government. Members would be giving effect to considered opinion if they carried the motion, thereby imposing upon the Government an obligation to do what is right. If the motion is carried, it will acknowledge the equity of the claim and the excellence of the services rendered by the road boards. It would also remove the odium which at present attaches to the Government because of the unfairness of the present position. I hope the motion will be carried and that the Minister in charge of the Road Districts Act will bring down the necessary amendment. If he does that, there will be removed a grievance which is justified and which has existed far too long.

MR. BOYLE (Avon) [8.27]: I second the motion, more particularly because of my interest in Merredin. The Merredin Road Board for many years has striven to obtain justice from the Railway Department. In this centre there are no fewer than 38 railway cottages built on a very good plan. The judgment quoted by the member for Swan (Mr. Sampson) referred to the fact that this was part of railway property used for railway purposes. In this particular case that does not hold good because there is the Bruce Rock-road separating the property of the Railway Department from these particular cottages. The people who are suffering most under the present conditions in these railway cottages are the occupants. There is only one road, the main road, and the roadways that should lead into these cottages have never been dedicated. Railway men have to knock off work at all hours of the day and night, and at night time are exposed to a good deal of danger when going to and returning from their work. These men knock off with the arrival of trains from five main lines that are converging on Merredin. This is one of the most important railway centres in the eastern districts. I sympathise with the members of the board, who have repeatedly tried to secure an arrangement with the Commissioner of Railways who, however, has continually sheltered himself behind the Act. That is neither just to the Merredin Road Board nor yet to the occupants of the houses I have referred to, more particularly when it is remembered that the Commissioner of Railways notified the board a little while ago that it was his intention to build an additional 16 cottages on the reserve, which is situated in one of the best portions of the town. The department reserved 42 acres of land on the high area overlooking the town, and the scrub conditions are absolutely to the detriment of the townspeople who have built their homes and spent hundreds of pounds in beautifying their properties. This is apparent when it is realised that on one side of the Bruce Rock main road there is a large section of the town where the homes are well-built and gardens are provided such as home-lovers would desire, while facing them on the other side are the railway cottages, the occupants of which are just as important and as good citizens, located in what amounts to bush, and this in a town of the importance of Merredin, with a resident population of 1,500! It is time the Minister took notice of the prayer of road boards such as the Merredin board, and at least behaved with a reasonable amount of justice to them rather than shel-

ter behind an Act of Parliament that was never designed to afford protection of the description I have indicated. There is no moral reason why the Commissioner should evade his responsibilities. It goes further than that. In a big centre like Merredin there are other Government dwellings from which the road board receive no rates. For instance, it has been made the headquarters for the Agricultural Bank district, and the manager has had constructed for him a house valued at £1,200, from which the board derive no benefit at all. I support the motion.

On motion by Minister for Railways, debate adjourned.

BILL—SALES BY AUCTION.

Second Reading.

MR. WATTS (Katanning) [8.35] in moving the second reading said: I submit the Bill in the interests of that section of the primary producers that is obliged to sell livestock and farm produce by public auction. I do so in order to prevent the term "public auction" becoming something that is not as desirable as some believe they should expect. There are certain practices that are regarded by primary producers as being improper and objectionable, but which have taken place at auction sales of livestock and farm produce for a considerable period, and which, as they have not been branded as illegal, have received tacit consent because it was impossible for those concerned to do otherwise so that the auctioneers affected could not dispose of the goods in question to the highest bidder. For many years the primary producers' organisation in Western Australia and, as will be seen from my remarks later on, those in other States of the Commonwealth, have been complaining that this practice, which is known as "lot splitting" or "tossing," has become more and more rife, with the result that while auction sales should result in the best possible prices for goods concerned being obtained by the seller as the result of competition amongst all those persons who are endeavouring to become buyers, there has actually been no competition at all. In order to explain possibly a little better what I refer to, I will read the observations of one commentator on this subject—

> Instead of all buyers bidding for stock and sale being to the highest bidder, often only one bids, and after the stock has been knocked down the rest of this group of rail sitters hop off their perch and put in a claim. They put in a claim although they have not bid, and sometimes this is by a prior arrangement and sometimes they hold an impromptu lottery between themselves and the bidder. The winner receives the producer's goods for less than their true value.

"Less than the true value," because there has been no active competition between persons who, in ordinary circumstances, should have been bidding for the goods by their successive bids. From time to time the producers in this State have complained on this score, without very much result. In the course of last year, the wool executive of the Primary Producers' Association of Western Australia declared most emphatically that these practices were among those that, if at all possible, should be put an end to, and the Bill is introduced with the intention of allowing this House to discuss such measures as are considered practicable for minimising this evil. Although these measures may not be entirely successful, and although they may require for their full observance more policing than is possible should the Bill become law, nevertheless I submit that we do not say that stealing should be made legal because, for 2,000 years or possibly longer, stealing has been illegal, yet there is some stealing going on still. We retain the illegality of the business of stealing because we realise that that illegality has the effect of minimising the evil. I suggest that if we reverse that position and make stealing legal to-morrow, the stealing that is going on will very largely and rapidly increase. So conversely, when there is a practice that has not only the effect, as I have endeavoured to show, of something bordering on stealing, in that it frequently deprives the producers of that extra margin of price that might otherwise be obtained with more active bidding, we feel that although we may not be able to stop it entirely, we may at least minimise it by the legislation that is now proposed. There is no doubt that auctioneers concerned in the business of disposing of livestock and farm produce are almost entirely opposed to the continuance of the practices I have referred to. But, as they have not been branded as illegal, the auctioneers have had no reason to prevent them. On the contrary, if the legislature decided that these prac-

tices should no longer be countenanced, it is obvious that those auctioneers who, in the majority of instances—in all instances, so far as I am aware—are reputable persons, will no longer permit these practices to continue if by any effort of theirs the law can be complied with. We can safely say that in the auctioning of such items as we are discussing, those people will be amongst those who will be only too anxious, for the preservation of their reputations and businesses, to see that the law is complied with. I am also informed that legislation for the cure of the same evil has been for many years in force in Great Britain, and some two years ago the Victorian Government took steps to enact legislation in connection with this subject. First of all, they designed their legislation to deal with livestock only. Subsequently, by an amendment, farm produce was brought within the scope of the Act. It was at first suggested that the legislation was not very successful. I was informed, some months ago, that it was doubtful whether it had served any good purpose. When I was in Victoria in June last I made inquiries, and was informed by a member of the Legislative Assembly there that for some 30 years he had been a regular attendant at livestock sales in that State, that the practice, which had been strongly objected to by him as a producer, had been greatly minimised as a result of the legislation, and finally he assured me that the results of the Act were by no means unsatisfactory. On the other hand, they were most satisfactory. Not content with that, I took an opportunity to communicate with the Minister for Agriculture in that State, Mr. E. J. Hogan, and asked him whether he would be good enough to advise me as to the results of the legislation he had introduced. Subsequently I received a letter from him under date the 21st July and, as I have his authority to produce the letter, I can read it to the House. The Minister wrote—

> In reply to the inquiry contained in your letter of the 13th inst., I have to advise you that the Auction Sales Act (copy attached), which was passed by the Victorian Parliament in 1935, has prevented the practice of "tossing" and "lot splitting" at auction sales of livestock. So satisfied were the primary producers with the operations of this Act that in 1936 I was requested to apply similar legislation to all auction sales of primary produce, and an Act to provide that that should be done was passed that year. A copy of this Act is also enclosed. Auctioneers generally have co-operated in the enforcement of the Act. A few of them may be furtively breaking the law, but I suppose that occurs with all laws. Speaking as Minister of Agriculture, I regard the two Acts above mentioned as well worthy of their place on the statute book. I understand that similar legislation is to be introduced in the New South Wales Parliament, and I am sure that if a Bill is also introduced and passed in the Western Australian Parliament the legislation will be beneficial to the primary producers in your State as it has been to the primary producers in Victoria. You may use this information in any way you wish, and also intimate that I provided it.

I think I have advanced sufficient evidence to show that legislation, which I will now tell the House is on very similar lines to that contained in the Bill, has been enacted in Victoria and has been found satisfactory there as it was undoubtedly beneficial to the primary producers concerned. That Act was passed in two parts, the second part being passed in consequence of a request arising from the satisfaction derived from the first part having been enacted—and that on the authority of the hon. gentleman who in that State is responsible for the adminstration of that law. The practice I have referred to is by no means to be found in the other States of the Commonwealth alone. During the past few months, when this matter has been under consideration in my mind I have taken opportunity to attend one or two auction sales of livestock and also one of fruit and similar produce. There in company with a friend of mine—who I confess has had far more experience of auction sales than I have—it was pointed out to me when and how this practice takes place. The following appears to be a typical example of what was being done: When a line of goods was put up to auction, only one person bid for it, and subsequently through the auctioneer himself the line thus bought was split into two or more lots. And the persons who had therefore obtained the benefit of, in some instances, the only bid put in by the first bidder, were able to obtain their articles, a portion of the total at the low price that the bidder had obtained through the auctioneer. That is to say that where a person did obtain the goods the lot was subsequently divided up by arrangement among his friends, and he was obliged to accept no liability for payment by his friends, the liability for them passing through the auctioneer. This Bill definitely provides that

no such transactions may take place through the auctioneer and so it seeks to prevent any such arrangement being made between the persons for such a practice to be put into effect. It is provided of course that an offence against the provisions of the Act will be the subject of a penalty which for the first offence is limited to a maximum of £10 and increased for the second offence, with the alternative of imprisonment. In the existing circumstances the auctioneer when these arrangements are made by persons sitting on the rail, as I suggested in the first instance, is helpless, as the unfortunate auctioneer cannot object in the existing state of the law to these arrangements being made between the buyers and he is therefore obliged to accede to their request, although there is no doubt that many auctioneers object to the practice. So whether it be simply by an arrangement made beforehand that the lot will be split or if it be simply covered by the tossing of a coin, the purchasers have the advantage of this solitary bid that has been put in. Even with unrestricted competition the primary producer is often obliged to take an unprofitable price for his goods. There is no occasion whatever why the primary producer should be unable to obtain in the most competitive field full value for the items he has for sale, and we should definitely discourage any practice which does not conduce towards that end. It will be realised that the provision to which I have just made reference would possibly have the effect of prohibiting, were nothing further done, one man from buying as agent for another. But a provision has been inserted in the Bill for the purpose of preventing such an occurrence. It is provided that if immediately after the item has been knocked down to him the person who was bidding as agent for another advises the auctioneer of that fact the auctioneer is entitled to enter in his book the name of that person for whom the goods were bought as the buyer of the goods, but otherwise he is not entitled to put down the name of any other person than the bidder for the item. And if he does so, in cases where he could not possibly know that he is doing wrong some provision is made for his relief, but if he enters in the book the name of any person other than the agent without the authority of the agent and without making any inquiries into the circumstances, the auctioneer himself is to be liable to a penalty. In order that the conditions that will arise if the Bill be passed may become, as it were, part of the conditions of sale, at every sale by auction it is provided that the auctioneer shall read or recite aloud the material parts of the clauses in the Bill which provide for the illegality of the practices to which I have referred. When he has done that it will be apparent that those conditions will be included in the ordinary conditions of sale which are read before the commencement of the sale. As it is possible, however, that there may be successive sales which in ordinary circumstances might not be distinguished one from another which are actually taking place by the one auctioneer on the one day, in order that it will not be necessary to re-read those items at the commencement of each sale it is provided that one reading will suffice. Now I am going to make reference to some of the definitions in the Bill. "Cattle" has been defined as including horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, ewes, wethers, rams, lambs and swine. I think that that takes into consideration practically all the livestock likely to be put up at an auction sale in this State. "Farm produce" means wool, cereals, grain, vegetables, potatoes, onions, other edible roots and tubers, tobacco leaf, fruit, hay, chaff, dairy produce, live or dead poultry and game and eggs. As I said earlier, in Victoria legislation was first introduced in regard to livestock only. It was subsequently added to by the inclusion of farm produce including wool, by an amendment to the Act last year; that is to say, after the original Act had been in operation for approximately 12 months. There will be found in this Bill a provision that the Act shall not come into operation until the 31st December, 1937, and that for wool it shall not come into operation until a date to be fixed by proclamation. The provision that the Act shall not come into operation until the 31st December next has been included in order that persons who go to auction sales in various parts of the State may have some little time in which to become accustomed to the new proceedings before they come into operation against them; and the provision regarding wool has been inserted because, while it is definitely understood that the problem of lot splitting goes on at almost all sales of wool, there are various reasons why the Act should not apply to that commodity unless it is going to be applied throughout

the major number of the States, if not the whole of the States of the Commonwealth, or unless it is apparent that all those States will not agree, in which case Western Australia will have to make up its mind whether or not to proclaim the Act. Personally I believe it will not be very long before it will be found necessary to take action in regard to this commodity in the other States of the Commonwealth; in fact, as I have already told the House, this provision is already in operation in Victoria and, according to Mr. Hogan of Victoria, is about to be enacted in New South Wales. I have endeavoured, as will be seen, to make provision which in the first instance in regard to the delay in time I have mentioned will be reasonably fair to both the buyers and the auctioneers who buy at and conduct those auction sales, and in regard to wool will not place restrictions on the sale of that commodity immediately which might, although I really cannot agree to that, re-act to some extent, unless it be uniform, against the vendors of the wool. There is also in the Bill provision that in regard to any offence a penalty of one-quarter of the maximum shall be the minimum. Referring again to the question of wool, on the 10th June, 1936, the Australian Woolgrowers' Council passed a resolution asking that legislation should be put in hand for the prevention of lot-splitting at wool sales. It will be recognised that that particular council, a Federal-wide body representative of all the wool-producers' associations in the Commonwealth, recognised at its meeting in Melbourne last year that lot-splitting in wool did take place and desired that as far as possible it should be put a stop to. In 1925, Sir John Higgins, well known as an authority on wool marketing questions, drew attention to the lack at wool auctions of the full and open competition to which growers had a right. He said it was apparent that wool auctions had been labouring under artificial restrictions, and that buyers' arrangements obviously were in existence to restrain the competition which was the essence of auction selling. I do not think we can seriously quarrel with the observations of a man of the vast experience and immense ability of Sir John Higgins, and it will be apparent, after hearing him on the subject, that there is considerable need for this legislation in regard to wool. There is also no doubt in my mind, and further evidence can be adduced if necessary, that there is great need for it in regard to livestock and farm produce. In the earlier part of this year an article in the "Wheatgrower" newspaper stated that there was an auction sale of livestock at Midland Junction on an occasion just previous to the publication of the article, and the auctioneer had requested some of the buyers present to put a limit on their arrangements for lot-splitting and had asked them to discontinue the practice. That being so, obviously this practice on that occasion must have been particularly noticeable. When speaking to a member of another place to-day, he informed me that he himself on dozens of occasions had seen these practices being carried on at auctions not only in the city but in the country. On one or two occasions, he said, he had been a party to them himself, but in the course of years had realised the losses they were causing him as a vendor and set off those losses against the small occasional profit he might make as a buyer, and decided that such practices were objectionable. I think I have succeeded in showing the House that the objectionable practices do exist, that there is need for their restriction, that while it might be difficult to abolish them entirely, there is every reason to make them illegal in order that they might be discountenanced by the auctioneers, and punished when ascertained. If we do not endeavour to put a stop to them, or substantially to minimise them, we shall be continuing practices that will not improve the position of the primary producers. In these times it is essential that every opportunity should be taken to enable the farmer to get the maximum price for that which he has to sell in order that he might be in a position to pay the maximum proportion of the liabilities he is expected to meet. Unless we take action against such practices, we shall be lacking in our duty to the men on the land. The opportunity is available to us. Fortunately we have the guidance of the Minister for Agriculture in Victoria in the matter to show that action is both practicable and desirable, and I trust the House will agree with me that the Bill should be passed. I move—

That the Bill be now read a second time.

HON. W. D. JOHNSON (Guildford-Midland) [9.4]: I regret that this Bill has been introduced. I think members will

realise that the hon. member has anticipated the Minister for Agriculture. For a couple of years this matter has been inquired into by the Co-operative Federation of Western Australia. We obtained copies of a number of Bills from the Minister for Agriculture in Victoria, and they were distributed throughout the agricultural districts for the information of active agriculturists. We found that the Victorian measure was limited to the auctioning of stock, and quite a number of district councils of the Co-operative Federation advanced the idea that a more comprehensive measure was desirable. The matter was submitted to the Minister for Agriculture within recent times. After discussing it with him on more than one occasion, he was approached by representatives of the federation to ascertain whether he would introduce a Bill this session, and he agreed to try to do so.

Mr. Warner: He is too late.

Hon. P. D. Ferguson: It was not in the Lieut.-Governor's Speech.

Hon. W. D. JOHNSON: I am not aware that all Bills proposed to be introduced by the Government are included in the Speech. In the circumstances, the matter should be left to the Minister for Agriculture.

Mr. Doney: An injustice to the member who has just spoken.

Hon. W. D. JOHNSON: The Minister for Agriculture was making inquiries in the Eastern States, and definitely took a favourable view not only of the auctioning of stock but of endeavouring to make the measure more comprehensive. As one who has been associated with those making representations to the Minister, and having obtained an assurance from him that he was giving the matter favourable consideration, and that the Government were considering the question of introducing a Bill of this kind, I regret that the member for Katanning has anticipated the Minister. I am not sure that the Bill is in order. Examination will be necessary to determine that.

Mr. Sampson: On a point of order. Is the hon. member in order in speaking to the Bill and giving the House a diatribe, or at least a statement, as to whether it should be brought forward?

Mr. SPEAKER: The member for Guildford-Midland is quite in order.

Hon. W. D. JOHNSON: I am not in a position to say that I have examined the Bill; as a matter of fact, I have not done so, but I fully realise the limitations of private members, and it is just a question whether a comprehensive measure of this description, limiting the operations of individuals and proposing to impose penalties on individuals, is altogether the province of a private member.

Hon. C. G. Latham: Surely there is nothing wrong with the House deciding upon a Bill of this nature.

Hon. W. D. JOHNSON: Parliament, of course, is all-powerful, but there is a grave danger in private members introducing legislation to impose penalties.

Hon. C. G. Latham: Then let us have some despot.

Hon. W. D. JOHNSON: I do not intend to argue at this stage, though I may do so later, that it is dangerous for private members to propose legislation imposing penalties.

Hon. C. G. Latham: There is nothing against it.

Mr. Doney: It is quite a proper course. We were not aware of the Minister's intentions.

Hon. W. D. JOHNSON: I simply say it is dangerous for private members to introduce legislation proposing penalties on any section of the community.

Mr. Doney: You did the same thing yourself.

Hon. W. D. JOHNSON: It might have been done in the past, and it might have been incorrect, all the same.

Hon. C. G. Latham: The only incorrect thing is that the Bill was introduced by a member on this side of the House, instead of by a member on your side.

Hon. W. D. JOHNSON: We shall have to examine the Bill when called upon to do so. That, however, is not what I rose for. I rose to relate the facts. The Bill we obtained from Victoria was freely distributed throughout the agricultural districts and it was discussed on more than one occasion with the Minister.

Mr. Patrick: But never publicly.

Hon. W. D. JOHNSON: In the meantime it was suggested that he should introduce the Bill this session.

MR. HUGHES (East Perth) [9.11]: I hope the member for Katanning (Mr. Watts) will not be cajoled into withdrawing his Bill.

Hon. C. G. Latham: Not by the member for Guildford-Midland.

Mr. HUGHES: If necessary we can insert a clause indicating that the original

idea was not that of the member for Katanning. It is surprising to hear an old and experienced Parliamentarian such as the member for Guildford-Midland (Hon. W. D. Johnson) saying it is dangerous for a member to introduce a Bill containing penalties. What does it matter what source a Bill comes from so long as it is a good Bill? The most noticeable thing about the Speech of the Lieut.-Governor was that apparently the Government have no legislative programme. The result is that the Notice Paper is filled with private members' business.

Hon. C. G. Latham: They are doing the work for the Government.

Mr. HUGHES: They are forced to step into the breach left vacant by the Government. If this Bill is necessary for the community and warrants the consideration of the House, why should not a private member bring it down? We as private members ought to take a stand not in the direction of cutting down our rights but of maintaining them. I have found myself very much in disagreement with you, Mr. Speaker, on the question of the privileges of private members.

Mr. SPEAKER: I hope the hon. member is not going to discuss that now. There is a Bill before the House.

Mr. HUGHES: The member for Guildford-Midland suggests we should see whether the Bill is in order, and my answer to that is that we should pass the second reading to-night before he has time to look into it. The member for Katanning cannot impose a penalty upon anyone. All he can do is to submit his Bill to the House. If it meets with the approval of a majority of members it goes to another place. It cannot then be said that the hon. member is inflicting a penalty upon anyone. The Bill passes out of his hands, and becomes an enactment of Parliament, if it passes both Houses. There is no danger of a private member setting up a dictatorship whereby he may inflict penalties upon anyone. All he can do is to bring down his Bill. If it meets with the approval of both Houses it becomes law. Why should not a private member apply his energies and abilities to this course of action? Bills introduced by private members may well improve our legislative enactments. A private member is appointed to this Chamber as a legislator. Unfortunately, members of Parliament too often fill the role of glorified agents, running around and doing jobs for different electors that are really not the business of a member of Parliament. We are given too little opportunity to become legislators. If we are going to be restricted merely to casting our vote for or against something that is introduced from the Treasury Bench we are going to be reduced to the standard of the first Italian Parliament under Mussolini, when if a member said "No" to a Bill he ran the chance of being struck on the head as he went out.

Mr. Marshall: I thought it was castor oil.

Mr. HUGHES: I am not familiar with the subject matter of this Bill and do not propose to offer any views concerning it. If any member of this House desires to apply his energies and abilities to bringing down legislation he will have my support so far as the maintenance of that right is concerned. If we are going to limit legislation to Bills introduced by those who occupy the Treasury Bench, to Ministers who have many other things to occupy their minds, our legislation will fall hopelessly into arrears.

Hon. C. G. Latham: We have not any knowledge of what they are going to do.

Mr. HUGHES: Our legislation is miles behind the times. Numerous enactments require to be brought up-to-date. Important questions are being left to the energies of private members, because, apparently, the Government are either too busy or too indifferent to deal with those subjects. I only rose to give my support to the member for Katanning.

The Minister for Works: A reply speech, is it?

Mr. HUGHES: If the Minister devoted more time to bringing down some legislation that is required instead of interrupting someone else who is endeavouring to do so, the better would it be for this House. I hope the hon. member will go on with his Bill, and allow this House to decide whether it shall pass through this Chamber to another place with the object of becoming law.

MR. SAMPSON (Swan) [9.18]: I am pleased that the member for Katanning (Mr. Watts) has brought down this Bill. It has been a long-felt want, and has been discussed

over and over again by producers. The need for it is very great. The Minister for Works will agree that people in his electorate have complained at many meetings at which I have been present that their goods are purchased at auction without the real competition which it is necessary to ensure their getting a fair price.

The Minister for Works: He has left out farm produce.

Mr. SAMPSON: That will be included in the Bill in the Committee stage. It should be included. Honey, for instance, is sold by auction on various occasions. If the beekeepers are to get a reasonable price, there must be an absence of any arrangement before the auction. The principle underlying the Bill is a very important one. There is scarcely a meeting of producers where the matter is not brought forward. Arrangements made beforehand as to how a lot shall be split up means in many instances a low price and unfairness to the producers. That is a bad thing for the State. Producers are to a large extent dependent upon what those who attend the auctions will pay. When added to other difficulties, an arrangement is made for the purchase of a lot by one person without competition, the position becomes very bad indeed. This Bill is an essential part of our marketing legislation. We should have had it long ago. If this has been discussed during the past few months or years, the member for Guildford-Midland, in the interests of some of his electors and the people generally should have urged that it be brought down, even if he did not feel inclined to introduce it himself.

Hon. W. D. Johnson: It should be introduced by the Government.

Mr. SAMPSON: It does not matter by whom it is done. The Government might be pleased if the hon. member would try himself out on legislation such as this. The hon. gentleman has been associated with co-operation. What about the co-operation of buyers who get together and bring about the downfall of producers? At all events, I speak on behalf of, I believe, every producer in my electorate. I am indeed pleased that the Bill has been brought forward. I trust it will have a safe and speedy passage.

Mr. Marshall: It does not cover the bee; it says nothing about honey.

Mr. SAMPSON: I wish the hon. member would study the bee—work, and not talk so much. My special thanks are due to the member for Katanning for bringing the measure forward, and for the very thorough inquiries he has made. He did not keep within the limits of Western Australia, but traversed a State in which such legislation as this already largely operates. Therefore I offer my best thanks to my fellow-member who has done something in a practical way to assist those who have been victims of the schemes to which the Bill refers.

On motion by the Minister for Justice, debate adjourned.

BILL—LEGAL PRACTITIONERS ACT AMENDMENT.

Second Reading.

MR. SLEEMAN (Fremantle) [9.25] in moving the second reading said: I do not think any member of this Chamber will charge me with having appropriated someone else's ammunition by bringing forward a measure associated with some other member. In fact, I think I could get this Bill copyrighted. As it contains penalties, I hope no one will take the point that a private member cannot introduce a Bill providing penalties. If anyone wishes to dispute the authorship of the measure, I am prepared to argue the point with him. I make no apologies for bringing the Bill forward. Most of the subject matter of the measure was discussed on a similar Bill last year. It will be remembered that during the previous session I put a Bill of this nature through this Chamber. Though not downhearted, I was rather surprised at its reception in another place after the way in which it had been carried here. The measure was passed here with only three votes against it. After a vote so nearly unanimous, one could not but be surprised at the reception of the measure in another place. That House may be a House of review, but there was not much reviewing of my Bill. However, I am not discouraged. Anyone who sets out to bring about a reform finds himself up against a lot of setbacks. They give me greater energy to go forward. As the result of having my one-clause Bill of last year thrown out, I now bring forward two Bills dealing with the subject, each containing several clauses. People who are using their influence in trying to get these Bills defeated—I do not say hon. members are using

any influence—may be sorry if the measures are defeated.

Hon. C. G. Latham: Get the Government to resign if another place does not pass the Bill!

Mr. SLEEMAN: I would be willing to go to my electors on a Bill such as this.

Hon. C. G. Latham: Come up to my electorate!

Mr. SLEEMAN: I do not know that the hon. member would have too much to say against the Bill.

Hon. C. G. Latham: I mean, come up and contest the seat!

Mr. SLEEMAN: I think the Leader of the Opposition will be found supporting the Bill. It provides that no premiums may be asked for in respect of the articling of any clerk. This is most important, not only to the son of poor parents who cannot provide the premium—and some of the most brilliant boys are sons of poor parents—but also to protect youths who can raise the premiums. These must be protected against dud solicitors in this country. There are duds in every profession. Dud solicitors get considerable amounts of money out of young fellows to be articled, and then, instead of getting the value of the £200 premium, the articled clerk may not get 200 pence worth of experience. I cast no reflection on the legal profession generally; but there are duds in it, and the duds are likely to get fair amounts of money sometimes for articling young fellows, with the results I have described. We do not find doctors, for instance, asking premiums to teach young fellows the science of medicine.

Mr. Patrick: Chemists charge premiums.

Mr. SLEEMAN: I do not know whether that is so. If it is done, it should be stopped. The quicker such a practice is put a stop to, the better. I am satisfied that the House will not object to this provision in the Bill. Next comes a clause proposing the repeal of Section 13 of the principal Act. The House has heard quite a lot about that section. It is time the section was repealed. This is the one State where a young fellow is debarred from this privilege while serving his articles. Again the son of the poor man comes into the picture. He may become articled to a solicitor and if he endeavours to earn a few shillings in order to assist himself while serving his time, there is no chance of his getting through. I have previously reminded the House of what a former Governor-General of Australia, Sir Isaac Isaacs, said when he emphasised the fact that if it were not that he had been able to earn a few shillings by carrying groceries around the suburbs of Melbourne, he could not have been called to the Bar in Victoria, because his mother was too poor to afford to keep him while he was serving his articles. Notwithstanding that, in Western Australia, as the Premier once stated, the practice of snobbery is being maintained in order to keep the sons of poor people out of the legal profession. It is high time that that sort of thing was stopped. It has been stated that such lads are not refused permission to earn while serving their articles. If the young fellow who is about to serve his articles first makes application to the Barristers' Board, the board make a practice of turning down the application and then they are able to announce that they have not turned down one articled clerk. The young fellow who intends to be articled knows that once he has paid over his 12 guineas or 13 guineas, there is no chance of securing a refund, so he makes application to be allowed to earn from some outside source while serving his articles, but the board refuse permission, and thus are able to say that they have not once refused such permission to an articled clerk.

The Minister for Justice: The board cannot deal with such a young fellow under the Act until he is articled.

Mr. SLEEMAN: I am surprised at the interjection by the Minister for Justice, who is a layman like myself. I do not suppose he can be expected to know much more than I do, except that he has a gentleman in the Crown Law Department who is a King's Counsel and probably the Minister is instructed by him. The board go further and say that after being articled, a young fellow cannot serve two masters.

Mr. Hughes: That has been said about other fellows too.

Mr. SLEEMAN: I hope we shall not have a repetition. The suggestion advanced by the Minister for Justice on a previous occasion was that young men in this position might even become bookmakers' clerks. There are a lot of men who have held worse positions than that and yet hold high offices in the land to-day.

I have heard that suggestion advanced three times and the last time was by the Minister for Justice, so there should be no repetition. When I refer to the position in New Zealand, it may be said that the Dominion intend to alter the legislation there. A member of this House who returned from New Zealand recently informed me to that effect. I wanted to find out the position, so I wrote to the Attorney General and I received the following reply under date the 5th May, 1937, from the Crown Solicitor in New Zealand:—

> I am directed by the Hon. the Attorney General to reply to your letter to him of 23rd ultimo. In New Zealand it is nowadays the exception for solicitors to have articled clerks. There is no reference to articles in the statutes relating to law practitioners or the regulations thereunder. Whether an articled clerk may earn anything outside his articles is therefore a matter of contract to be settled by the express or inferential terms of the articles themselves.

In view of that letter it is futile for anyone to say that the New Zealand Government intend to alter the Act. I was fearful that that argument might be advanced during the debate but I have quoted the letter from the Crown Solicitor. He does not say anything about stopping from earning men who are serving their articles, but that they are not required to serve articles, which is much more democratic than our system here. In the Dominion young fellows can earn their living at any calling and while doing so can study the law. If they are successful at the law examinations they can be called to the Bar.

Mr. Marshall: Doctors do not serve articles.

Mr. SLEEMAN: No, but they serve their time.

The Minister for Justice: They have to walk the hospitals, and sometimes they are not much good either.

Mr. SLEEMAN: But once a doctor passes his exams and walks the hospital, he can practise his profession. Another young fellow may secure the LL.B. degree at the University, but he is not allowed to practise in our law courts, or even to appear in minor cases. The doctor who has just passed his examinations is allowed to go to a public hospital, and he then has hundreds of lives under his control. That shows the difference between the two sections.

Hon. C. G. Latham: A doctor has to gain practical experience before he practises his profession.

Mr. SLEEMAN: I have been told that doctors bury their mistakes.

Hon. C. G. Latham: But lawyers make others pay for theirs.

Mr. SLEEMAN: During the last few weeks, some remarkable information has been furnished to me with regard to legal practitioners. According to some of the information, lawyers have made their clients pay in circumstances that appeal to me as being almost fraudulent. It may even be necessary for me to move a motion in this House to rouse the Government to the necessity to do something that will stop the practice.

Hon. C. G. Latham: You will not be able to rouse them at all.

Mr. SLEEMAN: According to the information I have received, some of this money has been recovered by fraud. I make that statement on the assumption that the information I have been furnished with is correct, and I have no reason to doubt that.

Mr. Boyle: You will get some help from this side too.

Mr. SLEEMAN: I am pleased to hear that. The Bill also provides that before being admitted to the Bar, a person must have served articles for two years. It means that no one will be admitted unless he has already served his articles. We talk about patronising our local industries and local concerns, yet our own lads, after they pass their University examinations, are required to serve articles for two years before they can be called to the Bar. On the other hand, if the Leader of the Opposition could afford to send his son to England, the young man could take his degree there and, after putting in a certain time there, could return to Western Australia; then, having complied with the residential qualifications, could be admitted to the Bar as a barrister and solicitor. In the Bill I propose that, irrespective of who the individual may be or where he may have passed his examination, proof must be furnished of his having served two years at his articles before he can be admitted to the Bar. In a previous discussion on this principle, a former Attorney General agreed with my contention. That was in 1932 when the late Mr. T. A.

L. Davy was Attorney General. I quote from "Hansard" for 1932 as follows:—

Mr. Sleeman: Is there any good reason why those who have been admitted were allowed to practise as solicitors and barristers without being articled at all?

The ATTORNEY GENERAL: No reason at all. I have no doubt that in due course we shall say that they will have to serve two years as well, which will mean two years longer still.

Mr. Sleeman: If a man took his degree in Britain, would that make it better for him here? Would it be better than if he took it here?

The ATTORNEY GENERAL: No.

Mr. Sleeman: Then why allow a man from Great Britain to be admitted without serving articles?

The ATTORNEY GENERAL: I think there is a lot to be said in favour of stopping the practice.

I do not know what the present Minister for Justice will say, but that is the attitude adopted by the Attorney General in 1932.

The Minister for Justice: That is one good part of the Bill.

Mr. SLEEMAN: The Bill also contains a provision that will stop the practice of solicitors submitting an amended bill of costs after being notified that their costs are to be taxed. At the present time, a man who has a bill of costs from a solicitor notifies him that it is to be taxed. The solicitor says, "Give it back to me. I have a perfect legal right to submit an amended bill."

Mr. Thorn: Does he do that?

Mr. SLEEMAN: He does. He puts on 25 per cent. and refers it to one of his own clan to tax it for him. I think it is the only sphere of life in which a man can submit a bill and then ask for it back in order to increase it by 25 per cent.

Hon. P. D. Ferguson: That is not really done, is it?

Mr. SLEEMAN: I will show the hon. member what is done. I am providing in the Bill that an amended bill of costs cannot be submitted. The bill which is first supplied has to stand. No man should be allowed to submit a new bill of costs, no matter what his profession. Under the present Act it is provided that if one-sixth in amount of the items objected to is disallowed, the practitioner, his executors, administrators or assignees shall pay the costs, but in every other case the same shall be paid by the party requiring taxation, his executors or administrators. Another provision in the Bill is to substitute one-tenth for one-sixth. At present, unless it is shown that one-sixth in amount of the items objected to is disallowed, the poor unsophisticated client has to pay the costs. All sorts of difficulties are placed in the way of the client. He gets his bill and is put to all kinds of trouble to get it taxed. I have certain information here from the Supreme Court in connection with a young man who was in trouble. He had a bill of costs, and wanted it to be taxed. He could not get his bill, in the first place. The solicitor was holding it up for some reason or other.

The Premier: He did not complain about that, did he?

Mr. SLEEMAN: He wanted to get the matter settled. When he did get the bill, being a layman, he considered it excessive. He wrote to the Supreme Court in connection with this matter. This is the reply he received—

A solicitor can be compelled to deliver a bill of costs to his client in respect of services rendered, and should he fail to comply with the client's request to furnish such bill, the course available to compel compliance is by means of an originating summons under Order 55, Rule 3 (10) of the Supreme Court Rules, returnable before a Judge in Chambers. Such summons must be supported by an affidavit setting out the pertinent facts, and, if satisfied, the judge will make an order enjoining delivery. After the bill has been delivered, the client has the right within one month to object to any item or items which he considers excessive by giving notice thereof to the solicitor. The solicitor may then amend his bill, and if the bill, as amended, is still opposed by the client, he may proceed to have it taxed by the taxing officer of the Supreme Court. See Sections 36 to 41, inclusive, of the Legal Practitioners Act, 1893, 57 Vic., No. 12. The procedure is rather intricate for a layman to follow, and I would recommend you to consult your legal adviser on the subject.

Here you find a legal man saying to the poor old client, "I would not attempt this on my own, if I were you. You had better employ a legal man to get the other solicitor's bill taxed." He went to another solicitor and found that unless he could get one-sixth taxed off he had to pay the costs. The bills now totalled £93. Ultimately he got them taxed and the taxation showed that he had been overcharged £14 1s. 1d. He was able to show with the assistance of the other legal adviser that out of £93 over £14 1s. 1d. too much had been charged. But, as this was not a sixth, the client had to pay the costs of taxation, amounting to about £2. So the final effect

was that for the privilege of showing the first solicitor that he had overcharged £14 1s. 1d., the client had to pay another £2 in costs, in addition, pay a solicitor his fees to represent him at the taxation, and further, to the solicitor who overcharged him, he had to pay £1 1s. for his attendance at the taxation of the costs. Therefore I think the time has come when something should be done. I am not going to take up too much time now because most members have heard this discussion several times. It was discussed when the last Government were in power, and during the regime of the present Government. I hope on this occasion it will be more successful than previously. It is a lot better than the Bill that was brought forward last year and I can recommend it. I move—

That the Bill be now read a second time.

On motion by Mr. North, debate adjourned.

House adjourned at 9.47 p.m.

Legislative Council.

Thursday, 26th August, 1937.

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

SWEARING-IN OF MEMBER.

The Hon. E. H. Angelo took and subscribed the oath of allegiance to His Majesty King George VI.

QUESTION—ABORIGINES, MEDICAL SERVICES.

Hon. C. F. BAXTER asked the Chief Secretary,—What sums have the Government expended on medical services in connection with natives (irrespective of moneys expended on leprosy) for the periods covering—(a) 1933-34; (b) 1934-35; (c) 1935-36; (d) 1936-37?

The CHIEF SECRETARY replied: It would be very costly and take a very long time to prepare and supply the information required by the honourable member, but the figures shown hereunder give the information so far as the Department of Native Affairs is concerned—(a) £2,382; (b) £2,351; (c) £4,323; (d) £5,661. These figures are incomplete in certain particulars, as the information cannot be readily ascertained with any degree of accuracy in regard to—(i) Proportion of salaries of outstation officers; (ii) Services rendered to natives by subsidised doctors and hospitals; (iii) Medical costs at native stations which are included in the figures of "relief to natives." Considerable expenditure has been incurred by the medical and other departments, which cannot be readily estimated.

QUESTION—EDUCATION, DISTRICT HIGH SCHOOLS.

Hon. E. H. H. HALL asked the Chief Secretary: 1, In what years were District High Schools established at Northam, Bunbury, Albany and Geraldton? 2, When were High Schools, in separate buildings, opened at Northam, Bunbury and Albany? 3, What was the number of pupils attending higher classes in each case in the year prior to the opening of the High School? 4, How many pupils attended higher classes at Geraldton in the years 1933 to 1937, inclusive? 5, Is it intended to erect a High School at Geraldton, and, if so, when?

The CHIEF SECRETARY replied: 1, Northam, 1917; Bunbury, 1918; Albany, 1918; Geraldton, 1917. 2, Northam, 1921; Bunbury, 1923; Albany, 1925. 3, Northam, 128; Bunbury, 134; Albany, 118. 4, 1933, 125; 1934, 136; 1935, 165; 1936, 147; 1937, 166. 5, It is recognised that a High School is warranted at Geraldton, but no such schools have been erected since the depression. When funds are available the claims of Geraldton will be considered.