is penalised under it. We do not want an appeal from Caesar to Caesar, but an appeal to an ordinary tribunal. It has been recognised for some reason or other that those who are qualified to present cases should not be permitted to do so in an industrial court. But it is permitted that anyone in jeopardy of penalty may have the assistance of a trained person and may also have the right of appeal to a trained mind.

Hon. T. Moore: What about the expense?

Hon. H. S. W. PARKER: A man need not employ a practitioner unless he cares to do so. When it comes to a question of expense I understand it is not a very cheap matter at all to go to the Arbitration Court on an industrial question. There is at the present time a Poor Law Act, and any man can seek the aid of that statute. He need not go to the expense of engaging a lawyer unless he cares to do so.

The Chief Secretary: There is a good reason why he should not at present.

Hon. H. S. W. PARKER: What is it?

The Chief Secretary: The arguments you are putting forward.

Hon. H. S. W. PARKER: At the present time if a man is convicted under the Justices Act and he appeals to a higher Court against the conviction he is not allowed costs against the Government in the event of the appeal succeeding. A man likes to exercise his right of appeal, especially if he thinks he has not committed a wrong. A person need not go to any expense, because he can always appear for himself, and the judge will always assist him in the conduct of his own case, that is, in a quasi criminal or criminal matter.

The Honorary Minister: And lawyers do not mind?

Hon. H. S. W. PARKER: I should not think that a lawyer would care two straws. If a man likes to defend himself he has a perfect right to do so. The Bill should go to a select committee with a view to being recast and brought up-to-date. It certainly cannot become a reasonable measure with all its present amendments entirely altering the whole principles of the Act, especially in respect of making vocational awards instead of industrial awards. I intend to support the second reading.

On motion by Hon. L. B. Bolton, debate adjourned.

*House adjourned at 8.24 p.m.*

# Legislative Assembly.

*Wednesday, 8th September, 1937.*



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

## QUESTION—MT. LAWLEY SUBWAY.

Mr. J. MacCALLUM SMITH asked the Minister for Works: In view of the great increase of traffic through the Mt. Lawley subway and consequent risk to human life, do the Government intend to undertake the widening of the subway in the immediate future?

The MINISTER FOR WORKS replied: Representations have been made by the local authorities concerned; these are being considered.

## QUESTION—FEDERAL AID ROADS AGREEMENT.

Hon. W. D. JOHNSON asked the Minister for Works: 1, For what period did the Federal aid roads agreement allow the State to spend part of the sums received upon "other works" and "forestry" as distinct from roads. 2, What was spent, if anything, during the period, and what was the nature of work on (a) other works, (b) forestry? 3, What was the total sum that could have been used during the full period of the provision referred to.

The MINISTER FOR WORKS replied: 1, The agreement incorporating this proposal was never ratified and consequently it did not operate. 2, Answered by 1. 3, Answered by 1.

## BILL—WORKERS' COMPENSATION ACT AMENDMENT.

Report of Committee adopted.

## MOTION—RAILWAY MANAGEMENT AND WORKING.

*To inquire by Royal Commission.*

**MR. SEWARD** (Pingelly) [4.33]: I move—

That in the opinion of this House a Royal Commission should be appointed to inquire into and report on the management and workings of the Western Australian Government Railways, with particular reference to their relationship to modern transport facilities.

I offer no apology for occupying the time that the moving of the motion will involve. Anybody who is at all conversant with or has watched the working of the Government Railways in the last few years can come to no other conclusion than that they are fast losing ground. They are getting into a most retrograde position. Staffs are being reduced. Stations that previously had two or more men employed are being reduced to the status of unattended sidings, while stations that gave employment to night and day staffs are being worked with only one staff of officers. Railway yards in the country districts present a deserted and stagnant appearance, all of which goes to show that the business the railways should be handling is fast slipping from them.

The Premier: That is not reflected in the figures.

Mr. SEWARD: I hope to be able to disabuse the Premiers' mind of that idea. Certainly during the past few years the State has been passing through a depression, and naturally one would expect the figures to show a decline, but even taking that into consideration, we are emerging from that period of depression, and of course there is not the slightest question that during the depression a vast amount of produce was raised and there is not that excuse for any great decline in the railway figures. A considerable amount of the State's business is increasing, but if we take the increase that is occurring in the volume of business being done by the railways and compare it with the natural increase of the producing and manufacturing sections of the State, we must realise that the railways are not only failing to keep pace with that increase but are losing ground. I do not for one moment suggest that the present Commissioner of Railways is responsible for this. He assumed office some years ago, and the position of the railways was declining when he took over. Apart from that, however, there are probably other factors influencing the position of the railways over which the Commissioner has no control. It is that reason which, to a large extent, has impelled me to move for the appointment of a Royal Commission so that all aspects of the service might be carefully examined in an effort to ascertain where the responsibility really lies and to bring about an alteration. First of all I wish to direct attention to the large amount of the State's indebtedness locked up in our railway system. During the course of my remarks I shall have to quote figures, and to reduce the figures as much as possible, I have arranged them in periods of five years. During the respective periods the capital cost of the railways and the amount that that figure represents per head of the population have been—

| Period. | Capital cost. | Per head of population. |
|---|---|---|
| | £ | £ s. |
| 1894-98 .. | 2,872,031 | 24 2 |
| 1899-03 .. | 7,186,836 | 38 3 |
| 1904-08 .. | 9,952,841 | 39 2 |
| 1909-13 .. | 12,512,049 | 43 2 |
| 1914-18 .. | 17,040,025 | 54 0 |
| 1919-23 .. | 18,464,816 | 55 3 |
| 1924-28 .. | 20,915,859 | 56 2 |
| 1929-33 .. | 24,049,082 | 57 3 |
| 1934-36 .. | 25,702,805 | 58 0 |

At the date of the last annual report of the Commissioner of Railways the capital cost stood at £25,850,341. To put it another way, the percentage of the total debt represented by the railways of the State declined from 45.73 in 1919 to 27.65 in 1937. I hold that an asset of the State, which is responsible for such a large amount of our public debt as are the railways, is an activity that the House should submit to the closest attention and scrutiny in order to see that the value of the asset is being maintained, and that the railways are being efficiently controlled and are certainly not slipping back. It might be contended that the appointment of a Royal Commission is not warranted on the ground of expense. Let me recall that the last occasion on which a Royal Commission was appointed to inquire into the railways was in 1922. In answer to that objection I point out that transport facilities have advanced out of all knowledge during the last 15 years. Roads have been greatly improved; motor conveyances are now capable of transporting anything from the most fragile to the heaviest article safely over the roads, and, in addition, air transport over long distances has come to the

fore in competing with the railways. That factor alone would justify inquiry into the position of the railways. I find that the last Royal Commission on Railways in 1922 cost £1,615. That was the amount on the Estimates in 1921-22, and in the following year there was an amount of £450 to cover the cost of commissions in that year. Therefore, if the whole of the amount was used to pay for the Royal Commission on Railways, it amounted to only £2,065. In view of the fact that the railways are losing ground to an alarming extent, I wish to emphasise that they are not affording that service which the public are entitled to expect, and the expenditure of a similar amount would be justified if we could place the railways on a better footing and enable them the better to compete with other forms of transport. I know there are many people who contend that the railways are out of date, and should be superseded by more modern means of transport, and that therefore the shrinkage in patronage is only to be expected. I intend to draw largely upon South African experience to prove that this view is not sound. In the course of my investigations I found, in the report of the general manager of the South African Railways for the year ended the 31st March, 1936, a paragraph as follows:—

> A few years ago opinions were freely expressed that the railways were on the down grade, and would never again produce the earnings of the peak years, 1928-29. Results during the last two years and also during the current year prove that these opinions are incorrect.

What is possible in South Africa is equally possible here, but to accomplish this result, the railway officials must go after business instead of sitting down and expecting business to come to them. As to the personnel of the proposed Royal Commission I would favour a commission consisting of three. One should be a business man unconnected with the railways but thoroughly conversant with Western Australian business methods; the second should be a railway man from outside the State, preferably an engineer, and the third should be a railway man conversant with the administrative side of railways, but also from outside the State. The reason for suggesting that those two railway representatives should be selected from outside the service of the State is in order that they might come with unbiassed minds and without any preconceived notions in favour of our own railways. I do not suggest that a local man would not be likely to give a fair and honest opinion based on his investigations, but if he had grown up under the present system or had been connected with the system previously, it would be useless to appoint him. On many occasions suggestions have been made to the department for the inauguration of improved business methods, but without result. For that reason I wish to emphasise my reason for suggesting that a business man should be appointed as a member of the commission. Let me mention one matter—the establishment of a parcels depot in the centre of the city in order to receive parcels. This suggestion has frequently been placed before the Commissioner, and I believe that during recent years such a depot has been established, but I have not the faintest idea where it is located. If I were in the city at present and had a parcel to forward by the railways, I would have to go over the William-street bridge to the parcels office in order to lodge it. There might be a depot in the city, but if there is, I do not know where it is. If a depot of that kind were established in central Hay-street, right in the shopping area, with booking facilities and provision for the sale of tickets, people would appreciate the convenience and would use it and, I am convinced, would despatch more goods by the railways than they do at the present time. But of course it should not stop by simply establishing such a depot. If we want people to use the business we are concerned with at the present day, they must be educated up to do it. Therefore I consider that up-to-date business methods should be introduced into the department, especially into the publicity branch. I suggest that that might be done by the Railway Department having an hour or half-an-hour daily or weekly over the wireless, so as to bring the railway facilities before the public. At the present time, when the Railway Department make any change or innovation in connection with trains or anything of that description, a poster is stuck up at the station and perhaps an advertisement is put in the "West Australian." It never seems to dawn upon the railway authorities that people do not go habitually to the Railway Department, but only when business takes them there. Recently a friend of mine told me that it was 14 years since he had been in a train in Western Australia. How

on earth is he to know when a train is running or whether better facilities have been provided unless the department brings these matters to his notice? The best and most up-to-date method of publicity is the wireless; and the Railway Department will have to use it for making their facilities known to the people. Here is another point. Some years ago the Commissioner adopted a very good move, in my opinion, by expediting the running of the Albany express. Perhaps I may be pardoned for mentioning that train particularly, since it happens to be a train on the line with which I am mostly concerned. No doubt other members will be able to quote other instances. The Commissioner introduced that innovation in connection with the Albany express by expediting the running. It now arrives at 9.5 on Friday morning instead of 11 o'clock, a saving of two hours. This gives the people a faster train journey, and a longer time in the city. These factors are appreciated by very many people. I happened to be talking with one of the leading business men in the State, an insurance man, who spends almost all his time travelling about the State, using the trains and not a motor car. He had forgotten the existence of the faster train introduced some years ago. It only shows that unless up-to-date methods are adopted, especially wireless, to bring these things before the people, we cannot expect them to know anything about them. For that reason I recommend that a business man should have a place on the proposed Royal Commission. The two railway members should be drawn from outside the State, so that our system might be examined from a neutral point of view, and compared with what is done outside Western Australia. In the course of my investigations I found some difficulty in securing as complete a set of statistics as might be desirable. The statistician gives some of the figures in sterling, and that is also done by the Commissioner of Railways. Others are given in weights. I have discarded many of the figures quoted in sterling, because values are continually changing. For the sake of argument, that the railways carry 100 lbs. of wheat at 1s. 8d. conveys nothing with regard to wheat carried at 3s. or 4s. Consequently I have discarded sterling figures, and shall quote only those given in weights. I would like to stress here that any conclusion arrived at in regard to the success or otherwise of the railway system is not, and should not be, based on financial results. Too often when we go along to the Railway Department for any concession or improved service, the reply given is that it would not pay to grant the request. The Railway Department have been given a monopoly of rail transport in this State in order that they may assist in the development of the State. I contend that it is from this point of view we should judge the railways to decide whether or not they are carrying out their job. I do not suggest that the financial aspect should not be taken into consideration at all, but the first consideration is service to the public of the State. When that is being given, a close scrutiny must be kept on the accounts in order to get them, as nearly as possible at all events, to balance. At the present time, however, finance seems to be the first consideration, service to the public coming in afterwards. I must dissociate myself, at all events, from any opinion of that description. Earlier in my remarks I stated that the Commissioner of Railways probably had unfair competition to meet and conditions imposed upon him for which he was not responsible. I had in mind the policy lately adopted of constructing bitumen roads running parallel with the railways, and often separated from main railway lines only by a fence. An example of that is the Perth-Beverley road via York. The whole length of that road is bitumenised to within five miles of Beverley. To give an example of the competition which the railways are up against, I may mention that not long ago I was with some friends in Perth and they asked me to accompany them back by motor to Beverley. I said that I had to catch the train. They said that we would catch the train all right at Beverley. The train left Perth at 4 p.m., whereas we left the city at a quarter to seven, almost three hours after the departure of the train, and yet we passed it at York at 8 p.m., and at Beverley I had to wait 20 minutes for the train to catch up to us. With those conditions we cannot possibly expect people to travel on the railways. In addition, I am perfectly certain that every country member will bear me out when I say that on the arrival of trains at stations during the night, especially during the winter months, passengers, and particularly those in open corridor second-class carriages, are to be seen huddled up in coats, or rugs if they possess them, trying to get warm. One should not ask one-

self why people do not patronise the railways: one should rather wonder that people patronise them at all, in view of the discomforts. When such things are going on upon an asset like our railways, it is our duty to inquire whether things cannot be improved. I think that before I finish I shall give sufficient proof that these things have been overcome elsewhere, and therefore should be overcome here. Before leaving that aspect, I do not want it to be inferred from what I have said about the construction of bitumen roads that I am against the construction of good roads in the country. A few nights ago the Minister for Works gave an interesting resumé of the activities of the Main Roads Board during the past few years. For the size of Western Australia and its population, we have the best roads of all the States in the Commonwealth. It is right that the construction of these bitumen roads should be continued, but it is a question whether it is good policy to have bitumen roads constructed alongside the railways or whether the roads should run more at right angles to the railways, thus acting as feeders for them. Personally I think the roads should feed our railways. I have in mind an excellent road, that from Williams to Kondinin. The road crosses three different sections of railway, and is feeding the railway system. It represents a facility to the country people in getting access to the railway line, but it is not competing with the Railway Department as some other roads are. If we continue in the present way, the time is not far distant when the railways will simply carry wheat and superphosphate, and all other goods will be sent by road. That is a thing with which the Commissioner of Railways has nothing to do. He is not responsible for, nor is he even consulted about, the construction of roads; but they undoubtedly affect the successful running of his department, and the matter should be inquired into. Another thing the Commissioner is not responsible for and which is a heavy drag on the railways, is the building of unpaying lines in the country. I have in mind one particular case. A line was built not many years ago which is 325 miles from Perth to the rail head. It was not recommended by the Engineer-in-Chief of those times. He recommended another line, about 100 miles shorter, to Perth. However, the longer line was built. Of course people are not going to use 100 unnecessary miles of railway for passenger or goods traffic when they can save that mileage by using another line reaching a point within 30 miles of the first-mentioned line. They simply use the shorter line and then transport their goods or themselves by motor traffic to their destination. Thus the Commissioner of Railways is faced with a loss of earnings by consignees using the shorter route, and, in addition, he is losing the money expended on the running of unpatronised trains on the longer line. I would like to be able to give a summary of the receipts and expenditure for that line, but unfortunately the only information I can get from the Commissioner's report is the quantity of goods handled at each siding. On that particular line, there is no siding with sufficient traffic to entitle it to special mention. All the sidings are bundled together under the heading "Miscellaneous Receipts" at the end of the return. However, I will give an illustration of the difficulties the Commissioner is up against on that line. A few years ago I approached the department with a request that they put on a stock train once a month to bring down sheep to the Midland Junction markets. The then Chief Traffic Manager, the late Mr. O'Connor, went into the matter and replied that it was not possible to do as requested, because in order to do so it would be necessary to book on a train crew and do a run of 80 miles to the junction, book off the crew for eight hours, then book them on again and run to the rail head, a distance of 60 miles, book off again for eight hours, then book on again and run back to the junction station; book off again for eight hours, and then book on again and run to the originating station. That, he said, was an impossibility from a railway point of view. In addition, it would be impossible to get fat stock to this point—the originating station—in time to connect with the last train leaving for the Midland Junction fat stock sales without, of course, having the crew out over the week-end. In an effort to overcome the difficulty, a trial was given to using a special special when required to connect with the country stock market, but even this has had to be discontinued. Such is the position on that line. People cannot be expected to patronise it. They come to Perth by anything—

motor truck or motor car. Meantime trains are running up and down the line only making greater losses. Of course there was an alternative route suggested to the Parliament of former days, by which the distance, instead of being 325 miles, would be about 280.

The Minister for Railways: What line is that?

Mr. SEWARD: The Wagin-Lake Grace-Hyden line. That line passes through some excellent country, as the Minister for Agriculture is aware. I had the pleasure of taking the hon. gentleman through it last year. There is no doubt that the line serves some of the best agricultural land in the State. But that line could have been built over a more convenient route than the one adopted. However, it is one of the lines that the Commissioner unfortunately has to carry, and it must have an adverse effect on his financial returns. Probably there are other similar instances. Let me give an instance of the excessive freight to be paid on that line. A farmer living on it wanted a spoke for his harvester wheel. He wrote to Perth for it. The cost of the spoke was 6s. 6d., and the railway freight was 6s. These are instances of a policy which is imposed on the Commissioner, and of course he has to take things as he finds them. There are, however, other aspects of the railways for which we must hold the present railway administration responsible. I have no desire to blame any of the railway officers. I have always found them most courteous and helpful. I have received much attention from them. But if the administration is falling behind, no matter how courteous the officials may be, we must hold them responsible. Earlier in my remarks I stated that the railways are not receiving that patronage which they should get. The depression seriously affected not only the freightage or tonnage carried but also the passenger traffic. Taking the passenger figures for our railways, they show a tremendous decline. During the years 1894-98 passenger traffic rose from 617,080 or 9.18 per head of population in the former year to 5,669,444 in 1898 or 34.56 per head of population. Following this, and taking five-yearly periods, we find that between 1899 and 1903 the average number of passengers carried each year was 7,237,083, or 38.30 per head of population; 1904-08, 12,202,780, or 48.48; 1909-13, 15,005,539, or 51.86; 1914-18, 18,055,345, or 57.15. It was during this period that the railways reached the peak in passenger traffic, namely, in 1914, when 19,208,420 passengers were carried, representing 60.00 for every head of population. After that a steady falling off in traffic has to be recorded. In 1919-23 the average number of passengers carried annually was 17,839,005, or 51.72 per head of population; 1924-28, 16,711,533, or 45.02; 1929-33, 12,581,907, or 30.20; 1934-36, 12,467,103, or 28.09. Thus we find that since 1914 when 19,208,420 passengers were carried, the number has progressively fallen to the figures of last year when 12,421,527 were carried. It is only fair to state that last year's figures were not the lowest in recent years. The lowest were in 1932, when only 10,394,311 passenger journeys were recorded, so that a slight improvement has taken place since then. But the improvement is so slow, a gain of but three journeys per head of population from 24.66 to 27.75, that it must be apparent to all that extra efforts to regain the lost traffic are urgently necessary. One might anticipate the statement that trams and buses have superseded railways, and that gradually railways will be discarded for suburban traffic, but that is not the experience in South Africa, where by the way the gauge is 3ft. 6in., the same as ours. I am going to quote a few figures taken from the latest report of the South African Railways to show how passenger traffic has increased there. The following represent the passenger journeys made in different years:—

| Year. | Passenger journeys made. |
|---|---|
| 1909 .. .. .. | 28,191,135 |
| 1933 .. .. .. | 69,921,653 |
| 1934 .. .. .. | 75,757,764 |
| 1935 .. .. .. | 83,280,993 |
| 1936 .. .. .. | 89,800,870 |

This reveals an increase in four years of 20,000,000 passenger journeys. One naturally asks, if that can be done in South Africa, why is it that our passenger traffic is falling off so shockingly? The reason for the better returns in South Africa is probably to be found in the following paragraph taken from the previously-mentioned general manager's report—

The policy of improving passenger train services was continued during the year under review (1936). The outstanding improvement was no doubt that in regard to the acceleration of trains, and the organisation of through

services which permitted of substantial reduction being effected in the time occupied by journeys between the more important centres. A few of the reductions were as follows:—

Johannesburg to Capetown accelerated by 63 minutes.

Capetown to Johannesburg by 60 minutes.

The Minister for Railways: They have plenty of scope on that journey.

Mr. SEWARD: We have probably just as much scope as they. Other reductions were:—

Johannesburg to Port Alfred 160 minutes.
Johannesburg to Port Elizabeth 140 minutes.
Johannesburg to East London 275 minutes.

Mr. SEWARD: The point I want to make is not as to whether the South African Railway Department has plenty of scope for speeding up, but the fact that the Western Australian Railway Department is not making any attempt to speed up. Consequently it is daily losing traffic. Unfortunately I have not been able to get hold of any old time-tables for Western Australia, so that I cannot make any comparison between the conditions of to-day and those of 30 years ago. Members will have sufficient recollection of conditions then and knowledge of present conditions to enable them to decide whether our trains are being speeded up or not.

The Minister for Railways: They have heavier rails in South Africa.

Mr. SEWARD: That does not matter. The point I am making is that in South Africa they are increasing their passenger traffic, and they have the same competition from other forms of transport that we have. Nevertheless they are getting the passengers, and we are not. That is one of the things which impelled me to move for this investigation. I want to read the short report furnished by the South African authorities concerning the extra trains they had to put on last year to cope with the increased traffic. Here is a list of the extra trains that had to be run in 1936 to cope with the additional patronage:—

| | 1933-34. | 1935-36. | Increase. |
|---|---|---|---|
| Main line trains .. | 22,310 | 24,972 | 2,662 |
| Local trains .. | 47,672 | 50,101 | 2,429 |
| Suburban .. .. | 390,796 | 403,109 | 12,313 |
| Rail cars .. .. | 6,752 | 6,803 | 51 |
| Mixed trains .. | 63,391 | 62,804 | 587 |

The Minister for Railways: They are suffering from a depression there, are they not?

Mr. SEWARD: It looks like it, doesn't it? The railway authorities are having extreme difficulty in dealing with all the trade they are getting.

Mr. Rodoreda: They do not build bitumen roads there.

Mr. SEWARD: Summarising the general position, the general manager says—

During the year 1935-36 railway traffic again increased on an unprecedented scale, and fresh records were established. The additional traffic was reflected in all directions. Passengers, goods, coal, livestock, harbour and shipping tonnage all showed substantial increases over the figures of the previous year, and the extra business done by subsidiary branches of the service such as the catering department, road and motor, publicity and tourist services, reached equally high levels.

The improvements effected in the South African railway system are exactly the improvements we have been asking for here for a number of years. People are accustomed to travel much faster now than they did 30 years ago, and unless there can be some speeding up of the railway system in Western Australia, the public cannot be blamed if they support other means of transport. No matter which country is examined, it will be found that the railway authorities are making experiments of various kinds: for example, with streamlined engines and carriages, and improvements in coaches, in order to encourage the public to patronise the railways. I had the pleasure the other night of seeing pictures of the latest carriages on the Japanese railways. We have nothing to compare with the first, second and third-class sleepers provided on those railways, and Japan has a 3ft. 6in. gauge, too. It is exactly the same in South Africa. The accommodation on sleeping cars is such as to be attractive to those wishing to travel. Unless we can keep up with the progress made by other countries, we cannot expect people to use our railways. In the report of the Commissioner for the South African railways, reference is made to matters with which we are familiar, such as road competition, which has to be faced there, the same as here. It seems, however, that the Railway Department in South Africa has embarked on a campaign of improving the railway service to enable it to compete with other forms of transport. In this State we have been carrying on with methods that were antiquated 25 years ago and we rely on the elimination of competi-

tive traffic rather than on the improvement of the railways. Another matter to which I wish to refer is the question of sleeper accommodation. During the last ten years an improved coach, known as the "AZ" has been placed upon our railways. This is a great improvement on the old four-berth coach, and it has been appreciated by the people using it. We have these coaches on the Albany line, but the trouble is that when there is extra traffic on the railways, a coach is taken away from that line and put elsewhere. Were the Commissioner asked why that has been done he would probably reply that the patronage on the Albany line is so small that the coach is naturally taken away from that line first. Nobody who uses the railway can fail to notice that the sleeper accommodation is not patronised to the extent it should be, and one naturally asks why? I am firmly convinced that the reason is the excessive charge made. The amount of 15s. has to be paid for a sleeper whether one comes from Albany or gets on at Wagin, Narrogin or Katanning. Any reasonable man would refuse to pay that amount and prefer to go to a hotel at a cost of 5s. and continue the journey on the following day.

The Premier: They pay £1 in Victoria.

Mr. SEWARD: That does not matter. The conditions there are very different from those in Western Australia.

The Minister for Railways: Their sleepers are no better there than they are here, nor in Sydney either.

Mr. SEWARD: I know too much about the Victorian and New South Wales railways to agree that there is no difference.

The Minister for Railways: I have never noticed it.

Mr. SEWARD: There was a difference when I was living there, and I have not been in Victoria for 19 years. I am certain there have been improvements since then: but that is not the point.

Mr. Raphael: The berths are only half an inch wide here, and then you have to tie yourself down, or you are thrown out.

Mr. SEWARD: The Minister might like to see pictures of the coaches in other places. The member for Kalgoorlie (Mr. Styants) showed me the Japanese pictures, and I have photos of the South African coaches.

The Minister for Railways: Ours would look pretty good in a photo.

Mr. SEWARD: I am not suggesting that they are not good. I suggest they are not good enough; but I do not want to be sidetracked. The point I was making is that the charge for these sleepers is too high. I wrote to the Commissioner suggesting that the charge should be reduced. This is his reply—

> Referring to your letter of the 30th ult., relative to the charge for sleeping berths, I am directed by the Commissioner to inform you that the possibility of inducing more passengers to utilise sleeping berths at a lower charge has been fully explored, but the view is held that the additional patronage would not be sufficient to compensate for the reduced revenue from the lower charge. If, for instance, the charge were reduced from 15s. to 7s. 6d. it would be necessary to double the sleeper bookings to avoid reducing the present revenue from them, whilst a reduction to 5s. would mean that the bookings would have to be more than trebled before revenue would increase.

In a previous letter he said the bookings on this line were almost infinitesimal. Yet he fears a reduction of revenue. He continues:

> It seems very unlikely that such results would be achieved and, even if they were, extra coaches would have to be added to the train, thus increasing haulage costs and widening the gap which would have to be covered before any advantage would accrue to the Department from the increased business. Our charge of 15s. is already lower than that of the Eastern States where a fee of £1 is general, and for the accommodation provided it cannot be considered unreasonable.

The Commissioner therefore was not able to accede to my suggestion that he should reduce the sleeper charge from 15s. to 7s. 6d., or even 5s. I turn again to the report of the South African railways, and I find this—

> As a means of improving the standard of train travel, a service of de luxe beds comprising a special mattress with standardised bedding was introduced recently on the limited and express trains. These beds, which are issued at an inclusive charge of 7s. 6d. per set for one unbroken journey, are also supplied to passengers on other trains subject to prior reservation at least 24 hours in advance of the commencement of journeys. The demand for de luxe bedding indicates that the service has found favour with the travelling public.

So in South Africa they can put on this improved service for 7s. 6d. and get increased patronage, yet our Commissioner says that if he were to reduce his charge of 15s., it is doubtful whether he would get an increased patronage.

The Minister for Railways: I suppose they have blackfellows employed on the trains.

Mr. SEWARD: What does that matter?

The Premier: At about 10 bob a day.

Mr. SEWARD: That is always a refuge with anybody who does not want to investigate something. I should like the Minister to investigate these reports and, if he can refute them, I shall be pleased to hear him do it.

The Premier: You are dealing with a nigger company.

Mr. SEWARD: I should not like to have to give a name to that subterfuge on the part of the Premier.

The Premier: I know what has happened in South Africa.

Mr. SEWARD: Yes, and I think it is high time we did something to bring about similar results. The financial returns from the bedding branch of the South African railways show that the receipts were £64,879, the expenditure £52,545, leaving a surplus of £12,334. They were the figures for 1935, and the receipts for 1936 were greater by £5,538. Instead of reducing the grossly extravagant price of 15s. for a sleeper from, say, Narrogin or Wagin, our department prefers to haul the sleeping car up and down the line year in and year out for what they themselves term its infinitesimal patronage. Before leaving the passenger branch of our railways, I want to mention the position of country people who desire to patronise the railways if they can. I frequently have this put up to me by people who want to board a train at an unattended siding. On reaching that siding they do not know whether the train has gone through or not. After waiting perhaps an hour, they determine that the train has gone through. Surely some means of indicating whether a train has passed through could be adopted so that intending passengers would know. Unless this sort of thing is altered, those people will turn away from the trains altogether. Dealing now with the goods traffic, the departmental report states that this branch is fast losing patronage, though not to such a degree as is the passenger service. That result, no doubt, has been secured by the operations of the Transport Co-ordination Act rather than by any up-to-date methods of the department. In the five years 1894-98 the carriage of paying goods and livestock represented 4.75 tons per head of population. In the following five years it amounted to 8.41. In the next succeeding five-yearly period the figure was 8.35. In the period ended 1913 it was 8.39. The next quinquennial period represented 8.17, after which the figure fell to 7.28, rose again to 8.95, fell to 7.71, and for the period 1934-36 it was down to 6.34. Thus we see that the tonnage carried per head of population has been less during the last three years than at any time since 1897. For comparison I go again to the South African railways. There, in 1909 the goods carried over the railways amounted to nearly 9,000,000 tons. In 1927 it was nearly 21,000,000 tons; in 1933 it had fallen to 17,000,000; in the following year it rose to 20½ million; in 1935 it was nearly 24,000,000; and last year it was nearly 36,000,00. And that does not include livestock, the traffic under that heading being shown in the South African report as number of animals carried, not the tonnage carried. However, that does not affect the comparison, so there again I say that if South Africa with their competition——

Mr. Cross: Do they build roads alongside the railways, as we do here?

Mr. SEWARD: If they do not, it shows their commonsense. Their Railway Commissioner's report has the following paragraph under the heading of road competition—

> Reference was made last year to the position which had been created by unbridled competition offered by the operation of road services between Port Nolloth and areas adequately served by railway transport, and as a result of investigations certain roads were proclaimed in terms of the Motor Carrier Transportation Act.

So apparently they have the same competition to meet there, despite which they have greatly increased the tonnage carried on their railways. They did not sit down under their Transport Act and wait for traffic to come to their railways, but have succeeded in doubling it in four years. I may mention that in South Africa they have instituted a service of road vehicles as feeders for their railways, which seem to have worked wonders in building up the business of the railways. In Western Australia, when the Transport Co-ordination Act was passed a few years ago, members on this side of the House pointed out to the Government that one effect of driving the motor trucks off the road would be to prevent their bringing in a lot of perishable stuff to the railways. That is exactly what has hap-

pened. The farmers used to send their produce by motor truck to the railways, but when the motor trucks were put off the roads, that business was lost to the railways. If the railways had had the foresight to put on a motor service of their own, the business undoubtedly would have grown, and so built up traffic for the railways. Another thing: when this road competition came into operation the Commissioner sent his officers round the various districts. One came to us and asked us not to send wool by road. We had never done so, notwithstanding that sending by the railway meant loss of time. We went to the railway officials and suggested that they should hire the local carrier to take all the wool of the neighbourhood to the siding. Had that been done, the railways would have got every bale of wool in the district. But no, they would not do that. One had to take it in to the railways himself. In consequence, most of the growers made quite other arrangements. What a contrast with the practice in South Africa where the railways introduced their own motor services! The following extract from the report of the South African railways should be of considerable interest to our dairying section:—

> Milk and cream traffic conveyed by the administration road motor vehicles, a large proportion of which was reconsigned by rail to the consuming centres, advanced from 1,008,080 gallons in 1934-5 to 1,337,815 gallons in 1936.

So we see that in South Africa the railways have established a road service in order to feed the railway system, and also as an answer to private road traffic. Another matter to which I would refer is the manner in which stock, particularly sheep, are handled on our railways. Early this year, after sending some sheep to the Midland sales, I received an account sales showing that one of the sheep had been crippled in the railway truck. Frequently one sends along sheep by the railway and his account sales show that several of them have been injured by getting down and being trampled on in the truck. That, of course, means considerable loss to the owner. We have asked the Commissioner of Railways to send a man along with a stock train, a man who would look at the trucks at each stopping place with a view to lifting any sheep that might be lying down. But no, the request is refused, and the farmer has to go on paying. That being so, can we blame the farmer if he refuses to send sheep by rail and uses road transport instead? Another matter: until a few years ago, all trucks conveying stock were sealed after loading. That was a safeguard against stealing, but the practice has now been stopped.

Hon. P. D. Ferguson: Why has it been stopped?

Mr. SEWARD: Because it is not done in the Eastern States.

Hon. P. D. Ferguson: How much did it cost the department?

Mr. SEWARD: I should say it cost the Commissioner nothing. Under the present system, yearly, hundreds of sheep are missing. I do not say for a moment that all are stolen, for miscounting may in some instances be the cause, but the sealing of stock trucks would at all events prevent any sheep from being taken out en route. Last year I got by rail a shipment of what should have been 200 ewes, but on arrival they were two short in number. Stock agents are continually speaking of this sort of discrepancy. There are many other things in connection with the railways upon which I could touch; things such as the refreshment service, but I think I have given sufficient information to the House to justify my motion for a searching inquiry. I do not wish to blame anyone, but I cannot help noticing the falling off in the business that the railways are doing, and so I deemed it my duty to bring the matter before the House.

On motion by Minister for Railways, debate adjourned.

## BILLS (2)—RETURNED.

1, Main Roads Act Amendment.

2, Main Roads Act Amendment Act, 1932, Amendment.

Without amendment.

## BILL—MUNICIPAL CORPORATIONS ACT AMENDMENT (No. 1).

*Order Discharged.*

Order of the Day read for the second reading to be moved.

**MR. CROSS** (Canning) [5.28]: I wish to make an explanation. In common with other private members, prior to the commencement

of the session I had no idea what were the intentions of the Government. Now I find that in a comprehensive Bill the Government propose to do all that I proposed to do with the Bill now before the House; they propose to repeal Sections 413, 414 and 415 and clauses 21 and 22 of the Schedule of the Municipal Corporations Act. The proposals in this Bill merely aim at abolishing the present system of distressing for rates in a municipality. If the Government succeed in their proposal, my objective will have been achieved, and so I move—

That the Order of the Day be discharged from the Notice Paper.

Question put and passed.

## BILL—LEGAL PRACTITIONERS ACT AMENDMENT.

*Second Reading.*

Debate resumed from the 25th August.

**MR. NORTH** (Claremont) [5.30]: This is the second occasion on which the member for Fremantle (Mr. Sleeman) has tried to increase the number of members of the profession. This, at all events, is one way of interpreting his intentions. He is a kind of recruiting sergeant for the devil's brigade. He thinks it is not up to full strength. It does not seem to me that he will necessarily increase the number of members of the profession, but he intends to make it possible for everyone in the State with sufficient ability and integrity to be admitted to it. In that respect I would be with him, but I do not like the method he adopts to achieve his end. The legal profession is not a popular one, either in the sense of those who intend to go in for it, or from the public point of view. Many people who may be ambitious in their youthful days in other directions may go a long way before deciding to join this intricate profession. It is full of pitfalls, and there are great difficulties attached to it. I do not think the hon. member realises how few there are of those he desires to assist, or that there are probably only a handful of such persons in the whole State. It does not seem to me that he is making an effort which will have a general appeal. As I say, there are pitfalls in the profession, although there are great honours too. If one of the hon. member's proposed candidates succeeds in getting to the highest position on the Bench, in reaching the eminence of the High Court, well and good, but they may only achieve a lonely place and their course in the profession might not lead to great successes. I do not think the hon. member really should, as he is doing, attempt to achieve his end by penalising those who desire to enter the profession. It is penalising them to say to those who desire to be articled to a lawyer that they shall have to earn their living outside. I would remind the hon. member what happens in the military sphere. Suppose there is a great war, and the army is functioning. It may be necessary for members of the army to go through a certain course of training, possibly in the Air Force or take a machine gun course. The army system provides that those in the front line who are doing their jobs there shall carry on with it, not that they shall go through their course in that way. Those who are in the front line carry on the work of the army. They are not expected to go through any course there. Such courses are taken at the base. Here we have a system suggested wherein it is proposed that candidates for the legal profession should have to earn their living as Sir Isaac Isaacs did seventy years ago. The hon. member must remember that he himself has been in Parliament for 14 years, and joined the Labour Party many years before that. During his speech he referred to the fact that Sir Isaac Isaacs had, with the few shillings he was able to earn daily, gone through the profession, achieved the highest position of eminence in it, and became Governor General. The hon. member is, however, going back seventy years. How can he at this stage justify the suggestion that there are impecunious students in the State that the State is not in a position to provide for in a five or six years course of law? This may not sound a relevant objection, but I put it forward seriously. The hon. member has not yet got over that scarcity complex which still seems to pervade this House. The idea is that there are many things to be done, and that the man who is going through this important course has to take on navvying or some other work of that sort while taking his course. He has to earn his living in some other way during the time he is studying for the profession. I would not have raised this point if I had not seen something startling in the Press this week. I would have been prepared to take lying down the fact that this House has a scarcity complex, and feels that there is

always work to do for students, and that even the army system is superior in its method of teaching a new course. This week I noticed in the Press that in London they are taking a movie-tone or a sound picture of a seance. In this Chamber the hon. member may get away with his old ideas, seeing that the public may not take much notice of what he is advocating. He may, however, have to face the thought of being hooked up in one of those seances in the years to come. One can imagine a number of elderly persons sitting round in a serious and sober way, saying, "Now, Joe, in 1937 you tried to bring in a law to make law students do navvying while taking their course in law. How can you justify that?" Joe would say, "As a member of the Labour Party I did everything I could to improve the conditions of those people, but after being 14 years in Parliament, I had to arrange for them to take special work, to labour amongst other workers, and take a job from someone else before going through this important law course." Those elderly persons would know that Western Australia was to-day the biggest producer in the world per head of the population. On paper we are apparently the richest country in the world per head. The hon. member would have to convince those elderly persons who tackled him about his methods, and he would have to say, "I know we had the biggest production in the world at the time, but in spite of that I was unable to distribute all this production sufficiently to enable the poor students to get a couple of meals a day and have a roof over their heads whilst going through an important law course." It is a very nasty thought. In Committee I propose to move an amendment that the law shall remain as it is, that the Barristers' Board shall have power to prevent those they think should not work during their course from doing so, provided that such power shall be held in abeyance until, to use the words of Mr. Bruce at Geneva, the benefits of science can be made available to the masses. That proviso would enable the hon. member to achieve his object in the meantime, and it would remind the House that we have still failed to make these benefits available. I am not sure that the hon. member would agree to this, but if he did it might encourage another place to pass the Bill. In their exalted position they would feel that the benefits of science were available to the masses to-day, and would consider that everything was well. Another clause in the Bill has to do with preventing lawyers from taking any premiums during the articles. There is another to prevent eminent counsel coming here from abroad to practise as a barrister.

Mr. Sleeman: Tell them about eating their dinners in the Old Country.

Mr. NORTH: The hon. member desires that no one shall practise without going through so many years of training here. That is all right as regards those who wish to go in for the profession on the solicitors' side. I can see no objection to persons coming here from abroad who desire to practise as barristers and are entitled to do so. The Bill will have my support in the hope that in Committee I may be able to make these slight alterations.

**MR. McDONALD** (West Perth) [5.42]: At present I will not oppose the second reading, but in Committee I propose to make a few remarks.

**MR. SLEEMAN** (Fremantle—in reply) [5.43]: I am pleased at the reception accorded the Bill. I take it that silence means that members have given their consent.

Mr. Marshall: Wait till it gets to another place.

Mr. SLEEMAN: I do not know whether to take the member for Claremont (Mr. North) seriously, or to take his remarks as a joke. He had not much to say about the Bill itself. He dwelt more on Clause 13. He could have said more about the portion of the Bill dealing with young men going to the Old Country, sons of wealthy parents, and returning here and gaining an advantage over the poor local lad whose parents could not afford to send him to England.

Mr. Hughes: Are you, as Chairman of Committees, replying to something that was not said?

Mr. SLEEMAN: I think the hon. member could have done better than he did when referring to Clause 13. He said he was going to have something more to say in Committee, and to move an amendment to Clause 13. Meanwhile, I thank members for their reception of the Bill, and am sure that on this occasion it will be passed.

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

| | |
|---|---|
| Ayes .. .. .. .. | 38 |
| Noes .. .. .. .. | 4 |
| Majority for .. .. | 34 |

AYES.

| | |
|---|---|
| Mr. Brockman | Mr. Needham |
| Mr. Coverley | Mr. North |
| Mr. Cross | Mr. Nulsen |
| Mr. Doney | Mr. Sampson |
| Mr. Doust | Mr. Raphael |
| Mr. Ferguson | Mr. Rodoreda |
| Mr. Fox | Mr. Shearn |
| Mr. Hawke | Mr. Sleeman |
| Mr. Hegney | Mr. F. C. L. Smith |
| Mr. Hill | Mr. Stubbs |
| Miss Holman | Mr. Styants |
| Mr. Hughes | Mr. Tonkin |
| Mr. Johnson | Mr. Troy |
| Mr. Lambert | Mr. Warner |
| Mr. Mann | Mr. Watts |
| Mr. Marshall | Mr. Welsh |
| Mr. McDonald | Mr. Willcock |
| Mr. Millington | Mr. Wise |
| Mr. Munsie | Mr. Wilson |
| | (*Teller.*) |

NOES.

| | |
|---|---|
| Mrs. Cardell-Oliver | Mr. Latham |
| Mr. Keenan | Mr. Thorn |
| | (*Teller.*) |

Question thus passed.

Bill read a second time.

## BILL—CONSTITUTION ACTS AMENDMENT.

*Second Reading.*

**MR. HUGHES** (East Perth) [5.50] in moving the second reading said: This is a Bill designed to readjust the relationships that exist between the two branches of the Legislature in this State. I see that probably the most important clause of the Bill is not included in it at present; I hope to have it inserted at the Committee stage, provided it is sufficiently relevant to the subject matter of the Bill! The British Government, about the year 1890, went to considerable trouble in passing legislation through the British Legislature to give Western Australia what was described as "Responsible Government." I do not think there is any doubt that they failed. In the course of time all forms of Government must give way. We know that the struggle from ancient times has gradually been from a dominant personality, generally controlling the majority of his fellow beings by means of force that he has been able to exercise through being possessed of sufficient organising ability to convince an adequate number of the people to enable him to dominate the rest. With the spread of education the tendency has been to move away from individual control and to vest power in the people. It has been recognised that under the form of Government we have, the ultimate power must rest in the electorate and consequently from the olden days there has been a gradual shifting of the ultimate power from the individual, thence to chosen groups of individuals until the ideal democratic state is reached when each person in the community is recognised as having an equal right in the voice of the Government to which he has been prepared to surrender many of his individual rights. If we depart from that, we take from the individual some of his natural liberty. To-day, in our organised society each individual must surrender some of his natural rights and impulses to the extent that he must restrain himself. While each individual is able to enjoy a maximum degree of personal liberty, that maximum liberty must be consistent with equal liberty enjoyed by his fellow citizens. There is nothing to stop me exercising my natural impulse to swing my arms about, so long as my exercise of that privilege does not injure or restrain the liberty of my fellow citizen in any way. Therefore with the spread of education there has been a continuous demand, and growth, to vest sovereign powers not in any dominant individual or bureaucracy, but in the people at large. Every time there has been a forward movement to vest ultimate control in the people, those already in power have naturally raised all sorts of objections. The other night I read in one of Cicero's works how perturbed and upset he was regarding the fact that the controlling influence in Rome that had existed for 2,000 years was being shifted from the dominant class to the people at large. Cicero was probably the greatest lawyer of all time and yet he did not serve one day at articles during the course of his life.

Mr. Marshall: With or without work.

Mr. HUGHES: That is so. Moreover, I believe Cicero did not have to serve any bill of costs, which might be taxed, but enjoyed the gifts of his clients. I understand that the little pocket that is provided in the gowns worn by lawyers when they are to appear in court, originated in olden days when grateful clients went to their counsel at the end of a case and dropped golden guineas into the pocket.

Hon. C. G. Latham: I suppose they wanted to take them out if they lost.

Mr HUGHES: I do not know what it was that caused a change from the policy adopted by grateful clients and the substitution of the system of presenting bills that are subject to taxing.

Mr. Hegney: The old system should be restored.

Mr. HUGHES: Cicero lamented the fact that by extending the franchise, dire consequences would happen to the community in general. With all his genius and brilliance, he could not visualise that what was good enough for 2,000 years might not be good for Rome 2,000 years afterwards. Notwithstanding the spread of education, the conservative mind—and we are all fairly conservative when it comes to a final show-down—is always trying to tie up future generations in the belief that something they adhered to will be the order of the day long after they have ceased to inhabit this planet. It is well known in English law that one of the greatest fights was to stop people tying up others with what they considered ought to be the law and the tendency to say that what was a very suitable and efficient law having regard to the state of society at the time, should be the law for all time. Of course changes followed. The order of society has altered and consequently what was good government 1,000 years ago cannot be regarded as good government to-day. We had the same cry in 1896 when Locke wrote his "Liberty and Democracy." He devoted chapter after chapter to bewailing the fact that with the extension of the franchise and giving the people the right to vote, all sorts of dire consequences would happen to the community. He spoke of the politicians being controlled by the uneducated and illiterate masses and prophesied calamities of various descriptions. Nevertheless, those calamities did not follow, mainly because education has improved the standard of the people's knowledge and intelligence. To-day the wireless is being used to spread knowledge and to give the people a better understanding of affairs of government. Personally, I believe there is one thing only that will stop war, and that is the adoption of a universal language, which may ultimately be the result of world improvement. The dire consequences predicted by historians and other eminent men, if we placed power in the hands of the people, have not materialised. One has only to come to Western Australia of 1937 to find the most conservative Government the State has ever had masquerading under the cloak of radicalism. So there is nothing to fear from trusting the people at large. We have, of course, a written Constitution. Our Constitution is an Act of the Imperial Parliament and although it is a written Constitution it is a very elastic one and is limitless. Section 2 gives this legislature full authority to make laws for the peace, order and good government of the colony of Western Australia and its dependencies. There we have the widest possible powers to make laws that could be vested in any legislature. Unfortunately that power has been more or less cut down by the establishment of the Commonwealth of Australia which, by another Act of the Imperial Parliament, takes away from the State certain matters upon which it could legislate, and so deprives us of that complete sovereign power that we had. When the Constitution was enacted we were emerging from a Crown Colony state. We were given a bi-cameral system of legislature, patterned after the Imperial Parliament, which consisted of an elective chamber and a nominative chamber. The elective chamber was as nearly as possible the equivalent of the House of Commons. The hereditary chamber, which was the nominee chamber, was fashioned after the House of Lords. So the real position was that the second chamber came under the control of the elective chamber because the elective chamber by electing its ministers was able to nominate additional members to the nominee chamber. Thus, if the Lower House really wanted legislation carried there was the power that the Governor, acting with his Ministers, could appoint members to the Upper Chamber to carry through the legislation. That was really the power that brought about the abolition of the Upper House in Queensland, and a similar power was used successfully to reform the Upper House in New South Wales. We in Western Australia are unfortunate inasmuch as we now have two elective Chambers, and by means of those two Chambers, we are placed in a disadvantageous position with the people of Western Australia who have never had vested in them the sovereign controlling power of Parliament. We know that this has been the means of a considerable amount of political hypocrisy and trie-

kery in Western Australia, and the electors have been fooled time and again because political parties, on going to the country, have promised the electors that, if returned, they would do certain things, knowing full well that their promises would never be fulfilled, because whatever had been promised would not pass the second Chamber. Frequently we have spent hours in this House discussing Bills and getting ourselves hot and bothered about the Standing Orders and other Parliamentary paraphernalia, knowing full well that our labours were doomed to failure. We are well aware that many Bills, on being sent to another place, are doomed, and I think it is an open secret that many Bills are introduced in the form in which they appear before this House because it is known they will be rejected in another place.

Mr. Cross: Are you speaking for yourself?

Mr. HUGHES: I am speaking from experience.

The Minister for Lands interjected.

Mr. HUGHES: One might feel like the hon. member who, with all his eminence and experience, might yet have little knowledge.

Mr. SPEAKER: The hon. member will discuss the Bill and not the Minister for Lands.

Mr. HUGHES: Very well, but the shaft must have gone home. It is an open secret that much legislation would not be introduced here if it were not known that it would be thrown out in another place. We are in this position: probably the first thing that will be said in respect of any Bill that attempts to extend the power of the Lower House will be that we are going to establish a one-Chamber legislature. Even if this Bill is thrown out by another place, if it gets there, an effort will have been made to readjust the relationships between the Houses, and we know that for the last 30 years we have heard people declaiming against the other House and at the same time not a solitary attempt has ever been made to readjust the powers of the two Houses. The reason for that is that the Upper House has been a good political weapon. It has been said by those in power, "We would do this or we would do that, but another place will not permit." If this House is sincere in its desire to alter the legislative powers, it need not depend on the other House. Once it is definitely assured that the other House will not agree to reforms that are required, and reforms that have been made in England, there is a power beyond the other House that can be approached to bring about an amendment of our Constitution if we cannot effect that amendment here.

Mr. Marshall: And that is what we shall have to do.

Mr. HUGHES: We have never tried to do it. I have never known a Bill to be introduced in this House to alter or attempt to re-arrange the powers of the Legislature.

Mr. Marshall: We have liberalised the franchise.

Mr. HUGHES: Yes, but no attempt has been made to follow the English Parliament Act.

The Premier: A resolution was passed by this House.

Mr. HUGHES: But a resolution cannot effect a change in any enactment.

The Premier: The resolution was agreed to by this Chamber and sent to another place.

Mr. HUGHES: Suppose this House sent a resolution to the Upper House and it was agreed to there; that would not have the effect of altering the Constitution. Does the Premier mean that a Bill could be brought down after both Houses had agreed to the resolution, a Bill to bring about the change?

The Premier: Look up the resolution and see what it meant.

Mr. HUGHES: It is news to me that by means of a resolution it is possible to amend an Act of Parliament passed by both Houses. With all due respect to the Premier, it could not be done. The Premier will not deny that the only way we can deal with the Constitution is by way of a Bill through the Legislature. I know that an attempt was made to define the powers of the Houses in respect of money Bills. Was not legal opinion obtained as to what were the powers of the Upper House under the existing law? That is a very different thing from bringing about an amendment to the Constitution. I think I know to what the Premier is referring, because I am aware an attempt was made to get an eminent legal authority to give his opinion on the respective powers of the Houses on money Bills under the law as it exists at present. The opinion would be that the Legislative Council in Western Australia

was placed in the same position in respect of money Bills as is the House of Lords.

*Sitting suspended from 6.15 to 7.30 p.m.*

Mr. HUGHES: I was pointing out that although the legislative powers might have been quite suitable for the State in its early stages and until it had settled down, we were unfortunate in having an elective Chamber in preference to a nominee Chamber. Consequently, it has been impossible to get any progress because, under our Constitution, although ours is allegedly a bi-cameral system, those who oppose any attempt to curtail the powers of the Legislative Council always advance the argument that if we take away those powers, we make it one-Chamber government. In reality, where we have a second Chamber elected on a restricted franchise, we finally have one-Chamber government. If a Bill is not acceptable to the second Chamber, it has no possibility of becoming law unless some machinery is provided for overcoming deadlocks and differences of opinion between the two Houses. Hence the legislative power rests entirely with the Legislative Council. No matter how great might be the majority in favour of a Bill in the popular elective Chamber, if it is not approved by another place, it cannot become law. The constant tendency is to create a final and ultimate legislative power in the electorate. The Imperial Parliament, on the basis of which this Parliament is modelled, has its bi-cameral system of legislation, but for 50 years previous to 1908, the second Chamber made no attempt to interfere with a money Bill. The House of Lords for half a century recognised that the House elected on the broad franchise was the right House to have control of the raising and expending of moneys for carrying on the government of the country. So the House of Lords voluntarily refrained from interfering with a money Bill until, in 1908 or 1909, when Mr. Asquith was Prime Minister, the House of Lords took upon itself to reject a money Bill. Mr. Asquith was made of sterner stuff than some of the statesmen of Western Australia. He did not take this rebuff lying down; he did not go round moaning that another place would not allow him to get his legislation passed. He promptly dissolved the House of Commons and went to the country, and when he returned, he presented a Bill that ultimately became the Parliament Act of 1911. By virtue of the vote of the electorate on the specific question of the legislative powers of the two Houses, he was able to show that the people of Great Britain demanded that control of money Bills should be exclusively the province of the lower House. By virtue of the threat that if the House of Lords did not pass the Bill, sufficient peers would be created to pass it, the Parliament Bill of 1911 became law. Broadly speaking, the Parliament Act divides Bills into two classes. First there is the money Bill, which has been carefully defined. The Act provides that if a money Bill is sent to the House of Lords at least one month before the close of the session and is rejected by the House of Lords, it automatically becomes law. All that the House of Lords can do with a money Bill is to delay it from becoming law for a period of one month. That was only putting into legislative enactment what had been the constitutional convention for the previous half century. The second part of the Parliament Act deals with Bills other than money Bills. It provides that if a measure is sent from the House of Commons in the same form in two different sessions and is rejected on both occasions by the House of Lords, and if in the third session the Bill is sent to the House of Lords in the same form and again rejected, the Bill may be presented to the Crown, be certified, and become law without the concurrence of the House of Lords. Thus the House of Lords has a restraining power only. The House of Lords can now hold up a Bill for only a little over two years. Under the English Act, there is no necessity for an election to be held between the first rejection of a Bill and its final acceptance without the authority of the House of Lords. The Bill now before members is based as far as possible on the Parliament Act of 1911. There were many debates over the proposed introduction of the Parliament Bill, and many prophecies of the dire consequences that would follow its passing. The debates contain a speech by Mr. Austen Chamberlain in which he deplored the effect of the passing of this legislation. He prophesied all sorts of dire consequences. Well, 26 years have elapsed since the Bill became law and, so far as is known, none of those dire consequences has ensued. It will be very in-

teresting to see whether another Chamberlain—a son or brother of Austen Chamberlain—now that he has taken over the Prime Ministership in England, will make any effort to alter the provisions of the Parliament Act. I venture to say he will not. As we extend the power of government to the people at large, the people can be trusted with the responsibility of governing themselves, particularly in these days of advanced education and the extensive spreading of knowledge, which, of course gives a knowledge of public affairs to the masses of the people, whereas formerly that knowledge was limited to the few. I have imported into this Bill one feature of my own; I hope I have not injured the Parliament Act by so doing, but we are in a different position from the Parliament of Great Britain, inasmuch as there the electoral value of each vote is more or less the same. Here, of course, there are wide disparities in the electoral value of the vote. For instance, we have city constituencies with nearly 10,000 electors, and a member who represents 10,000 electors has only the same voting power as the member for Kimberley, who represents, say, 949 electors. It can never be said that we are putting the ultimate power into the hands of the people when one member has ten times the voting strength of another. We have various constituencies ranging from 10,000 electors to fewer than 1,000 electors. The only way by which we could satisfy ourselves that a Bill actually had the approval of the people would be to introduce a system whereby, on a vote finally to determine whether a Bill should become law, each member should have a voting power according to the number of voters in the electorate represented by him.

Mr. Patrick: What about another referendum?

Mr. HUGHES: This is not by any means a new idea. In commercial life it is the practice for members of a company to vote according to their shareholding in the concern. In view of the way in which electorates are arranged in Western Australia, it would be possible for, say, 26 members representing the lowest number of electors in the various constituencies, to pass a motion in this House and it would be far from being the voice of the people of Western Australia. Therefore I have propounded what I term a representative vote. Instead of waiting for two or three sessions to elapse, I have proposed what might prove to be a workable method of solving many of the problems between this House and another place. I have provided that when a Bill that has been passed by this House is rejected by the Legislative Council, the President of the Legislative Council may, and he shall at the request of the Speaker of the Legislative Assembly, convene a joint sitting of the two Houses, and present that Bill to the vote of the joint sitting; and if that Bill is carried at the joint sitting on a representative vote—that is, each member having a voting strength equivalent to the number of electors he represents—then it shall become law without any further passing by the Legislative Council. In that respect I did overlook one thing, and this I hope to be able to amend if the Bill gets into Committee—the fact that members of the Legislative Council do not represent single constituencies, and that there are three of those members to a certain number of electors. In defining a representative vote I have given each member of the Legislative Council a vote equivalent to the number of people he represents. Thus, inadvertently, I trebled each member's vote. In Committee I hope to carry an amendment reducing that voting strength to one-third of the number of people the member represents.

Mr. Marshall: What is the voting strength of the Council relatively to the Assembly?

Mr. HUGHES: Relatively one-third. In round figures, there are 250,000 electors for the Legislative Assembly and 85,000 for the Legislative Council. If we allowed each member of the Council to vote on the strength of the number of electors in his province, we should be trebling the number. That was not at any time intended by me. It is purely an oversight. At a joint sitting the two Houses would be represented and the vote would be taken on the basis of 250,000 Assembly electors and 85,000 persons with the second vote, due to the privilege of representation in the Legislative Council. There are many Bills which, having been passed by this House, would probably become law at a joint sitting. If ever there was an argument for voting in a representative capacity, our Legislative Council presents that argument, because the figures for the Council show a tremendous disparity between the numbers of electors in the various provinces. In fact, 15 members

of the Legislative Council are elected by less than 25 per cent. of the electors enrolled. So that one can get a resolution or a Bill carried by the Legislative Council while having only 25 per cent. of the electors actually voting through representatives there.

Mr. Marshall: Have you any idea of the percentage of plural votes?

Mr. HUGHES: No. Further, the disparity between electors is enormous. In the metropolitan area the Metropolitan-Suburban Province has 28,860 electors, the West Province has 8,320, and the Metropolitan Province 7,280. Thus, in Subiaco and West Perth, side by side, the Legislative Council elector in West Perth has four times the voting strength of the Legislative Council elector in Subiaco. I admit that when we get away from the city and find electorates engaged predominantly in one industry, occupied mainly with the same class of work, they are apt to get wrapped up in their special private affairs and to take a restricted and narrow view of State affairs generally. Therefore I think it will be readily agreed that as a result of big electorates and the conflict of interests involved, the large city constituency does, with exceptions, produce more broad-minded and more intellectual members of Parliament. However, I do not hold that even on that view city electors should have four times the voting strength of metropolitan-suburban electors. I recognise that in a State like Western Australia, where we have scattered industries a long way from the seat of government, we should give those industries adequate Parliamentary representation. I would not alter any of the provisions at present existing, except that I think there ought to be a more equitable form of distribution of the voting strength of the Legislative Council. Whilst we are prepared to give constituencies far distant from the capital greater representative power, when it finally comes to a decision on a controversial question, on the question whether a certain Bill ought to become law in Western Australia, we ought to be assured whether or not it has the support of a majority of the electors in the State. There are four North-West Assembly seats with about 2,500 electors. Those 2,500 electors have four seats in the Legislative Assembly and, in addition, three seats in the Legislative Council. Thus a small population of 2,500 out of a quarter of a million electors has one-eleventh of the total voting strength in the State.

Hon. P. D. Ferguson: There is nothing very unfair about that, is there?

Mr. HUGHES: We are supposed to be a democracy, and that is a negation of democracy. We can adjust the anomaly by providing that finally there shall be a representative vote. There is no need to take away representation from the North Province of the Legislative Council, but I see no reason why electoral power should not be equally distributed between the ten provinces of that House, as the smaller provinces are already well represented in this Chamber. Taking the 28,000 electors of the metropolitan area against the 1,000 electors in the North Province, we find that the northern electors of the Legislative Council have 28 times the voting strength of city electors. In view of such large disparities, surely it is idle to talk of Western Australia being a democracy. Democracy means that each individual, voting as an intellectual unit, shall represent one vote. It is not territory so much that should be represented, as human intellects capable of thought and understanding. The intellects ought to have the final power vested in them. For better or worse, I have added a provision of that nature to the British Parliament Act, with this exception, that I provide, side by side with the joint sitting, if a Bill has been presented twice to the Legislative Council and been rejected there on both occasions, then, if it is passed by the Assembly with an election intervening, this House can present the Bill to the Council as having definitely received the approval of the electors. If the Council refuses to pass the Bill on that occasion, the measure ought to become law as being the expressed wish of the electorate. My Bill provides that after a measure has been rejected for the third time by the Legislative Council, it shall be necessary to carry a resolution in this House, on a representative vote, so that the Bill will be assured of having the large majority of electors in favour of it. I do not know why the Legislative Council of this State should not be prepared to consider and discuss some form of readjustment of the branches of our Legislature. That has been done in nearly every Australian State. It has been done—in fact, had to be done—in the House of Commons. The second Chamber has always taken the attitude that it is a House of review, and that its function is to prevent hasty legislation. If a Bill can be held up for two years and then presented to the people by means of an

election, I do not think that by any stretch of imagination it could, upon being presented once again, be called hasty and ill-considered legislation. Not only would it have had to undergo two debates in each arm of the Legislature, but it would have had to run the gauntlet of public debate consequent upon a general election. Thus it would be a very much considered and well digested piece of legislation. In accordance with the constitutional functions of the British Parliament the Upper House on that occasion should give way. I do not suppose that the people of Western Australia are going to sit down forever—being a free and enlightened community and becoming more and more educated each day—and place it in the power of one-third of their number to veto legislation required by the State as a whole. I think members of another place will give consideration to this measure if it reaches there. They may not pass it but, as a result of hearing their views, we may be able to produce a Bill next session that would perhaps solve our problems. The only alternative left to us, if we cannot re-model our constitution to suit ourselves, is to go back to the British Parliament and say: "You gave us a Constitution in 1890 which was modelled on your own existing Constitution, but you yourself found 20 years later that your own Constitution was not workable and you had to re-model it. Unfortunately you have left the State of Western Australia with a replica of your own Constitution without the means of re-modelling it and bringing it up to date." A very strong case could be made to the Imperial Parliament to amend our Act, so that finally the will of the people would prevail in accordance with all modern tendencies. We would not be justified in taking the second hurdle first, in approaching the Imperial Parliament, until first we had exhausted all the means in our power of re-modelling the Constitution for ourselves. There is one important provision that should be in this Bill, but, through what I might term a mistaken zeal for Standing Orders, it is not there. I do not consider that any amendment to the Constitution ought to be made without its being confirmed by a referendum of the people. The Constitution is the charter that the people have and I would reserve to the people the final right to veto any amendments made to the Constitution. I had provided in the Bill for a clause that no Bill or Act that amended the Constitution or any amendments of it should become law until it was approved by a majority of the people at a referendum held throughout the State. That is roughly the provision of the New South Wales Act. Unfortunately—and I want to say I disagree—it was considered in the seats of the mighty that that was a mandate to the Government to hold a referendum that would have incurred public expenditure and therefore it could not be introduced without a message from the Governor. However, if the Bill gets into Committee I hope to have an opportunity of moving to add that amendment. There is really no new provision about the right of vetoing other than is to be found in the Imperial Parliament Act and there are arguments for and against that Act—which is the basis of this one—at great length in the Parliamentary Debates of the Imperial Parliament, 1910, which are contained in the volumes at the public library. If any member is interested in these debates, there are three speeches that are worth reading. First there is the speech of Mr. Asquith when he introduced the Bill. Secondly there is the speech of the Hon. A. J. Balfour in reply, and thirdly the lamentations of Austen Chamberlain. They are all worth reading. I did intend to bring down a couple of them and read them during this debate, but I thought better of it out of consideration for hon. members. But the whole argument for the Bill is put up by Mr. Asquith with much more skill and ability than I could hope to display in connection with this little measure that I have introduced. I am not optimistic enough to believe that at one fell swoop we will re-model our Constitution, but a start is due and if we get a step along the road during this session, I shall be quite satisfied and encouraged to make another effort later on. The Bill is open to improvement and to a lot of discussion. It is only the skeleton around which I hope to raise a discussion in both Houses on our own Constitution. I trust the Bill will get that discussion. I move—

That the Bill be now read a second time.

On motion by Hon. C. G. Latham debate adjourned.

## BILL—STATE TRANSPORT CO-ORDINATION ACT AMENDMENT.

*Second Reading.*

**MR. SAMPSON** (Swan) [8.10] in moving the second reading said: The Bill which is now submitted to members is not unknown. It has already been before the House and I think was defeated by one vote. The Bill provides for the addition of one word to the State Transport Co-ordination Act Amendment Act. It provides for the insertion, after the word "vegetables" in paragraph 3 of the First Schedule, of the word "honey." The paragraph will then read as follows:—

> Solely for the carriage of livestock, poultry, fruit, vegetables, honey, dairy produce or other perishable commodities or wheat from the place where they are produced to any other place, and for the carriage on the return journey of any farmers' requisites for domestic use or for use in producing the commodities named therein and not intended for sale, in a vehicle owned by the producer.

It will be noticed that even wheat is permitted to be carried. If the Bill is approved, it will have the effect of enabling honey to be added to those products which are permitted to be transported as exempted commodities in respect of a permit being required under the Act. It has been claimed by the Minister that honey is not perishable, but that is not in accordance with the views of other authorities. When the Bill was before the House last year I quoted from the "Honey Journal of England" to the effect that honey is perishable and that storekeepers found that the holding of honey meant a great deal of deterioration. The argument that because honey is clarified and packed it should be moved from the list of exempted commodities will not stand examination. Consider the case of the treatment or transport of separated milk. That is permitted to be moved by road transport. It cannot be argued that there is any difference from the standpoint of principle in regard to the two commodities. Again, eggs may be moved, notwithstanding that they have been cleaned, graded and packed. In spite of these facts, the Minister persists in declaring that honey is an entirely different product. Different it is in body and substance, but the principle which I am endeavouring to set out is not different. Again, consider apples. The picking of apples carried out necessarily on the orchard does not complete the preparation of the apples for market. Apples are very frequently taken either in a vehicle or in cases to the packing shed, possibly a community packing shed, and there graded. Poor grades, badly coloured or varying in shape or having other bad points are eliminated from the apples forwarded to market. Yet there is no dispute about the hauling of apples to market. Indeed, I might go further, because in addition to other evidence of the care expended upon apples, they are on many occasions wrapped, which improves their appearance and to an extent preserves them from damage. The same applies to oranges and other fruit, which, if desirable, might be multiplied indefinitely. Then take grapes. They are removed in their trays from the vineyard and packed in cases, even being packed with cork dust. Still, that product cannot legally be carried by road. The Minister, I understand, shelters himself behind the statement that whereas the orange, the apple, the egg and other products are perishable, honey rises superior to all the effects of deterioration which attack everything else. That is a tribute to this most wonderful food, and I hesitate almost to say anything more in connection with it. If the Minister will agree to pass the Bill, I am prepared forthwith to sit down. That is a good offer.

Mr. SPEAKER: The hon. member is not in order in offering a bribe to a Minister.

Mr. SAMPSON: We are all open to bribes but——

The Minister for Employment: Why not put a bit of sting into it?

Mr. SAMPSON: I understand the Minister is keen on this Bill passing, and I am glad of it; glad to know that it is in the Minister to take a non-party view of a case.

The Minister for Employment: Put some more sting into it.

Mr. SAMPSON: I do not know that the advice of the Minister will get me very far. To put sting into the Minister for Works might produce a frame of mind that was not normal.

The Minister for Employment: I do not think you see the point yet.

Mr. SAMPSON: Well, I have handled many bees and, unlike the Minister, I have not often been stung. I wish to read a little matter that has some reference to this subject. At the recent beekeepers' conference a resolution was carried as follows:—

> That this conference is of opinion that the Transport Co-ordination Act is not satisfac-

tory to the beekeepers of Western Australia, and urges that an amendment that was introduced into Parliament last session be again introduced.

It is only natural that beekeepers desire and should receive the same consideration as other primary producers. In addition there is a special reason why beekeeping should be encouraged. Western Australia offers great opportunities for the production of fruit, and in the production of fruit there is no more valuable auxiliary, in fact necessity, than is the bee. It has been claimed time after time that Western Australia ranks with California in fruit production. But if this ill-founded animus towards the bee is to be carried to such an extent as to mark it out for distinct opposition in comparison with other primary products, then goodbye to any great extension of this industry. Only to-night we had advice during the tea adjournment that Western Australian honey is being forwarded each week to New York and that the honey is found to be of such quality that a good price is obtained for it. And it seems that the discriminating buyers of New York favour the Western Australian article. I learn that when my amendment was before the House last session a request was submitted by a certain hon. member on the Government side of the House to the Minister for Works, stating that the Transport Board had already agreed that honey in its crude form was a perishable commodity. No one would have the temerity to dispute that honey in its crude form is a perishable commodity. So I learn that in the opinion of the hon. member, whose name I prefer not to mention, apiarists should be permitted to transport their honey to any particular refinery and to transport on the return journey not more than one drum of petrol and all supplies used by the apiarist in the production of honey. Mr. Millington was written to by that hon. member and he himself has expressed the views that I have read out, but in spite of this statement it seems that the Transport Board still insist on apiarists taking out a license to cart crude honey. That is a very important point. It was stated last session that crude honey, being perishable, can be transported from the place of production to any other place. But it seems that this is not the case, and in proof of this statement I submit a license issued to Mr. F. E. Cook, an apiarist of Toodyay. This license has a tremendous amount of printed matter in it, but I will read only a portion of it. It is headed, "Form No. 5. No. 075. State Transport Co-ordination Act, 1933. License for a commercial goods vehicle." The route on which the vehicle may be operated is described. The license fee is given as £1 9s. There is a full description of the vehicle and of its identification plates. Under a number of special conditions on this form it is provided that the licensee shall be authorised to operate the vehicle solely for the carrying of crude honey, bees, hives, bee frames and other supplies for use by the licensee in his business as an apiarist, together with one drum of petrol.

Mr. Raphael: I think you must be the queen bee of the Beekeepers' Association.

Mr. SAMPSON: If the statement made by Mr. Millington is correct, and the Transport Board agrees that honey in crude form is a perishable commodity, it should be exempt under our Act, and a license such as that demanded of Mr. Cook should not be necessary. The Minister cannot have it both ways; he cannot demand a license fee for the transport of crude honey and then declare that crude honey is not perishable. I hope the Minister does not propose to compel the honey producers of this State to make of this case a test case. When the Bill was before the House, the Minister for Works read a letter which had been sent by the Transport Board to the president of the Primary Producers' Association which, according to the Minister, clarified the position. I think I ought to read that letter, for it is a very good one, and it deals with the matter at considerable length.

Mr. Raphael: Read them all out to us.

Mr. SAMPSON: No, perhaps it would be more considerate to let the letter go. It will be found in "Hansard," where hon. members may read it. It sets out the position at length. It is not satisfactory from the point of view of the Minister, because the letter does not make the position clear. When the Premier was Minister for Railways, he remarked that the State Transport Co-ordination Act must not be attacked as though the protection of the railway system were the be-all and end-all of the Act. It seems to me that when a very small commodity such as this is not permitted to be added to the Act, the railways surely are the be-all and the end-all of everything. The Minister for Works, last year, said, "Why a Bill should be introduced

to direct the board on a twopenny-halfpenny matter such as this, I do not understand."

The Minister for Works: Did I say that?

Mr. SAMPSON: Yes, and the Minister spread himself over more than two pages of "Hansard" in order to say it. While I might have been guilty in bringing forward a record small Bill, a one-word Bill, a highlight of brevity, the Minister went to the other extreme in endeavouring to reprove me. I begin to think that conciseness does not appeal, but that length of talking may make an impression. Last year you, Mr. Speaker, will recall with some degree of pleasure, I am sure, that I dealt with the matter in a very brief, yet I hope, clear manner. Because of that the Minister for Works was not favourably impressed. The trouble is that if a member does not talk at length he is considered not to have said anything, whereas if he does talk at length and does not necessarily deal with the subject, he begins to acquire a reputation for profoundness.

Mr. SPEAKER: I hope the hon. member is connecting his remarks with the honey.

Mr. SAMPSON: Yes, definitely so.

Hon. C. G. Latham: I think it is a very sticky matter.

Mr. SAMPSON: The inclusion of the word "honey" was overlooked when the original measure was introduced. Had it been included, no objection would have been raised by the then Minister for Railways. In his heart, I am positive that that applies now.

The Premier: Not in his head, though.

Mr. SAMPSON: A warm-hearted man is a clear-thinking man. I assert that the inclusion of the word "honey" was overlooked, and I challenge any member to deny it. I have shown that honey cannot be transported unless a special fee is paid. Form No. 5 read by me bears out my contention. If not, why should Mr. Cook, one of our pioneer beekeepers, be called upon to pay a sum of £1 5s. plus the charge for identification plates? We know that businesses in the country are being strangled by city competition. Here we have a leading Minister championing a law that says in effect that honey shall not be clarified in the country, or, if it is clarified in a country town, then it will be illegal to transport that honey to the city; the only way honey can be refined or treated so that it may reach the public is by first bringing it into the capital city and having the work carried out there. That is a direct contradiction of the statement made by members on occasion that decentralisation is overdue and that we should all work for it. If the Minister insists upon maintaining his attitude, it will be goodbye for the present to the claims of decentralisation. Businesses and enterprises in the country are being strangled because of the action of Perth business people, aided and abetted in this instance by the Minister. I propose to leave the matter in the hands of members, though I suppose its fate really rests with the Minister. If the Ministers refuses to accede to my request, I can only assure him that I shall continue to bring the Bill forward until it is ultimately approved. The beekeeper is a hard-striving and small profit-making man to whom this slight consideration should be extended. That he should be required to go to the State Transport Board every time he desires to bring honey into Perth, and pay for a permit, is most unreasonable, and if anything is calculated to discourage this form of primary production, it is action of that kind I move—

That the Bill be now read a second time.

On motion by the Minister for Works, debate adjourned.

## MOTION—IMPRISONMENT OF FRANK EVANS.

*To inquire by Select Committee.*

Debate resumed from the 1st September on the following motion by Mr. Lambert (Yilgarn-Coolgardie) as amended on motion by Mr. Watts (Katanning):—

That a select committee be appointed to investigate and report upon the case of Frank Evans, deceased, and whether an amendment of the law dealing with such cases under which Evans was detained is advisable and, if so, to recommend such an amendment.

**THE MINISTER FOR JUSTICE** (Hon. F. C. L. Smith—Brown Hill-Ivanhoe) [8.39]: This motion deals with a subject and raises issues in connection with which there have been many misstatements and much misunderstanding, and so I feel it necessary to deal with the more important aspects without going into all the details. The case of the late Frank Evans is one that can be discussed in existing circumstances only with considerable difficulty. That has already been indicated by those who have addressed

themselves to the motion. Evans died in the Fremantle Public Hospital on 14th January, 1937, he having been removed there from the Fremantle prison. His death was afterwards the subject of a coronial inquiry. The finding of the Coroner was that the deceased came to his death at the Fremantle Hospital on 14th January, 1937, from euraemia and chronic nephritis following starvation, self-induced. There were circumstances associated with the offence committed by Evans which aroused a good deal of public sympathy. He had been faced with failure in his farming enterprise. As this was not unique in this State it evoked in many parts of the State a wave of emotionalism that was not unfavourable to Evans. Actually, it is this response by the community in such circumstances which threatens to disturb that equity in the operation of the law which as far as possible should always characterise it. In considering such cases as the one under notice, it is as well to remember that without the law and the policing of it, society, as we know it, would cease to exist. It is well to remember also that much of, if not most of, the crimes for which society punishes offenders has, as a precedent to it, circumstances in which there is often much physical and mental stress, and consequent unhappiness. Evans was indicted before the Criminal Court on the following three charges:—

That he did wilfully and unlawfully set fire to a camp and stables.

That he threatened to assault Malcolm Leo Austin and Maxwell Edwin Brinkworth, being officers of the Agricultural Bank, with intent thereby to hinder the said officers in the execution of their duty.

That he wilfully and unlawfully destroyed a motor car and farm machinery, the property of the Agricultural Bank.

The first of these charges only was proceeded with, and Evans was indicted on a charge of arson in a case which commenced in the Supreme Court on the 6th October, 1936. In opening the case for the defence, counsel for the accused contended that the acts of the accused were not unlawful, but His Honour ruled that on the admitted facts that question did not arise. I presume he ruled in that way because Section 26 of the Criminal Code provides that the accused person is presumed to be of sound mind until the contrary is proved. As the question of insanity had been raised by the defence, His Honour ruled that the defence was insanity under Section 27 of the Criminal Code, and that a special verdict must be returned by the jury under Section 653 of the Criminal Code. I propose to quote the sections so that members may thoroughly understand their purport. Section 27 is as follows:—

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission. A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of the section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

Section 653 of the Code, under which His Honour said a special verdict must be given by the jury, reads as follows:—

If the jury find that the accused is not guilty, or give any other verdict which shows that he is not liable to punishment, he is entitled to be discharged from the charge of which he is so acquitted; provided that if on the trial of a person charged with any indictable offence it is alleged or appears that he was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, the jury are to be required to find specially if they find that he is not guilty whether he was of unsound mind at the time when such action or omission took place, and to say whether he is acquitted by them on account of such unsoundness of mind; and if they find that he was of unsound mind at the time when such act or omission took place, and say that he is acquitted by them on account of such unsoundness of mind, the court is required to order him to be kept in strict custody in such place and in such manner as the court thinks fit, until His Majesty's pleasure is known. In any such case the Governor, in the name of His Majesty, may give such order for the safe custody of such person during his pleasure, in such place of confinement and in such manner as the Governor may think fit.

At the conclusion of the trial of Evans the jury returned a verdict of not guilty owing to unsound mind at the time of doing the act; in other words, the jury found him not guilty on the ground of insanity. The trial judge was compelled to act under the provisions of Section 653 of the Criminal Code and order that Evans be kept in strict custody in such place and in such manner as

the Judge thought fit until His Majesty's pleasure was known. In view of that verdict the place of detention, in the first instance, could be none other than the Hospital for Insane at Claremont. In the Criminal Court a plea of not guilty on the ground of insanity is sometimes put forward on behalf of accused persons, but it is rarely put forward unless the penalty for the crime for which the person is being tried is either capital punishment or a very long term of imprisonment. When the member for Avon (Mr. Boyle) was speaking, the Leader of the Opposition interjected—

He (Evans) is not a criminal, only an alleged criminal.

The member for Avon, it will be recollected, treated all the circumstances of the offences with which Evans was charged as though the offences were insignificant in character, comparatively minor. The hon. member said—

And yet he (Evans) was put on his trial as though he were the greatest criminal in the country.

The member for Avon went on to say—by way of emphasising his case that the offences committed were but comparatively minor in character—that Evans did not fire the Agricultural Bank's motor car, which caught fire from the building Evans had set alight. In relation to that statement I propose to quote two other sections of the Criminal Code for the purpose of indicating to members just how the law regards the charge of arson, on which Evans was indicted. Section 444 of the Code reads—

Any person who wilfully and unlawfully sets fire to any of the things following, that is to say—(a) any building or structure whatever, whether completed or not; (b) any vessel, whether completed or not; (c) a mine or the workings, fittings, or appliances of a mine, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Section 445 of the Code provides—

Any person who (1) attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section; or (2) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Thus hon. members will see that the crime with which Evans was charged was not a minor offence, as the member for Avon attempted to indicate to this House. The plea of not guilty on the ground of insanity, when put forward by counsel for the defence at any trial, is put forward with a full knowledge of the provision of the Criminal Code making it compulsory for the trial judge to order detention. Further, as I have already indicated, the relevant section casts upon the Governor the responsibility of fixing the conditions of detention of any person who has been found by a jury to be not guilty because of unsoundness of mind. It is in connection with this responsibility, thus exercised by the Governor on the advice of Cabinet, that I wish to offer a few comments on the evidence given at the trial, which I think are material to a proper consideration of the subsequent proceedings. One comment is that the only expert evidence relating to Evans's sanity was given by Dr. Bentley, Inspector-General of Insane at Claremont. Prior to that, Dr. Bentley had advised the Crown Law Department that he thought Evans could appreciate the nature of his actions. But at the trial, after giving some evidence that is not very material in which he discussed the possibilities respecting neurasthenia, Dr. Bentley said—

Evans is a very nervous but honest man. I do not think he is insane now. I first saw him on the 24th and the 27th September at the Fremantle prison. He showed no sign of insanity then.

When he was cross-examined, the doctor said—

I think Evans would appreciate right from wrong. There was no sign of mental disease. I have no definite opinion as to his condition when the crime was committed. I was inclined to think he was not insane at the time the act was committed. He has no mental infirmity, but is a little subnormal. No indications at the time I examined him of inability to control his actions. No signs of delusions or hallucinations. No sign of persecution mania.

When he was re-examined, Dr. Bentley said—

A person suffering from neurasthenia is more likely to lose control than one who is not so suffering.

Notwithstanding that this was the only expert evidence on the sanity of the accused, and that it was definitely unfavourable to the defence put forward, the jury returned a verdict, as I have indicated, of "not guilty owing to unsound mind at the time of doing the act." This verdict of the jury, in the face of that expert evidence, raises a very important issue in the most involved and difficult problem of crime and insanity. The issue in the circumstances associated with the Evans case is: How much im-

portance, or how much credence, shall the jury attach to the evidence of the expert witnesses, and to what extent shall they be guided in their verdict by common sense and experience? Associated with the issue that I have indicated, is a recent case that engaged the attention of the High Court. Before I touch on that, I would like to clarify the position a little with respect to the case that was before that court. To do that, I would have to say that in 1843 a person named Daniel McNaghten shot dead Sir Robert Peel's secretary, a man named Drummond, although he intended to kill Sir Robert. McNaghten was found not guilty on the ground of insanity. The verdict occasioned a good deal of consternation in England, and led the House of Lords to propound to all judges a series of abstract questions as to the proper test of irresponsibility in delusional insanity. It was laid down by 15 judges, and it has since been substantially recognised, "that the accused must be clearly proved to have been labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the deed he was doing, or if he did, that he did not know he was doing what was wrong." Last year, as I have said, the Sodeman case was dealt with in the Hight Court in Melbourne. Sodeman had been found guilty of the murder of a little girl, and I quote from an article in the "Australian Rhodes Review" in connection with that particular case—

> The trial judge directed the jury in substance in the terms of McNaghten's case, and the Full Court affirmed his direction, the prisoner having been found guilty. Two judges of the High Court, however, thought the direction insufficient, partly on another point, in that it might have been taken to mean that the prisoner had to satisfy the jury "beyond all reasonable doubt" of his insanity, and partly also, in that it had not been properly put to the jury that an uncontrollable impulse, though not in itself a ground of exemption, might be evidence of such a defect as would satisfy the rules in McNaghten's case. The other two judges of the High Court who sat being of a contrary view, the decision stood, and an appeal was taken to the Privy Council, which dismissed it and affirmed the direction of the trial judge. From the case generally this appears, that the McNaghten rules still remain the sole test; that the prisoner has the onus of proving insanity in that sense, but only on the balance of probabilities, and not "beyond all reasonable doubt," and that "uncontrollable impulse," at any rate by itself, is not a ground for exemption from ordinary responsibilities. The judgment of Mr. Justice Evatt in the High Court was noteworthy for his criticism of a judge who deprecates medical evidence, "as though the special difficulty of the subject matter made scientific research into it less, instead of more, valuable." He dissented from the words of the trial judge who had invited the jury to "subject the medical evidence to the microscope of commonsense and experience," and indicated his dissent by observing, "what real value, commonsense, and experience might have in setting at nought the serious opinions of scientists trained in the study and practice of mental condition, it is difficult to say."

There we have a case which has similar aspects to the Evans case, and two judges dissenting, one indicating his dissent by observing "What real value commonsense and experience might have in setting at nought the serious opinions of scientists trained in the difficult study and practice of mental condition, it is difficult to say." And we have the other two judges siding with the trial judge who had invited the jury to subject the medical evidence to the microscope of commonsense and experience, and supported in so doing by judges of the Full Court, and subsequently by the Privy Council. It was between those two contentions that the Government found themselves in connection with the Evans case. There was the medical testimony of the experts, which, as I have indicated, was definitely unfavourable to the contention that Evans was insane when he committed the offence. On the other hand, there was the verdict of the jury, who had evidently submitted the whole of the evidence to the microscope of commonsense and experience. Twelve days later there was given a certificate by the same expert witness, whose testimony at the trial was that Evans showed no signs of insanity, and which was rejected by the jury. I therefore want to put this contention to members: That it cannot be said that the jury's verdict, as distinct from the testimony of the expert witness, is to govern the question of the sanity and the guilt of the accused person at the trial, and that his subsequent treatment should be governed by the testimony of the expert witness to the exclusion of the verdict and the opinion of the jury. In other words, you cannot have it both ways. If the jury's verdict is to be the test of the defence of insanity at a trial, it must also be the test of the responsibility that is cast upon the Governor and upon the Government under Section 653 of the Criminal Code. The question of Evan's further detention was con-

sidered on receipt of the certificate from the Inspector-General of the Insane, and he was ordered to be detained at Fremantle as an unconvicted prisoner, and further it was decided that the case was to be brought up for consideration by the prison authorities at the end of six months. Unfortunately, Evans died before the time his case was due for review. He was detained in the Hospital for the Insane at Claremont from the 8th October, 1936, until the 20th November, 1936, a period of 43 days; then he was transferred to Fremantle. He remained there as an unconvicted prisoner until his unfortunate death on the 14th January, 1937. As I have already stated, a coronial inquiry was held into the circumstances of the death of Evans. The coroner, in delivering his verdict, which I have already indicated in the early part of my speech, said there was not a tittle of evidence to show that death was due directly or indirectly to negligence by act or omission on the part of Government officials to whose custody the deceased was committed after the proceedings in the Criminal Court. If the proposed select committee is to inquire into the cause of the death of the late Mr. Evans, then it would have to review the evidence that was given at the inquiry. If this House were to carry the motion, it would postulate that there was something lacking at that particular inquiry, that it was not satisfactorily conducted, but if there is any person who has any evidence to substantiate such a charge—that the coronial inquiry was not properly and satisfactorily conducted—that person could make application under Section 14 of the Coroners Act for the purpose of having the whole case reopened and reviewed. But no one made such a charge. There was no one at the inquiry, or connected with the inquiry, who was not satisfied with the manner in which it was conducted. As Minister for Justice I want to say that on no occasion prior to Evans' death was any representation made of any kind whatever in connection with it, either for a remission of the sentence or for his relief from detention. No representation was made by either an organisation or an individual.

Mr. Lambert: Representations were made.

The MINISTER FOR JUSTICE: I am the Minister who should receive and deal with such representations. They come within the province of the department which I have the honour to administer at the moment. But after Mr. Evans's death I did receive a letter from the Wheatgrowers' Union, which unfortunately I have neglected to bring with me. But as far as I recollect, it asked that some inquiry be made into the Evans case and was generally along those lines. So in consideration of having received that letter, and in consideration too of a great deal of misstatement and apparent misunderstanding that appeared in the Press of this country in connection with the Evans case, I took advantage of the occasion to ask the Coroner if there was anything associated with the coronial inquiry that would lead anyone to believe that ample opportunity was not given to those who desired to make any representations there at any time whatever. And the Coroner replied to me that ample opportunity was afforded to all persons interested at the inquest for the elucidation of facts regarding the treatment of Evans at the hands of the prison and hospital officials. As for the motion itself, I want to say the Government have nothing to hide in the matter. For their part the motion can be carried and the select committee appointed. The amendment that was added by the member for Katanning (Mr. Watts) is one that, with the hon. member's knowledge of the law and his knowledge too of the difficulties that surround the problem of proving insanity, and with his knowledge that the wisdom of centuries has not been able to solve it and lay down a satisfactory formula in connection with it, I do not believe that he himself thinks that a select committee could carry out what he desires. In the second place the Evans case has its own circumstances. Each of these cases has different circumstances attached to it, these cases of crime associated with insanity. They cannot be placed in categories, nor can particular rules or regulations be laid down in connection with them. Just to indicate how difficult this problem of crime and insanity is, and just how and why it has defeated the wisdom of the centuries, I propose to quote further from the article written by R. R. Sholl in the "Australian Rhodes Review"—of which by the way I think every member of the House got a complimentary copy. It is entitled "The Social Problems of Insanity and Crime."

Mr. Lambert: It did not affect me, so I did not get one.

The MINISTER FOR JUSTICE: It is a subject that the hon. member might well read up. There is a mistaken idea that insanity is one of those things that strikes a person suddenly, but it does not. I give here the opinion of Dr. John Harvey Furbay, in the "Daily News" on the 31/3/37, for what it is worth. He says that the popular idea that when a person goes insane his mind suddenly snaps is absurd, that everyone who has had experience with mental patients knows that insanity just develops gradually, usually over a long time, but with many warning signs as it progresses, and, as I might tell the member for Yilgarn-Coolgardie, it is during these early stages that it is most easily cured. The cause often lies in mental conflicts of some sort which bring on mental delusions. The emotional conflict is also important. The intensity of the conflicts may determine how long it takes to produce insanity. However, I was going to read from this article again, just to indicate to members what the select committee would be up against in connection with the amendment proposed by the member for Katanning. The article continues—

It should be added that the verdict, if favourable, being one of acquittal, there is no appeal from any part of it. Thus the law has returned, after a century of progress outside them to the narrow rules of McNaghten's case. As Mr. Justice Dixon said: "The formula has proved incapable of adaptation to widening knowledge and changed conceptions of mental phenomena," and the British Medical Journal has referred to the "unfortunate legal position" which exists .... Before considering the results of this triumph of formalism over knowledge, and its probable cause, it is interesting to look at the development of our knowledge of the mind by physicians, physiologists, psychologists, psychiatrists, and others, whom we may refer to under the general heading of medical opinion. All through the same period, but to a degree much greater probably since the beginning of this century, the physiology of the nervous system, including the electrochemical theory of thought, the psychology of repressions, the curative treatment of disorders of the mind, the recognition and classification of differences between curable and incurable mental states, even the elementary distinction between cases of permanent absence or loss of necessary mental parts, and cases of curable impairment of normal or nearly normal equipment, have been investigated and illuminated by a host of investigators of many races, as united by the international catholicity of medical science as lawyers are still sundered by man's national and social prejudices.

Mr. Lambert: What has that to do with the death of Evans?

The MINISTER FOR JUSTICE: The article continues—

Of course these men hold different theories, and while one psychiatrist maintains that all conduct is involuntary, being a merely automatic product of the conflict of man's conscious and subconscious mind driven on its inevitable route by environment, impulse, and, it may be, the laws of physics or chemistry, another scouts this denial of free will.

That indicates the nature of the problem and the difficulties associated with it and why it has been possible for people to make misstatements and to be under a misapprehension. The Government are not concerned whether the motion is carried or not.

Mr. Lambert: Are you supporting or opposing it?

The MINISTER FOR JUSTICE: We have nothing to hide, but I certainly think that the motion in its present terms is too indefinite. The House should know exactly what the motion means, just how far the inquiry is to extend, and what are the factors associated with the case.

Mr. Lambert: We are not going to sweep the horizon as you have done. We want to know about Evans's death.

The MINISTER FOR JUSTICE: I do not care what the hon. member is going to do. The horizon has been swept in the matter of misrepresentations in the Press, and so I felt it necessary on behalf of the Government further to sweep the horizon so that every member of the community who has interested himself and who may still be interested in the case should know the facts.

**MR. WATTS** (Katanning) [9.32]: I did not come here this evening——

Mr. SPEAKER: Has not the hon. member already spoken?

Mr. WATTS: I moved an amendment to the motion.

Mr. SPEAKER: The hon. member must have spoken to move the amendment.

Mr. WATTS: I moved the amendment, and immediately spoke to it.

Mr. SPEAKER: I thought the hon. member had spoken to the motion.

Mr. WATTS: I did not come here this evening armed with such a barrage of information as we have just heard from the Minister for Justice. It seems to me that

the case can be confined within a very small area as compared with that covered by the Minister.

Mr. Lambert: You sought to enlarge it quite unnecessarily. It was your fault.

Mr. WATTS: I am dealing with the motion, as amended, and now before the House. The Minister for Justice suggested that it would be necessary for the select committee, if appointed, to go into a series of subjects which, I venture to say, have nothing to do with the subject matter of the motion. The point I desired to make in moving the amendment was that it was quite clear to me at any rate that the action of the Government in this matter was perfectly legal, that there was no question whatever arising in my mind as to the legality of the procedure adopted. But, as the Minister has said, Evans's case is not an ordinary case. I freely admit that the provisions of the law as it at present stands regarding persons who have been found not guilty on the ground of insanity when those persons have been charged with homicide might be perfectly satisfactory, but I submit that when the offence is one that is not connected with the death of another person, we may reasonably suggest that some other method of procedure might be found. As the law stands, it is within the powers of the authorities to keep a man detained for an indefinite period. Were he found guilty by a jury of his peers, there would be a definite limit to the period of his incarceration, even if it were the maximum, which would be most unlikely in such a case, prescribed by the Code. So far as Evans was concerned, there was not known to him any limit to the period during which he might be detained, notwithstanding that it has been admitted that the case was to be reviewed in six months. Had that man been guilty of some homicidal offence during the time he was supposed to be insane, as the verdict of the jury, for all practical purposes, proved that he was, then there would have been very sound reasons for not allowing such a person to be at large for a considerable time. But in the circumstances of this case, which I do not propose to traverse—the member for Avon covered them thoroughly—the offence was of quite another nature. No harm was done to any other person, and the property that was actually set alight by the accused was at least in some respects his own property. I submit that there should be some investigation of and that a select committee could very well inquire into the question of an alteration of the law in cases where homicide is not involved.

Mr. Lambert: What do you suggest?

Mr. Marshall: Silence on your part.

Mr. WATTS: That is exactly my opinion. What I suggest has nothing to do with the matter. There are people who have no doubt made some study of the problem involved and whose evidence could be obtained by a select committee without entering into the theories which might be advanced, say, by alienists, psychiatrists and others referred to by the Minister. In this case I have very little, if any, personal feeling, but there is another point which requires some consideration and which apparently up to the present time has entirely escaped notice. It has been admitted that, on or about the 9th December last, the member for Avon and the member for Yilgarn-Coolgardie discussed the matter with the Premier somewhere in the precincts of this House. On the following morning there appeared in the "West Australian" newspaper for all to read—it was there that I saw the information for the first time—a paragraph which, after making reference to the fact that those gentlemen had interviewed the Premier, concluded by saying, "Subsequently Mr. Boyle stated that Mr. Willcock had promised that Evans would be released not later than the 15th January next." That statement appeared in the "West Australian" and, to the best of my knowledge, there has been no denial of it at any time. I am not in a position to say whether the Premier actually made that statement to Mr. Boyle or not.

The Premier: You have had my assurance that I did not.

Mr. WATTS: I am not going to reason why the matter of this inquiry has been raised, and I am prepared to accept any explanation the Premier cares to offer, but I know that the appearance of the paragraph in the "West Australian" was the cause of most of the argument that has arisen since that time. No denial of the statement which is alleged to have been made to the paper by the member for Avon has so far as I know appeared in the Press. In consequence the presumption at the time had to be that the Premier made that statement, in the absence of any denial. It was evidently anti-

cipated by those who had any interest, be it personal or impersonal, in the case, that Evans would be released on the 15th January or thereabouts, and what is more, that he would be given some information as to the intention expressed by the paragraph to release him. It is suggested by those who discussed the matter with me, and I include the branch of the Returned Soldiers' League in my town, that he was going to be released, but subsequently it was ascertained that Evans had known nothing of the statement.

Mr Lambert: Why did you not discuss it with the Premier?

Mr WATTS: I was not concerned at the time. Evans died before the date in question.

Mr. Lambert: You did not know Evans was in existence until the motion was moved?

Mr. SPEAKER: Order! The member for Yilgarn-Coolgardie will cease from interjecting and from making speeches by way of interjection.

Mr. WATTS: On or about the 7th December, 1936, I visited the Fremantle gaol with and at the invitation of the member for Avon, and interviewed Evans. I therefore knew Evans, and was impressed by the fact that he seemed a reasonable fellow. That was my first opportunity to see him, and I had some interest in him from that day forward. It was no concern of mine to question the paragraph in the "West Australian," particularly as Evans died before the date in question.

Mr. Lambert: And you as his attorney left him to die in the Fremantle gaol.

Mr. SPEAKER: Order!

Mr. WATTS: I was not his attorney at any time.

Mr. Lambert: Did you visit him as his attorney?

Mr. SPEAKER: Order! I warn the hon. member that I am not going to give him any more chances. This is the last one he will get, and I shall then reluctantly be compelled to take action.

Mr. WATTS: As I say, that is an aspect of the question which I really feel has been the occasion of a great deal of the discussion that has occurred since the death of Evans. It seems to me that it is of not very great value to inquire into the circumstances of his death. I do not dispute the verdict of the coroner, as set forth by the Minister for Justice, but I do say that the paragraph in the "West Australian" and the circumstances which gave rise to it, should be clarified for the benefit of all concerned. The question of what the law should do after the jury had returned such a verdict as was returned in this case is something which definitely requires to be inquired into. The question whether the jury should or should not take little or much notice of the evidence of medical experts as discussed by the Minister has, I admit, nothing that a select committee could conveniently inquire into. But when the jury has returned such a verdict as was returned, we as members of the Legislature are entitled and should make inquiries as to whether the law as it stands should remain applicable to all cases where there is such a verdict, or whether it is not advisable to differentiate between those cases perhaps on the lines I have mentioned as differentiating between cases where homicide is involved and cases where there is no such crime. Whatever may be the result of such an inquiry, in all the circumstances it is worth while to make it. I support the motion.

On motion by Mr. Marshall, debate adjourned.

## BILL—EMPLOYMENT OF COUNSEL (REGULATION).

*Second Reading.*

Debate resumed from the 1st September.

**MR. McDONALD** (West Perth) [9.45]: I do not propose to raise any objection to the Bill. It is not, however, a very necessary one. The occasions on which there has been any unfairness by the way of charges by second counsel are on the whole very few. As the Bill represents the existing law, there is perhaps no reason for any opposition to it. Under the law the question of employment of second counsel is determined by the Taxing Master of the Supreme Court. He has discretion as to whether second counsel shall be paid for or not in any bill that he taxes. That same discretion is exercised by him whether the bill is one between two litigants, or is one which is brought in by a client for taxing between himself and the solicitor he employs. The Taxing Master under our system is either the Master of the Supreme Court, Mr. Davies, who at present is acting President of the Arbitration Court, or the Acting Master or Deputy Master of the Supreme Court. Both of these officers are gentlemen who occupy responsible and senior judicial positions in our courts.

They to-day are the people who certify whether the second counsel was necessary or fair in the particular circumstances of the case. I know of only a few cases in the last few years when the occasion has arisen for the Master of the Supreme Court, as Taxing Master, to disallow a second counsel where he was actually employed, but the Master thought that the amount involved or the difficulties of the case were not such as to justify more than two counsel. So we find to-day that exactly what the hon. member wishes to bring about by his Bill is being performed by the responsible officer of the court who occupies the position of taxing master. What the hon. member desires to do is to provide that instead of the certificate for second counsel being given by the Taxing Master, it shall be given by the court. Well, I see no objection to that. The judge is a still more senior judicial officer. He may perhaps have, in one sense, rather better opportunities of judging, after hearing the case, whether the second counsel was justified or not. So that, as the Bill proposes to put on the statute-book what is at present the practice of the court, except that the certificate is to be given by a judge instead of by the Master of the Supreme Court, the change is not very material. It may prove beneficial in some way. I certainly have no intention of objecting to the Bill, and am quite prepared to vote for the second reading.

Question put and passed.

Bill read a second time.

## MOTION—RAILWAY SERVICE, SUPERANNUATION.

*To inquire by Select Committee.*

Debate resumed from the 25th August on the motion by Mr Needham—

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.

**THE PREMIER** (Hon. J. C. Willcock—Geraldton) [9.53]: This matter of superannuation has quite a long history. The Act which was passed in 1871 giving rights to permanent civil servants or, as it is phrased in the Act, persons serving in "an established capacity in the permanent civil service," dates from pre-responsible government days, when Western Australia was under the Parliament of Great Britain. In 1890 responsible government was granted to the colony, and from then until now a certain procedure has been followed; and that is the policy obtaining at the present time. Under it, only salaried persons were considered eligible for pensions. This position was universally accepted until, I think, in 1902, when a wages man named Roach submitted a claim for a pension. The matter was dealt with by the then Attorney General, who gave a ruling which I shall quote later, and which is known as Mr. Burt's ruling. The actual position is that for all the years since 1871 successive Ministries, whether under the British Parliament or under the system of responsible government, have consistently and without deviation administered that law in the same direction as the present Government are administering it now. And now, after the 50 or 60 years of experience we have had of the administration of the Act, the mover desires a select committee to inquire into the liability with regard to superannuation of men employed in the railway service. No Government has ever entertained the idea of any liability except on the lines consistently followed in the past, and still followed. It is rather late in the day, two-thirds of a century after the Act has been passed, to seek to interpret, or to get a select committee to inquire into and decide, a liability which all through those years has been uniformly accepted almost without question. That is the position we find ourselves in to-day. Even under the various applications of the 1871 Act the Government and Parliament of 1904 could see that Western Australia was building up an immense liability in the matter of superannuation payments; and at that stage they decided that from then on there would be no liability to, or no eligibility for, pensions in respect of anybody employed by the Government in any capacity. That this action was justified at that particular time can be seen from our experience of the present day, when even under the limited application which all Governments have given to the Superannuation Act, the State has to pay, in this year of our Lord 1937, about £140,000 in pensions and compassionate allowances to the very limited number of——

Hon. C. G. Latham: Compassionate allowances do not come under that Act.

The PREMIER: But there are some rights to compassionate allowances, which rights have been interpreted. Upon the death of a man who in the ordinary course would have lived until he attained the age of pension, consideration has been given to that fact, and a compassionate allowance has been made.

Hon. C. G. Latham: A compassionate allowance is made by the generosity of the Government.

The PREMIER: Because of the fact that had the man lived, he would have received the pension in the ordinary course.

Hon. C. G. Latham: But otherwise as well.

The PREMIER: Yes, there have been other cases. It has been the practice to grant a compassionate allowance in the case of a person dying before reaching the age for retiring from the service. Last year the State paid out about £116,000. During the 12 years since 1925 Western Australia has paid out £1,200,000 in pensions to even the limited number of persons who became eligible for and entitled to pensions under the decisions of the various Governments as to what the law meant. The payments will go on at that rate for a little time, but I should say that within a few years the liability of the Government for payment of pensions will diminish, because of the length of time which has elapsed since additional pensions were wiped out. But if the intention of the mover of the motion were given effect to, the annual payment, on the most conservative estimate, would amount to about £500,000. And if, to be logical in the matter, we decided to make retrospective payments, the cost would amount to millions.

Mrs. Cardell-Oliver: But if there were no retrospective pay, the amount would not be much, would it?

The PREMIER: If there were no retrospective pay, the annual amount of pensions for wages men would be very considerable indeed. It could easily be £500,000 a year. I was working on the railways 25 years ago, and hundreds of men then in the Railway Department are still working there.

Mr. Patrick: We cannot select just a few of them.

The PREMIER: No. Hundreds of men that I knew personally 25 years ago are still employed on the railways.

Hon. C. G. Latham: It would be necessary that they should have been employed prior to 1904.

The PREMIER: Yes. I was employed on the railways prior to 1904, and numbers of my co-workers of that period have not left the Railway Department yet. The probability is that if I had remained in the railway service I would still be employed and would have years to go before I reached the retiring age and became eligible for a pension under the terms of the motion. Of course the member for Perth recognised the position regarding the point raised by the member for Subiaco (Mrs. Cardell-Oliver) and admitted that we could not possibly dream of agreeing to retrospective payment, but he said that possibly the Government could consider starting payments from the present time. The Superannuation Act of 1871 provided pensions for persons who "shall have served in an established capacity in the public service of the Colonial Government, whether their remuneration be computed by day pay, weekly wages, or annual salary." The point to be determined is whether the men's services have been "in an established capacity."

Hon. C. G. Latham: The meaning of "established capacity" is the arbitrary point.

The PREMIER: It means that the member for Perth endeavoured to show that the men were permanent employees and if that was all that was required, it would not have been necessary to include in the Act the words "in an established capacity." He had to show that the men were not only permanently employed, but that they had served in an established capacity. That is distinctly necessary under the Act.

Mr. Doney: It is difficult to see much distinction between the two terms.

The PREMIER: There must have been some reservation with regard to permanent employees or else the Act would have merely set out that permanent employees would be entitled to the pension, without the necessity to refer to "established capacity."

Mr. Doney: I think it would be interesting to have the explanation of that.

The PREMIER: I will place before hon. members the ruling of the late Mr. Septimus Burt, K.C., that successive Governments have adhered to, for it will show

what was in the mind of the Attorney General when he gave that decision. The Superannuation Act contains no definition with regard to the established capacity in which any of the permanent employees were to be engaged and it became the duty of the Government of the day to interpret the measure. After the Act was passed in 1871, and successive Governments administered its provisions, no ordinary wages man received a pension. Although men must have retired from the Government service, not one of them raised this particular point. It was not mentioned until 1902 when a man named John Roach forwarded an application for a pension, in consequence of which a definite ruling had to be secured with reference to the issue. At this stage perhaps I had better read what the late Mr. Septimus Burt said in connection with the matter. In the course of his opinion he stated—

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 Vict., 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 established 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 this 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.

Since that opinion was given, the following have been taken as proof that claimants have been employed in an established capacity and their claims admitted:—(1) That the officer has been in receipt of an annual salary; (2) that he has been appointed by the Governor-in-Council; (3) that his name appears in the Blue Book as holding an office; and (4) that a special item appeared on the Estimates for his remuneration. That does not mean that non-compliance with those conditions necessarily disqualified claims for pensions if the applicants provided other evidence before the Public Service Appeal Board to determine their engagement in an established capacity. Ever since then, that opinion of Mr. Burt has been religiously followed by all Government advisers as well as by Governments themselves. Successive Governments have not arrived at decisions

in this matter without securing opinions for their guidance. Not only have all Governments and Government advisers religiously followed that opinion since 1902, but the Public Service Appeal Board confirmed it by their decision until what is known as the Kay case that was prominent two or three years ago. The principal feature of that ruling is that a man must have been employed in an established capacity.

Mrs Cardell-Oliver: Why did not the Governor honour the appeal of Kay?

The PREMIER: I shall tell the hon member about that. Section 83 of the Public Service Act, 1904, provides that "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 shall be deemed to confer on any person whomsoever any right or privilege under the Superannuation Act." The effect of that section is to prevent any service, following an appointment to a public office under the Public Service Act, 1904, made after the commencement of that Act, being taken into account when considering the qualification for a pension. It was obviously intended that that section should apply to all public servants and not only to Public Service officers within the meaning of the Public Service Act. Under the Privy Council decision in the Laffer case, it does not legally do so and as a matter of law it imposes on Public Service officers a prohibition not statutorily provided against other public servants.

Hon. C. G. Latham: That was broken service, you know.

The PREMIER: Yes, it was broken service. In the consideration of that case, the Privy Council held that the teachers, not being specifically mentioned in the Act, were outside the provisions of the Act. All along, whatever conditions applied to the Public Service have applied to other officers employed by the Government. While it is admitted that there is a limited application in respect of the 1904 Act, that deals only with public servants When any Act is passed dealing with any section of the Public Service in a matter such as superannuation, it has also been interpreted to mean the whole of the persons in Government employment. In common fairness there cannot be differential treatment. No Government will pass a law which says that one section of the Public Service has a right to certain things, and men occupying absolutely similar positions in some other department should be denied that right. An officer in the Public Service before 17th April, 1905, who is out on that date but who subsequently rejoins is eligible for pension only in respect of period of service before 1905. Similarly with officers reduced to wages before that date and subsequently reinstated to salary. These principles have been rigidly applied to public service officers under the Act. Where similar cases have arisen with other public servants, Section 83 has been applied, not as a matter of law but as a matter of equity and justice, to place all public servants in the same category in that respect. The question whether or not a wages man has served in an established capacity in the permanent civil service of the State has also been considered in the light of legislation passed by Parliament in 1900 which indirectly affected the operation of section 1 of the Superannuation Act of 1871. Section 7 of the first Public Service Act, 1900, provides as follows:—

> The Public Service includes all persons employed in the Public Service of Her Majesty with the exception of persons employed at a daily or weekly rate of wages, or whose appointment is expressed to be temporary or who, not being in the professional or clerical division, are not continuously employed for at least one year.

That was in 1900.

Hon. C. G. Latham: Did that supersede the 1871 Act?

The PREMIER: Up to that stage there was no question raised, as far as can be ascertained, of any wages man ever thinking he had the right to a pension. In 1900 there was a definition of "public servant." It was "those employed by Her Majesty, with the exception of those on a daily or weekly wage," so this definitely excluded from the Public Service under the Act a person employed at a daily or weekly rate of wages, although employed in a Government department where other persons were employed at an annual salary. Thus carpenters and tradesmen employed in the Public Works Department being on wages were expressly excluded from the Public Service, and thus from being entitled to pensions. The Public Service Act, 1905, repealed the Act of 1900 but included Section 83. Therefore the effect of Section 7 of the Act of 1900, together with

Section 83 of the Act of 1905 definitely prevented any person employed in a Public Service Department on wages from qualifying for a pension.

Hon. C. G. Latham: In any case, it was futile. They could not qualify after 1905.

The PREMIER: It was then stated in 1900 that people employed on weekly wages were not eligible for a pension because they were not public servants. The Public Service Act definitely said so. Then the Act passed repealing that Act says that "nothing in this Act shall be deemed to confer on any person whomsoever any rights or privileges under the Superannuation Act." It did not restore any rights taken away, but said that the passing of that Act did not confer any rights on anyone else.

Hon. C. G. Latham: It ought not to have taken any away, either.

The PREMIER: Some might have pointed out that wages men or men paid weekly were not public servants, but when the Act was repealed, this was done and finished with. But Parliament was careful to say that nothing in the Act would be deemed to confer on anyone else any right to benefit under the Superannuation Act of 1871. The practice of all Governments has been to place wages men in the Railway Department on the same footing as wages men in any other department. They were excluded by Section 7 of the Act of 1900. That is the position at the present time. Successive Governments have always acted on that. There has been no question with regard to it. No wages man has ever received a pension, although the member for Perth (Mr. Needham) might reply that wages men are entitled to it, and a number of people are claiming the benefit under the Act of 1871. When the original Act was passed in 1871, while there might have been thought to be some ambiguity about what "established capacity" meant, or what "permanent civil service" meant, or about anything that might have transpired in connection with the interpretation of the Act in the years that followed it, it was set down 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." The decisions of Governors-in-Council under various Governments at various times have consistently and invariably been similar to the practice now existing. The Governor-in-Council could go so far as to refuse to pay anybody a pension, but it is hardly of use giving the right to a person to have a pension and then saying that the Governor-in-Council can take it away. But it does imply that some people have been given rights to be eligible for a pension and that where there is any doubt or any argument or any agitation with regard to pensions, the Governor-in-Council has the absolute right to decide whether the persons considered by themselves to be eligible are in fact entitled to a pension.

Mrs. Cardell Oliver: Did the Governor in Council decide the Kay case?

The PREMIER: Yes, but not on those grounds, but because Kay was not employed in 1905, or not in an established capacity.

Mrs. Cardell-Oliver: Then why did the Appeal Board hold it up?

The PREMIER: Of course it was evident when the Act was passed that there would be some decisions in regard to the eligibility of persons making claims. The 1871 Act set out with a definite scheme, that persons in the Civil Service were not entitled to pensions unless they were serving in an established capacity. Then if there were any difference of opinion the Governor in Executive Council would give a decision. That is what has been done over all those years.

Hon. C. G. Latham: But the question is not whether it has been done, but whether it was right or not.

The PREMIER: I have told the hon. member that the Public Service Act of 1900 defined a public servant as someone employed in the permanent Public Service, but that did not apply to wages men.

Hon. C. G. Latham: But that Act took away some of the rights of the 1871 Act.

The PREMIER: From then on there could be no argument about it, except when dealing with public servants not under the Public Service Act. That is the point that Mrs. Laffer raised; she said she was not a public servant, but was a teacher But that is a different thing altogether from deciding a legal point in a legal way, dealing with persons in Government employment not decisively excluding a certain section of the service

Hon. C. G. Latham: Personally I think the High Court should be asked to decide it once for all.

The PREMIER: The Act gives certain persons the right to decide it.

The Minister for Lands: Every Government have had that chance.

The PREMIER: The law is very clear about it—but I do not want to go over all that again.

Hon. C. G. Latham: What is the meaning of the term "an established capacity"?

The PREMIER: Why was it put in the Act if it didn't mean something?

Hon. C. G. Latham: Would not an engine-driver driving a locomotive be in an established capacity?

The PREMIER: I was an engine-driver driving a locomotive for years and years, and I did not then think that I would ever be discussing a question of this kind in this House. Not by the wildest stretches of fancy did I think I would ever become eligible for a pension. Everyone was retiring in those days, and no one ever thought anything about a pension, or ever thought that he was eligible for a pension. Very few people made claims in that respect. Regarding the Kay case, it was decided by the Public Service Appeal Board. The facts were that prior to the 17th April, 1905 Kay was employed as leading wagon-builder. Prior to and on that date he reverted to his old position as ordinary wagon-builder, but in 1911 he was again promoted to leading wagon-builder, and in 1921 the office was made a salaried one. The Public Service Appeal Board decided that he had served in an established capacity while leading wagon-builder, and therefore was qualified for a pension. Then it came to the point of deciding whether he was in that office when the Public Service Act was passed, and it was decided that at that date he was not a leading wagon-builder but an ordinary wagon-builder, and so he was denied eligibility for a pension under that Section 83 of the Public Service Act, and the Governor-in-Council made a decision upon it, as he was entitled to, and the claim was not allowed. We were acting on the decision of the Public Service Board. Then there were the five other cases analogous to the Kay case. Those men, too, were made salaried officers, whereas previously they were wages men.

Hon. W. D. Johnson: That is the whole crux of the question.

The PREMIER: Yes, it is. Because of Kay's case they could not raise new issues, and during the consideration of that case these other cases came up, and were recommended by the Pensions Board in accordance with the decision of the Public Service Appeal Board. They said that this case had been decided and that it was of no use going over it again. Before Kay's case was finalised these other five men came up.

Hon. W. D. Johnson: That was the cause of the trouble.

The PREMIER: It caused a great deal of trouble. If the Government liked, they could advise the Governor-in-Council to take away something that created an anomaly, as I pointed out, almost inadvertently. Some men were occupying the same positions as they had occupied in 1905 as wages men, but between that and the time they retired the Commissioner of Railways made them salaried officers and they received pensions. That is how the whole thing happened, but if those five cases had been held up pending the decision of the Governor-in-Council, the probability is that the Governor-in-Council would have been advised not to grant those pensions.

Hon. W. D. Johnson. It would be quite wrong to interfere with them now.

The PREMIER: Yes, nobody wants to review their cases, although they might be termed fortunate in that their pensions were approved against all previous practice because of the delay in dealing with the Kay case. Because of its unusual features, and because of that decision, their pensions were approved.

Mr. Needham: The decision in those cases is not the crux of the question by any means.

The PREMIER: No, but that decision has given rise to all the discontent and dissatisfaction that exists amongst men who have gravitated from the wages staff to salaried positions in the railway service. No one has ever seriously considered paying pensions to men who have always been on wages. No such decision has been given by any Government, nor has serious consideration been given to that aspect. Subsequently, the decision in the Kay case was limited by the decision of the Appeal Board in the Devling case. I worked with Devling on the railways years ago; he is a personal friend and I knew the circumstances. He was a leading platelayer on wages. Subsequently, he was appointed to a salaried position but not as a platelayer. Kay worked in the same job all the time. He was leading wagon-builder, and when the position was made a salaried office, he was still leading wagon-builder. Devling was appointed to a differ-

ent position altogether. The board decided that he had served in an established capacity only after receiving promotion, and therefore disallowed his claim. The decisions of the board in the Kay and Devling cases has led to much confusion and misunderstanding. It resulted in some men originally on wages, and later on salary, being declared eligible and others not eligible for pensions. This has created a feeling of dissatisfacton and discontent among the men who are unable to understand the distinction. Let me give two actual cases to demonstrate this anomaly. Dunstan, another man I knew well, attended, with me, the conference of the Locomotive Engine-drivers' Union for years. He was a driver on the 17th April, 1905, and was appointed to a salaried position in 1916 as sub-foreman. In 1936 he was a first-class shed foreman and retired at a salary of £392. Under the Devling decision given by the Appeal Board, he was not in an established position in 1905, because when he was appointed to the salaried staff he was given an entirely different position. He was appointed to a sub-foreman's position, and therefore was not in the same category as was Kay. A man named Williams was a foreman in 1905 and was on wages. In 1922 he was appointed to a salaried position with the same title at £305. Under the Kay decision he would be eligible for a pension, although, as compared with the former case, he joined the service four years later, did not attain a salaried position until six years later, and did not rise to as high a position. Under these decisions one wages man, afterwards made a salaried officer, could get a pension whereas another man who also started on wages, and ultimately was transferred to the salaried staff, even though he rose to be Commissioner of Railways, could not get a pension. If he remained in the same position, he was considered eligible for a pension, but if he was appointed to some other position, even a position such as Chief Traffic Manager or Commissioner of Railways, he was not entitled to a pension. These decisions may be in accordance with the law, but they have given rise to a position which is utterly illogical and opposed to equity, justice and commonsense. There is another serious anomaly. Men who retired about 1930, and who applied, had their claims disallowed, but many under the Kay decision would have been considered entitled to a pension. The Government have refused to reopen their claims, as it would create a precedent and lead to endless difficulty. Yet those men who retired at the same time and with the same case and who did not previously apply may now apply, and if the Kay decision is followed, they would be eligible for a pension.

Mrs. Cardell-Oliver: There were three in 1935.

The PREMIER: If the Kay decision of the board is followed in railway cases, it should in equity also be followed in similar cases connected with all Government departments, such as the Public Works, Metropolitan Water Supply, and so forth. If we are going to do something in regard to the Kay case, all those officers should benefit. Under the Public Service Act wages men were definitely excluded. In 1905 they were not given any eligibility to pensions. That attitude has been consistently followed, and all of them have been denied pension rights. If Kay's case was considered to be good in law, where a man was declared to be a salaried officer who had been in the same position for years, hundreds of people would be made eligible for pensions who were not eligible in 1905 when the Act discontinuing pensions was passed. Such a thing of course was never contemplated. The position is open to abuse. By declaring a man a salaried officer at any time previous to his retirement, provided he was on the same work in 1905, he would automatically become eligible for a pension, whereas otherwise he would not get it. Conversely, if a man were at any time regressed from salary to wages, even if only for a few days and then reinstated, he would qualify only in respect of the services previous to regression. In some cases where this latter position has arisen, the Pensions Board felt that it would be unreasonable to apply the strict letter of the law, and they were recommended for pensions. If the Commissioner of Railways, for the purposes of administration, desired to make officers of all the railway gangers, he could do so. He might reason, "They are in a position of authority, sometimes being in charge of 15 or 20 men, and therefore should be given some status." Under such a decision a man who had been a ganger since 1905 would be entitled to a pension. That, of course, would be utterly wrong. No one would dream that anything of the kind should apply. We say that a

man who was entitled to a pension in 1905 retains his right while he continues in a similar office, but if he had no pension rights in 1905, when Parliament definitely and absolutely terminated pension rights, action taken 20 years after would not make him eligible. Yet that is the position that is sought to be established.

Hon. C. G. Latham: It could only be decided under the 1871 Act and under no other.

The PREMIER: No one on the wages staff in 1904 considered he had a right to a pension and never dreamed of it. Because the Commissioner, for administrative purposes, and in order to have a different method of administration, decided that some of the men should be called officers in 1922 or 1924, that did not render them eligible for a pension. He might determine that a ganger should be an officer. If the decision in the Kay case were to apply 500 gangers who might be scattered all over the State might be considered eligible for pensions.

Mrs. Cardell-Oliver: Are they not?

The PREMIER: If the Commissioner did that, in view of the Kay case they might be considered eligible. The hon. member thinks with the member for Perth (Mr. Needham) that they are entitled to a pension. I cannot fathom the contention advanced with regard to the status of wages men under the 1900 Public Service Act or the 1905 Act. It became apparent that something had to be done about all these different decisions, rulings and limitations. The whole position had to be faced and the anomalies dealt with, and the Government had to issue a policy. The matter was seriously considered, and deputations from unions and other people acting on behalf of those concerned waited upon the Government. The Government did not declare any new policy. They did not say that henceforth people would be excluded from pensions who had received them up to that time. They did not alter the policy. They said that what had been the existing practice for 60 years would continue to be the practice so far as the Government were concerned. They sent that out in a memo. to the people who had made representations.

Mrs. Cardell-Oliver: Was that done through Parliament?

The PREMIER: The 1871 Act distinctly conferred upon the Governor in Council the right to decide this question.

Hon. C. G. Latham: The Government had the final say.

The PREMIER: Yes.

The Minister for Lands: The responsible Government of the day.

Hon. C. G. Latham: The Act was amended to allow an appeal.

The PREMIER: But the appeal does not give anyone any right. There might be a doubt in a certain case, but the officer in question would have a right to appeal. Public servants have always had that right, but an appeal does not make the position any different, for it only gives the man the right to have his case considered. What the 1932 Act did was to extend the right of appeal to railway servants, and so make it similar to that applying to the Public Service. The staff of the Railway Department always has been divided into two classes. They have always been governed by entirely different statutes and regulations as to their employment. The Act of 1900 perpetuated or inaugurated a distinction which had existed before. As one who served with the Railway Department I knew the conditions that existed between the wages and the salaried staff. That became more apparent when the wages section was given right of access to the Arbitration Court. The Government by their right to appoint public servants, control those officers, their salaries and conditions, and thus create for them an established position. If other people appoint persons to service under the Government they are not appointed in an established capacity, and the Government have no control over them. The Government have no control over people in other trades and callings because their remuneration and conditions come within the control of the Arbitration Court. It was not until 1921 that the Railway Officers Classification Board was formed to deal with cases of officers of the railway service. I know of people on the wages and salaried staff of the railways, those who changed from one service to the other. The wages staff worked for eight hours a day. They were allowed overtime and had time and a half for Sunday time. Those who were eligible for pensions, the officers, and were appointed by the Governor in Council, had no overtime, used to work 12 hours a day and seven days a week, and had no redress. Many thought that the conditions of the wages staff were better than those of the salaried staff, pension and all in. They,

therefore, changed from the salaried staff to the wages staff. One officer I know of was working 12 hours a day for seven days a week. He became sick of that and joined the wages staff where he received more remuneration and better conditions generally. He unsuccessfully sought the pension rights from the Government, because he had seen service as an officer for several years, and whilst an officer had become eligible for a pension. But he joined the wages staff before the 17th April, 1905, and therefore lost his pension rights. There were others on the wages staff who said that for the sake of getting a pension they would give up the conditions of employment on the wages staff, and join the salaried staff. I will read some remarks by Sir Walter James which are distinctly apropos of the question of the eligibility of pensions. He made these remarks in Parliament on the second reading of the Conciliation and Arbitration Act of 1901—

> The Government propose to introduce a clause later on so that any person employed in the Government service on wages shall be entitled to join any outside union of the same trade or occupation as that of such person. The effect of that would be that if persons wished to join any outside union like some of them do, who belong to old and historic unions, they could still do so. That wil govern all the service exeept, of course, the clerical staff. So far as the clerical staff is concerned, personally I am prepared to give it to them, but I think before it is granted I should like them to devote most anxious consideration to the point. It must be borne in mind that if we are going to extend this to the clerical staff, we are going to have no pensions. They are not going to get the privileges they have now, but will have to work the same hours as under ordinary circumstances, and they will have to bring their differences to be settled before the ordinary board or tribunal; so I should like the clerical staff to give the most anxious consideration before they ask for those terms.

He pointed out that in the case of those who were dependent on the Governor in Council for their appointment and their remuneration and conditions and who were to enjoy pensions, once they got away from the Executive Council which controlled their service and conditions, that removed their eligibility for a pension. That was even before Mr. Septimus Burt had given his ruling of 1902 with regard to the matter. It is unreasonable to expect at this stage that those people, having received whatever benefits were conferred—and benefits undoubtedly were conferred upon the wages men immediately they came under the Arbitration Court—should be granted pensions. As a matter of personal reminiscence I may mention that when I entered the Railway Department I got 6s. 6d. per day for nine hours per day. Immediately the Industrial Arbitration Act was passed in 1901, we were given conditions fixed by the Arbitration Court, and we speedily got the eight-hour day, and it was not long before our wages were materially improved.

Mr. Styants: I got 6s. 6d. a day in 1912.

Mr. Marshall: What are you growling about? Were you over-paid?

The PREMIER: In my time, 6s. 6d. was the rate for men. The Government do not consider they would be justified in reversing the practice accepted over all those years. That is where the Government stand in the matter. I have tried to make it clear throughout my remarks that the Government are not doing anything to jeopardise the interests of anyone. There has been a certain practice existing for years and years, and now we are asked, in effect, to alter that practice.

Mrs. Cardell-Oliver: No; to have a select committee.

The PREMIER: A select committee to ascertain the liability in respect of all the people whom the motion desires to bring within the purview of the Superannuation Act. The Government know what the liability is. A select committee is not needed to ascertain the liability. We can put our hands on the name and salary-rate of everyone who, under the terms of the motion, would become entitled to a pension; and we know what the State's liability would be. I have that information in my office at the present time. The Public Service Appeal Board have consistently maintained the same attitude all along, right down to the present time. That is all the Government are concerned with. The member for Perth has contended that the decision of the chairman of the board was not given in a judicial capacity. That is a very fine point, inasmuch as he cannot be chairman of the board unless he is a judge. What is the use of definitely excluding from the chairmanship of the board all persons except Supreme Court judges, if afterwards we are to say that when the judge is on the board he is not a judge? He would not be chairman of the board unless he was a judge. A deci-

sion he gives as chairman of the board is given by him as a judge.

Mr. Needham: When is a judge not a judge? Is that your point?

The PREMIER: No. I say the constitution of the board makes it necessary for a judge to be chairman, and that when he gets on the board as chairman he is chairman because he is a judge. Whatever decision he gives as chairman of the board is given in a judicial capacity, because he would not be chairman unless he was a judge. The Government's decision regarding the various qualifications for a pension were stated in a letter dated the 24th December, 1936, which provided the following essential qualifications for a pension:—

(1) When a claimant establishes that he was holding a salaried staff office as a salaried staff officer on the 17th April 1905, or (2) when the claimant establishes that, although he was not holding a salaried staff office as a salaried staff officer on the 17th 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.

In the circumstances I do not consider there is any necessity for the appointment of a select committee. The whole of the facts are well known. If a man was entitled to a pension in 1905, he got it upon his retirement. If he was not then entitled to it, no subsequent action has taken place to make him eligible for a pension from which he was at the time definitely excluded, and is still excluded notwithstanding any administrative act of a later date. The decision of Parliament was to discontinue pensions. Contributory schemes have been suggested, and I have no doubt that a contributory scheme will be established in this State before very long. But a contributory scheme has been unduly delayed because of the serious liability which the Government carry in connection with the free pension scheme existing now.

Hon. C. G. Latham: And, of course, salaries and wages increased much more rapidly than was ever anticipated.

The PREMIER: Yes. It was never contemplated, for instance, that a man who served the last two years of his public service at £1,200 a year would get a pension of £800 a year, whilst the remainder of his service, for 30 or 40 years, had been at the rate of £300 a year. Because of the salary he received during two or three years at the end of his service, the State is saddled for many years with a liability of £800 a year as pension. That could never happen in connection with any contributory scheme, these schemes being established on the basis that nobody can receive a pension of more than about £400 a year. It would be open to the Government to say, "We have numbers of employees in our railways and public works and various departments to whom we would be pleased to give a pension, but we have the serious responsibility of finding the money required for the purpose." We have a responsibility to the people of the State to carry out what has been the procedure for so many years, and not run loose to the extent of half-a-million sterling per annum. I want to sum up the position. When we get talking about this case and that case, and this ruling and that decision, and this precedent or something else that is drawn across the track, matters become confused. Briefly, the position is that the words "established capacity" must have been inserted in the Act for some definite purpose. The interpretation placed upon them by legal advisers, and consistently acted upon by all successive Governments since the inception of the Act, has been that ordinary wages employees were not entitled to pensions. As far as wages employees in the Public Service were concerned, the Act of 1900 made it quite clear that this was the position; and obviously all wages employees were intended to be, and were placed, on the same footing. In the case of the Public Service wages employees the interpretation has been confirmed by all the decisions of the Public Service Appeal Board. No Government has ever felt justified in extending preferential treatment to other wages employees just because they belonged to some other department not included in the Public Service as defined by the Public Service Act. So far as railwaymen, with whom the motion deals, are concerned, the Government could not at this stage possibly accept the grave responsibility of reversing the practice of over half-a-century for one section when we could not do it for another, and at the same time incurring a huge financial liability. Financial commitments to the extent implied in the motion should not be decided by a select committee, but are a definite responsibility of the Government; and as the liability under existing procedure is known, no good purpose would be served by the appointment of a select committee. At any rate, we as a Government definitely are not prepared to

alter the procedure and practice which have existed over so long a term of years. We do not feel that we are entitled to take the responsibility of doing so, having regard to Western Australia's tremendous financial commitments. The liability of the Government under the Superannuation Act is well known with regard to railway employees, as it is with regard to other Government employees. There is no necessity for the appointment of a select committee to inquire into that phase. In the circumstances, I do not think the appointment of a select committee should be agreed to, nor do I think any select committee should be asked to undertake such a futile task, seeing that everyone knows the position.

On motion by Mr. McLarty, debate adjourned.

*House adjourned at 11.2 p.m.*

# Legislative Council.

*Thursday, 9th September, 1937.*



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

## QUESTION—AGRICULTURAL BANK.

*Relief to Dairying and Fruit-growing Districts.*

Hon. W. J. MANN asked the Chief Secretary: 1, What was the total amount of funds made available last year through the Agricultural Bank to relieve the position caused by fires and storm in the fruit-growing and dairying districts? 2, Which dairying districts were assisted, and to what extent? 3, Which fruit-growing districts were assisted, and to what extent?

The CHIEF SECRETARY replied: 1, At 30th June, 1937—Advances £1,269. 2, Denmark—£1,107, advances. 3, Bunbury—£162, advances; in addition, interest of £1,035 was remitted.

## BILL—FEDERAL AID ROADS (NEW AGREEMENT AUTHORISATION) ACT AMENDMENT.

*Third Reading.*

Debate resumed from the previous day.

**THE CHIEF SECRETARY** (Hon. W. H. Kitson—West—in reply) [4.35]: Since the previous sitting of the House I have had a discussion with Mr. Tuckey and explained the meaning of the Bill. It will be as well perhaps if I tell the House what is implied by the words to which the hon. member took exception. I repeat what I have already said, that the Bill will bring our Act into line with an agreement which was recently ratified by the Federal Parliament. This agreement was reached by all the States of the Commonwealth and by the Commonwealth Government as well. Until such time as the amended Act becomes law, this State will not be entitled to participate in the allocation of Federal Aid Road moneys, which for Western Australia this year are expected to amount to over £600,000. For July and August of this year we have not received anything, because of the fact that the Bill has not yet been passed by this Parliament.

Hon. J. Nicholson: It has to be passed in line with the other States.

The CHIEF SECRETARY: Yes. If there should be any amendment, any alteration of the wording at all, the agreement will not operate and cannot operate because the Federal Parliament has authorised the Prime Minister of Australia to sign an agreement containing the particular words which are included in this Bill. Members will recall that within recent months a debate took place in the Federal House when the agreement, which was ratified by this Parliament last year, was not agreed to by the Federal House. As a result the wording of the agreement was altered in accord-