was not likely to be affected by the clause. The Surveyor General had instructions to report or cause a report to be made in regard to all land adjacent to any new railway that might be laid down.

Hon. H. B. LEFROY: If a man was not improving his land the Government should have power to resume, but this clause gave the Government too much power He understood that the clause was contained in all railway Bills, but it seemed to him that it placed too much power in the hands of the Government, because it enabled the Government to compulsorily purchase land, which a man may have lived on for a lifetime, and on which he might desire his children to live. That was a wrong principle and he objected to it. It was not usual when in the past railways were built to agritural districts to make a provision such as the one proposed. It was a wrong policy for a man to be compelled to give up his holding. It would, perhaps, be justifiable if the land were required for some public purpose, but the clause provided for taking land from one man and giving it to another to be used for precisely the same purpose as the original owner had used it.

Clause put and passed.

Clauses 5, 6—agreed to.

Schedule, Title—agreed to.

Bill reported without amendment; and the report adopted.

House adjourned at 10·54 p.m.

Legislative Assembly,

Thursday, 22nd August, 1912.

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

PAPERS PRESENTED.

By the Minister for Works: By-law of the Broad Arrow roads board.

By the Premier: Annual report of the Chief Inspector of Liquors to 30th June, 1912.

By Hon. W. C. Angwin (Honorary Minister): Inspector's report on dairies (ordered on motion by Mr. Lander).

QUESTION — TIMBER REGULATIONS, SAWMILL PERMIT.

Mr. O'LOGHLEN asked the Minister for Lands: 1, Is he aware that sawmill permit No. 35/11, containing 6,800 acres, was granted to the Timber Corporation on 14th July, 1909? 2, Is he aware that regulation No. 27, gazetted on the 27th March, 1910, provides that operations must be commenced within six months after approval? 3, Has the sawmill permit mentioned been liable to forfeiture? 4, What reason has been given by the company concerned for their failure to observe the regulations?

The MINISTER FOR LANDS replied: 1, Yes. 2, Yes. 3, No. 4, The Regulations are being complied with. The area was approved on the understanding that the mill erected near Greenbushes was of sufficient capacity to hold the land granted as Sawmilling Permit No. 35/11. it being considered necessary to make the Corporation erect another mill. The Corporation also relinquished for selection a considerable area of the land held under timber lease in exchange for the area granted under sawmill permit.

QUESTION — MEAT SUPPLY, AUCTIONING STATE CATTLE.

Mr. MITCHELL asked the Premier: 1, Does he think that the method adopted by the Government of auctioning State-owned cattle will reduce the cost of meat to the consumer? 2, When does he expect that the retail price of meat will be reduced?

The PREMIER replied: 1, The action taken was determined by circumstances. This is not the only method adopted for disposal of the State-owned cattle, and these have in view the reduction in cost to the consumer. 2, There has already been a considerable reduction in the prices charged for meat by some retail butchers, and this indicates what may be done by others. When the plans laid down by the Government have had sufficient time to get into full working order, even better results are confidently anticipated.

BILLS (2)—FIRST READING.

1. Public Works Committee (introduced by the Minister for Works).

2. Pharmacy and Poisons Act Amendment (introduced by Mr. Thomas).

BILL—FREMANTLE-KALGOORLIE (MERREDIN-COOLGARDIE SECTION) RAILWAY.

Read a third time and transmitted to the Legislative Council.

BILL—INDUSTRIAL ARBITRATION.

In Committee.

Resumed from 15th August; Mr. Holman in the Chair, the Attorney General in charge of the Bill.

Clause 30—Saving of right to transfer shares in company:

Hon. J. MITCHELL moved an amendment—

That the following words be struck out:—"But no such transfer shall relieve the transferor from any liability incurred by him under this Act up to the date of such transfer."

In the case of a limited liability company the company's assets should be sufficient without entailing responsibility on individual shareholders. If the clause were allowed to stand as printed it would override the Company's Act because it set up a liability that the shareholders of a limited liability company should not be responsible for.

The ATTORNEY GENERAL: The clause merely said that the transferor should be responsible for the liabilities he had incurred. A company was only liable to the extent of its assets for its debts. It did not increase the liability of the company, it only meant that the particular share as incident to that general liability should not be relieved from obligations. The same applied to any other liability or contract.

Mr. GEORGE: If this Bill permitted the transfer of shares to a man of straw with the object of escaping the liability incurred by his actions, he would agree with the Minister. The clause however would seriously interfere with companies formed under the Companies Act.

The Attorney General: It will not increase their liability.

Mr. GEORGE: There are businesses which people would not enter if their liability were not limited. He would not be inclined to invest if a clause like this could overcome the relief given by the Companies Act.

The Attorney General: It would not touch you.

Mr. GEORGE: If owing to bad management a company became liable for penalties under this measure and could not meet their liabilities, what would happen?

The Attorney General: They could not meet them, that is all.

Mr. GEORGE: If the Attorney General would assure him that no shareholder would become liable, he would be satisfied. Shares in mining companies passed from hand to hand very quickly, and the name appearing on them might represent a person who had parted with the shares years before, but because he had failed to register a transfer, he would become liable under this clause. If it could be worded so that shareholders

would not become liable for more than the unpaid amount of their shares it would be all right. When a man sold shares to another who was equally able to carry the liability, he should not be further liable.

The ATTORNEY GENERAL: The clause attached liability only to the shares in accordance with the articles of the company. The shares had only a face value in the company, and the unpaid portion was the amount of the liability. The object was to keep the shares with that equity attached to them.

Mr. Wisdom: That must happen anywhere.

The ATTORNEY GENERAL: It happened everywhere, and this did not make an exception.

Hon. J. Mitchell: If that is so, there is no necessity for the words.

The ATTORNEY GENERAL: If the words were deleted the shares would carry the liability.

Mr. George: Well then, delete them.

The ATTORNEY GENERAL: They were more expressive in this clause.

Mr. Nanson: They should not carry the liability for over twelve months.

The ATTORNEY GENERAL: The liability was carried on by the shares until the debt was paid.

Mr. Nanson: It follows the shares to the next holder, but you are going further.

The ATTORNEY GENERAL: A man would be responsible for the liability incurred when the shares were transferred. That was perfectly fair and did not alter the law.

Mr. WISDOM: If it were not intended to place any liability on the individual, but simply to retain the liability which naturally attached to shares, he could hardly see any necessity for the words in question, especially as the Companies Act provided for liability in the event of shares being transferred, and if the amount was not recoverable from the transferee the transferor was still liable for twelve months.

The Attorney General: That is right.

Mr. WISDOM: Then was there any necessity for these words which seemed to create a certain amount of ambiguity?

The ATTORNEY GENERAL: This measure might be administered completely by laymen.

Mr. George: You need not worry about that.

The ATTORNEY GENERAL: There was a possibility of that course being taken. If the words were deleted, the Companies Act would be required to interpret the meaning of this Clause. He had no objection to the limitation of the liability to twelve months.

Hon J. MITCHELL: After the remarks of the Attorney General the words should be struck out. The Companies Act should not be overridden by this measure The Minister agreed that it was sufficient to limit the liability to twelve months.

The Attorney General: I will accept that as an amendment if you content yourself with it.

Hon. J. MITCHELL: The Minister might as well agree to strike out the words in question.

The Attorney General: No, but I will accept the other suggestion.

Mr Nanson: Is it necessary, when you have it already in the Companies Act?

Hon J. MITCHELL: The limitation was necessary, unless the words were struck out.

Amendment by leave withdrawn.

Mr. GEORGE moved an amendment—

That the following be added at the end of the clause:—"Such liability shall not continue for more than twelve months from the date of such transfer."

The ATTORNEY GENERAL: I accept that.

Amendment passed; the clause as amended agreed to.

Clause 31—agreed to.

Clause 32—Provisions affecting unions applicable:

Mr. GEORGE: Why was it provided that no industrial association should be entitled to recommend the appointment of a member of the court?

The ATTORNEY GENERAL: It would mean that the unit represented on the association would have power to

vote in the union and through its representative in the association. It was better to trust the units.

Clause put and passed.

Clauses 33 and 34—agreed to.

Clause 35—Industrial agreement may be made:

Mr. GEORGE: Subclause 3 provided that an agreement might be limited to a particular locality therein specified but otherwise should be taken to apply to the whole State. It would not be fair, if an agreement were drawn up on the goldfields, that all others engaged in the industry affected should be bound by its terms. Surely the operation of an agreement should be confined to one locality, leaving it to other localities to have the right to apply to have its conditions extended.

Mr. MUNSIE moved an amendment—

That the word "may" in line 1 of Sub-Clause 3 be struck out and "shall" inserted in lieu.

It was his intention later to move to strike out the words "but except in so far as it is so limited shall be taken to apply to the whole State," the object being to limit industrial agreements to the particular localities specified in them.

The ATTORNEY GENERAL: I have no objection.

Amendment passed.

On motion by Mr. UNDERWOOD, Subclause 3 was further amended in line 2 by striking out "a" before "particular locality," and inserting "the" in lieu.

Hon. J. MITCHELL: Why should not an agreement apply merely to the parties concerned?

The Attorney General: That is the object of the amendment

Hon. J. MITCHELL: What he wanted to know was whether the clause did not give the court power to apply an agreement to a locality notwithstanding that there was not any people there who were parties to the agreement, and who would not apply under Clause 37 to become parties.

The ATTORNEY GENERAL: The subject might not be a party matter at all, it might be a question of wages and hours of labour for a particular industry. It was necessary to apply it to a particular locality, because geographically that locality might have very much to do with the wages which should be paid and the hours of labour. It could be limited as the court saw fit, or on application it might be applied to the whole State. The object of these agreements was to prevent the expense of citations and the trouble of going to court.

Mr. MUNSIE moved a further amendment—

That all the words after "specified" in line 2 of Subclause 2 be struck out.

Amendment passed.

Mr. B. J. STUBBS moved a further amendment—

That Subclause 6 be struck out and the following inserted in lieu:—At any time after, or not more than thirty days before the expiry of an industrial agreement any party thereto may file in the office of the clerk of the court a notice in the prescribed form signifying his intention to retire therefrom at the expiration of thirty days from the date of such filing, and such party shall, on the expiration of that period, cease to be a party to the agreement.

Under the clause as it appeared in the Bill, any party who wished to retire from an agreement had to wait until the agreement expired and then he had to give 30 days notice. The amendment would allow 30 days notice before the date of the expiration. That was the only object, to allow 30 days notice being given before an award expired.

Mr. GEORGE could not quite follow the hon. member. What was the object of making an agreement for a term? It was the desire that between the two parties to the agreement there should be absolute accord. If an agreement was made for three years it was made for that period.

The Attorney General: Not necessarily, because the Bill provides that an agreement can run on.

Mr. GEORGE: Even if it ran on it had to be completed in a specified time. The member for Subiaco wanted to stop it running before the term was up.

The Attorney General: No.

Mr. GEORGE: The amendment said that notice could be given at any time

after or not more than 30 days before the expiry and the clause provided at the expiry of the term.

The ATTORNEY GENERAL: The member for Murray-Wellington misunderstood the object of the amendment. If an agreement was for 12 months, before a man could give notice when he wanted to withdraw, according to the Bill he would have to wait until the 12 months had run out, although he might not want to continue beyond the time he agreed for, and in spite of himself he must continue 30 days. Therefore there would be an agreement for a specified term plus at least 30 days. The object of the amendment was to provide that a party to the agreement who did not want to continue need not do so a day longer than he desired.

Mr. A. A. WILSON: An agreement which was in his possession made this year with the Collie miners set out that it should operate until the 31st March, 1915. If the Collie miners wanted to retire under the amendment, they would still have completed the three years.

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

Clause 36—Duplicate to be filed:

Mr. B. J. STUBBS moved an amendment—

That in line 2 the words "thirty" be struck out and "sixty" inserted in lieu.

This would give a longer time for industrial agreements to be filed in the court. The present Act provided for 30 days and the experience had been that several agreements through being a few days late in arriving at the court could not be registered. The amendment would prevent such an unfortunate circumstance again happening.

Amendment put and passed.

Mr. MUNSIE moved an amendment—

That the following be added to stand as Subclause (2) "Every document purporting to be a copy of an industrial agreement shall (notwithstanding that no notice to produce the original has been given) be admissible in evidence in proof of the contents of the original provided that such copy be certified as a correct copy under the seal of the court and the hand of the Clerk of the Court, and the production of such copy shall be prima facie evidence that the original agreement was duly executed in accordance with this Act in manner indicated in the copy, and that a duplicate has been duly filed as provided in this section.

The object in moving this was to put agreements and awards on all fours. Clause 88 made somewhat similar provision in regard to awards of the Court. His experience had taught him that industrial agreements gave better satisfaction to the parties concerned than did any award of the court, and in his opinion such an agreement should have the same legal force as an award of the court.

Amendment passed; the clause as amended agreed to.

[*Mr. Male took the Chair.*]

Clause 37—Parties to agreement may be added:

Mr. A. A. WILSON: Would the Attorney General tell the Committee if this clause were optional in respect to both sides?

The ATTORNEY GENERAL: The words used were permissive and not compulsory, and therefore any party might come under the agreement.

Mr. A. A. WILSON: At Collie there were six branches of the union and six mining companies. An agreement had been drawn up between the companies and the union, but while five of the companies signed that agreement, the sixth had refused to do so, with the result that the agreement was not binding upon that particular company, although binding upon all members of the union.

The ATTORNEY GENERAL: If the employers and employees were working under an agreement, for such agreement to be effective it must be absolutely binding on all the members on both sides. An agreement meant that the two parties were at one.

Mr. HOLMAN: The clause was a very dangerous one indeed. An illustration of this was presented to-day in connection with the timber industry. In that industry there was but one organisation of

workers, while there was a number of employing firms. Two years ago an agreement had been made between the union and Millar's company. At that time he (Mr. Holman) wrote to every other employer in the timber industry asking each employer to join in the agreement. However, none of them would do so. Now, owing to a marked change in the conditions prevailing throughout Western Australia, a dispute had arisen, and the union had served upon all those employers due notice of intention to ask the court for increased wages. Thereupon those employers who, for over two years, had refused to grant the improved conditions provided in the agreement, rushed along to the clerk of the arbitration court and officially concurred in that agreement. In other words, after having for two years robbed the men of the rights bestowed by that agreement, those employers had now come along and concurred in the agreement when they found that they were about to be cited before the court. This was the sort of thing that was done under the clause. It often happened that while there were 20 or 30 employers in an industry, there was but the one union. A direct result of this situation was that under the clause an employer could stand out of an agreement for so long as it suited him, and come in whenever he pleased. It was wholly unfair that one side should be given an advantage denied to the other. The workers in the timber industry had received no advantages from the agreement referred to, but the moment the union went to the court the employers had rushed along and signed the agreement.

The Attorney General: Why cannot an employee obtain the same advantage?

Mr. HOLMAN: For the reason that it was impossible to have an agreement except at least two parties concurred in it. On the side of the union there was but one party, while on the other side one employer could concur, and so set up the agreement, while 20 others could refuse to accept it until such time as the conditions might materially change, when, if the men should attempt to move the court, the remainder of the employers could concur in the agreement and so block the union. Undoubtedly either one of the two parties who first signed the agreement should have the power to prevent a third party from coming in unconditionally, because he realised how unfair it had been in the past. He was satisfied it was not the intention of members to allow one side to obtain an advantage which another could not have.

Mr. B. J. STUBBS: There was no doubt that under the present Act and also under this clause, anybody could be joined to an agreement by simply lodging a notice with the clerk of the court. Members would find on the Notice Paper an amendment to insert between "may" and "become" the words "by leave of the court, to be obtained in the prescribed manner after the giving of the prescribed notice."

Mr. Holman: That will not meet the case.

Mr. B. J. STUBBS: The effect of the amendment would be that anyone desiring to become a party to an existing agreement would have to give notice to the court, and if any of the other parties desired to oppose this person or company coming in they could do so before the court. The point could be argued before the court in the same way as a case cited. The instance mentioned by the member for Murchison illustrated the need for the amendment. There was an agreement between Millar's company and the workers. All the other companies refused to come in for a couple of years until wages had risen so high that there was a chance of the union obtaining something better than the agreement if they could get to the court. To save that reference to the court these companies then signified their intention of coming under the agreement.

Mr. George: Could not the union object to that?

Mr. B. J. STUBBS: No, the agreement had been signed by the union, and covered the whole of the members of that union. If the amendment were carried, then if the companies wished to become parties to the agreement they would have to give

notice to the court, and that would enable the workers to appear in the court and oppose the application. If the workers could prove to the satisfaction of the court that the employers were trying to take an unfair advantage of them, the court would not grant their request. On the other hand, if the employers could bring forward reasonable argument why they should be joined, the court would allow that to take place. He moved an amendment—

That in line 2 between "may" and "become" the following words be inserted, "by leave of the court, to be obtained in the prescribed manner after the giving of the prescribed notice."

Mr. GEORGE: There should be no law that should not have the same incidence on both employer and employee. If it was competent for the employer to signify his concurrence in an agreement, it should be competent for the workers to do the same, and also to state their objections to the joining of any party to an agreement. Amongst the timber workers there was only one union; that union must have signed an agreement with Millar's company, and if portion only of the union could get the benefits of the agreement it did not seem to be fair at all. The agreement should include the whole of the union and the whole of the employers. If, for instance, there was an award or agreement dealing with the coal mining industry at Collie, and five of the proprietors were agreeable and one was not, that one should be compelled to join. The Committee ought to amend the Bill to make that clear.

Mr. A. A. WILSON: In connection with the instance at Collie, there was a registered agreement in existence to which five companies, namely, the Proprietary, the Premier, the Cardiff, the Co-operative, and the Westralia, all subscribed. One company had not signed the agreement, but the men, through their officers, had signed, and the whole of them were compelled to observe the agreement while the one company could go scot free. The amendment would not provide a complete remedy, because it would be necessary for a party to apply to the court to be joined in an agreement and the court might not grant the application. The Bill should make it clear that where a majority of the workers, and a majority of the companies had entered into an agreement, that agreement should be a common rule in the industry.

Mr. B. J. STUBBS: An agreement having been signed by the union, it was binding on every member of that union; but being signed by only one employer was binding only on that employer. Some members of the union, who were bound by the agreement, would have to work for other employers, upon whom the agreement was not binding at all. Provision for a common rule in connection with awards of the court was made in another portion of the Bill. This clause dealt only with those agreements which might not become awards of the court, and, therefore, would not become a common rule. The Bill left it to the option of the court as to whether an agreement should be made an award of the court and thus become a common rule; but it was desirable that that provision should be compulsory in cases where the agreement was signed by a fair number of the employers and by the union. The amendment would have the effect of making persons appear before the court to show that they had some good reason for being joined to an existing agreement.

The ATTORNEY GENERAL: As had been indicated by the member for Subiaco, in Clause 40 power was given to the court to create practically an award on the basis of an industrial agreement, and make the industrial agreement a common rule. Therefore, there was no danger such as had been anticipated in the passing of this clause even as it stood, but it would be further safeguarded by inserting the amendment to which he had agreed before it had been placed on the Notice Paper. If the Bill passed, the agreement which had just been made by certain colliery proprietors, and from which some people were standing out, could at any time be made a common rule,

and in that event the parties now standing out would be compelled to come into the agreement. The great difficulty at present was that unions might cover a large area and a large number of people, and their employers be exceedingly numerous, and when an agreement was made with one employer it covered the whole of the union, but three-fifths of the unionists might be employed by other people who would not agree to the conditions of the agreement.

Mr. Wisdom: Can the workers not go to the court?

Mr. Holman: Not when they concur.

The ATTORNEY GENERAL: In reference to the instance which had been given in connection with the timber industry; when that agreement was made it was a good agreement, and it would be supposed to be good during the whole of its currency, and if the employers standing out had come in at an early stage there would have been no objection on the part of the union. But they waited until an award of the court would possibly have given better terms to the workers, and the objection was to them being allowed to become joined at that stage.

Mr. GEORGE: Perhaps the clause could be improved by adding this proviso, "Provided always that both parties concerned must concur, and that unless both parties concerned do concur the agreement shall not apply." It was grossly unfair that people should be allowed to stand outside of an agreement giving certain rates of wages, and then, when they felt a fear of the whip being put on them, be able to creep in under the shelter of the agreement.

The Minister for Mines: Your suggested amendment would allow them to do that.

Mr. GEORGE: If an employer said he did not concur in an agreement two years ago, but did now, the men might fairly claim that he had received two years' services at lower wages.

The Minister for Mines: But you would allow him to go on for two years simply because he did not concur.

Mr. GEORGE: It should not be possible for employers or employees to agree to a certain thing in the court, and bind other parties, who might have been willing to come to an agreement at the time.

Mr. HOLMAN: If the words "provided both parties are agreeable" were inserted after "may," in line 2 of the clause, the object would be achieved. An agreement always gave more satisfaction than an award. Since agreements had been in force among timber workers there had been five years of industrial peace, whereas previously there had been a cessation of work every six or nine months. An agreement drawn up between Millar's and the timber union, provided among other things that stores should be supplied at ten per cent. above Perth prices. Other companies which had not come in were agreeable to all the other clauses of the agreement, except this one, and they continued to compel their employees to pay as much as 50 per cent. more for stores. They almost compelled the men to purchase from them.

Mr. George: They could not compel them to purchase.

Mr. HOLMAN: If the men did not purchase from them they soon had to look for another position. For two years they had to pay extortionate prices and after that the employers concurred in the agreement. The men had no remedy. To go to the court they would have to call a meeting of all the men and thus penalise those who had agreed. Mr. Stubb's amendment would not meet the case, because all the preliminary steps would have to be taken and what was the good of an employer fighting a case when no good results could come from it. If an employer would not sign when the agreement was made he should not be allowed to come in afterwards.

The Attorney General: You want the consent of both the original parties.

Mr. HOLMAN: Of both the contracting parties, the union and the employers. If a union made an agreement with two out of three employers and later on the other one wanted to come in, he should not be allowed to do so unless the union agreed.

The ATTORNEY GENERAL: There would be a doubt whether the parties

to consent were the parties to the original agreement, or the party applying. He would accept an amendment in that direction but would like to draft it clearly, and to enable that to be done he asked that the clause be postponed.

Mr. B. J. STUBBS: In the circumstances he asked leave to withdraw his amendment.

Amendment by leave withdrawn.

On motion by the Attorney General, further consideration of the clause postponed.

Clause 38—On whom agreement binding:

Hon. J. MITCHELL: This clause was affected by the previous one. It provided that not only the parties who concurred in an agreement but every member of an industrial union or association should be bound.

The Minister for Mines: No; only the members of those unions or associations which are party thereto.

Hon. J. MITCHELL: The clause was affected by the preceding one and should also be postponed.

Mr. A. A. WILSON: The clause bound the members of a union but only the employer who signed the agreement.

The ATTORNEY GENERAL: The clause bound every member of a union party to the agreement, and if there was an association of employers it would bind every member of the association.

Mr. A. A. Wilson: But employers are not compelled to be in an association.

The ATTORNEY GENERAL: It was impossible to do otherwise than bind the parties who were units of the body which made the agreement.

Sitting suspended from 6.15 to 7.30 p.m.

[*Mr. Holman resumed the Chair.*]

Clause put and passed.

Clause 39—agreed to.

Clause 40—Industrial agreement may be declared a common rule:

Mr. A. A. WILSON moved an amendment—

That the word "may" in line 1 be struck out and "shall" inserted in lieu.

The object was to provide that the court must declare that any industrial agreement should have the effect of an award and be a common rule. He understood the Attorney General approved of this course.

The ATTORNEY GENERAL: The Committee had already decided, by amending Clause 35, that agreements must be limited to particular localities; how then could we compel the court to declare that an agreement should be a common rule? If it was desired to have an agreement made a common rule to an industry, application should be made to the court, and the court could only exercise discretion in that regard after hearing evidence. We must allow the court discretion upon the evidence given.

Mr. A. A. WILSON: The whole principle of the Bill was compulsory arbitration. It was understood the Attorney General agreed to agreements being made common awards.

Mr. GEORGE: When an agreement was made by the majority of employers there should be no loophole by which the minority could escape it, but it would be scarcely just for a small employer, making an agreement without the knowledge of the bulk of the employers, to be able to bind the majority. Safeguard should be made by which the majority of employers or employees must enter into an agreement before it could be made a common rule.

The ATTORNEY GENERAL: One could not see how we could safeguard the minority or the majority of employers with a common rule. As the case must be decided in open court on the evidence, if making an industrial agreement a common rule would inflict an injustice the court would not allow it. The decision of the court would be on the evidence tendered. That was why the amendment could not be accepted.

Mr. GEORGE: Before the court could declare than an industrial agreement should have the effect of an award and be a common rule, evidence must be produced before it showing that the industrial agreement dealt with the whole industry and not a portion of it. Was that the effect of the clause?

The Attorney General: Yes.

Mr. GEORGE: Then it was fair.

Mr. A. A. WILSON: It should be made possible to have agreements declared awards without trouble. An application of his to have an industrial agreement made an award was opposed by the employers.

Mr. George: Why should they object?

Mr. A. A. WILSON: From pure cussedness.

Amendment put and negatived.

Hon. J. MITCHELL: Though the Attorney General declared that the court must take evidence before making an agreement an award, the clause did not provide it, and to meet the difficulty the leader of the Opposition had placed an amendment on the Notice Paper which he (Hon. J. Mitchell) would move. It was to give reasonable notice to all parties who might come under a common rule, so that they might object if they so desired. He moved an amendment—

That the following proviso be added to the clause:—"Provided also that before any common rule is so declared, the president shall, by notification published in the Gazette, and in such other publication (if any) as the court directs, specifying the industry and the industrial agreement in relation to which it is proposed to declare a common rule, make known that all employers and industrial unions or associations interested and desirous of being heard may, on or before a day named, appear or be represented before the court; and the court shall, in manner prescribed, hear all such employers, unions, and associations so appearing or represented."

The ATTORNEY GENERAL: The amendment would make the machinery too cumbersome; and the circumlocution provided, besides creating delay, would possibly lead to litigation in other courts, thus defeating the object of the clause. The mere fact that there was an application of this kind being heard in open court would bring all parties to give their necessary evidence.

Hon. J. MITCHELL: The amendment provided that before any common rule was declared the president should, by notification in the *Government Gazette* and in such other publications as the court might direct, specify the industry and the agreement in regard to which it was proposed to declare a common rule. It was entirely in the hands of the court to do this. Obviously it was right that all who might be parties to an agreement should be given the opportunity of saying whether they were willing to be so included. There would be no delay. The fact would be published that the court was going to deal with the case on a certain day and the people could go to the court on that day. Could the Attorney General suggest a simpler method of notifying the parties concerned? The amendment would make the clause workable, and without it there would be no means by which the parties could be notified.

The ATTORNEY GENERAL: If the hon. member would turn to the latter portion of the Bill he would find that power was given to the court to make rules specifying how all these matters were to be brought forward. That was the way all these things were done. In all such acts the steps to be taken were to be decided upon by the court, and these steps were published in the form of regulations.

Mr. GEORGE: So far as the clause was concerned, the court could declare, if it chose, that these industrial agreements should take the force of awards, and that could be done without hearing a single person from the other side. Yet, the employers, or even the employees might object.

The Attorney General: See Clause 127.

Mr. GEORGE: True, Clause 127 provided for regulations, but there was nothing in it about regulations with regard to agreements.

The Attorney General: For everything. It says that it may make regulations prescribing any acts or things necessary to supplement or render more effectual the provisions of this Act.

Hon. J. Mitchell: They may or may not do that.

The Attorney General: The Act could not be carried on without it.

Mr. GEORGE: It was recognised that as far as arbitration was concerned it had come to stay. He was satisfied, however, that if the Bill went through with anything in it that had a flavour of ambiguity, or that might not be fair to both sides, it would not assist arbitration being carried out to a successful issue. Under Clause 40, the court, if they chose could declare an agreement to become an award without a single witness being called, and then make it a common rule, but if the amendment was passed it would mean that they would not do that until they had given all the parties the opportunity of stating whether or not they objected to the agreement. There might be both employers and employees to whom the agreement could not fairly apply. Unless we made both sides feel that they were getting a fair deal, the best results would not be obtained.

Mr. B. J. STUBBS: The first four words of the clause were "The court may declare." That meant that it would require evidence to be brought forward in support of the application, and if that was done then the opportunity must be given to those who desired to oppose the application to do so. There could be no real objection to the amendment except, as the Attorney General had pointed out, that it was overburdening the measure. The court would, as it had the power to do, make regulations governing the clause in precisely the same way as the amendment desired. Under the Bill, the court would lay down the whole course that had to be followed and that would be done by regulation.

Mr. NANSON: The amendment, as he understood it, was that it should be obligatory on the court to insert in the *Government Gazette* and in other publications that the court might direct, notice of the intention to make the agreement a common rule. It was perfectly true, as the Attorney General had said, that there was ample provision in the measure to allow the court to demand that due notice should be given to all parties who were interested in the application, and it was unlikely that the court would refuse until the parties interested had had the opportunity of stating their objection. He could see no objection to making the provision obligatory, because it was admitted by the Attorney General and the member for Subiaco that in all cases some means would be taken to give notice to the parties who might be likely to object to making an agreement a common rule. That would necessitate an equal amount of delay, but no more than would take place if the amendment were carried.

The ATTORNEY GENERAL: The hon. member would see that this was a distinct provision relating to procedure, and there was ample power in Clause 127 for the framing of regulations by the court dealing with procedure in every case. The matter under review would have to be dealt with under the regulations, otherwise the procedure would not be complete, and, as it was proposed to deal with procedure in every other form of approach to the court, this also of necessity must come under it. In matters of procedure the court would be a better judge than the Committee.

Hon. J. MITCHELL: The question was would the regulations take the form suggested in the amendment? The provision for a common rule was a most important point. We should carefully guard against the possibility of a common rule being made to apply to any person who had not first been given an opportunity of appearing before the court.

The Attorney General: That will be properly dealt with when the regulations are being framed.

Hon. J. MITCHELL: It was gratifying to have that assurance. So long as the parties concerned were duly notified, no objection could be taken. Still he regretted that the Attorney General did not see fit to agree to the amendment.

Mr. MUNSIE: It might be that certain amendments which had been made in Subclause 3 of Clause 35 would necessitate an amendment of the clause, which provided that the court might declare that any industrial agreement should have the effect of an award, and be a common rule of any industry to which it related, and

the agreement should thereupon, subject to certain provision, become binding upon all employers and workers engaged in that industry. The said provision was that if the operation of the agreement was limited to any particular locality, then the common rule should not operate beyond such locality. By an amendment to Subclause 3 of Clause 35 we had definitely limited these agreements to specific localities. Would it not, therefore, be necessary to amend Clause 40 with a view to bringing it into line with Clause 35 in respect of that limitation?

The Attorney General: No, the proviso still stands.

Amendment put and negatived.

Mr. A. A. WILSON moved an amendment—

That the following be added:—"Provided where an award of the court of arbitration or a registered industrial agreement is in operation the court shall direct that each and every worker in the industry covered by the said award or agreement shall be members of their respective unions or associations."

The adoption of this amendment would do away with the vexed question of preference to unionists.

Mr. GEORGE: Clearly the amendment provided for preference to unionists. If the amendment were to be agreed to what would be the position of a non-union worker?

The Premier: Wait till we pass it, and then ask the question. We are not going to accept the amendment.

Mr. GEORGE: Just the same, it would be interesting to hear from the Attorney General what would be the position of a non-unionist if the amendment were to be accepted.

Mr. A. A. WILSON: The amendment was nothing new. It had a place in many of the agreements at present in operation in the State. There was no justice in allowing any worker who did not contribute his fair share of the cost to enjoy the advantages of an award.

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

Ayes	..	..	10
Noes	..	..	27
Majority against		..	17

AYES.

Mr. Allen	Mr. Moore
Mr. George	Mr. Nanson
Mr. Male	Mr. O'Loghlen
Mr. Mitchell	Mr. A. A. Wilson
Mr. Monger	Mr. Layman (*Teller*).

NOES.

Mr. Angwin	Mr. Lewis
Mr. Bath	Mr. McDonald
Mr. Carpenter	Mr. McDowall
Mr. Collier	Mr. Mullany
Mr. Dooley	Mr. Munsie
Mr. Dwyer	Mr. A. N. Piesse
Mr. Foley	Mr. Scaddan
Mr. Gardiner	Mr. B. J. Stubbs
Mr. Gill	Mr. Swan
Mr. Green	Mr. Underwood
Mr. Johnson	Mr. Walker
Mr. Johnston	Mr. Wisdom
Mr. Lander	Mr. Heitmann (*Teller*).
Mr. Lefroy	

Amendment thus negatived.

Clause put and passed.

Clause 41—agreed to.

Clause 42—Members of court:

Mr. GEORGE moved an amendment—

That after "President" in line 1 of Subclause 2 the words "who shall be a judge of the Supreme Court" be inserted.

The arbitration law was practically a law to itself, notwithstanding which it was desirable that there should be someone on the court who was trained in the weighing of evidence, and who was regarded as being absolutely free from prejudice. It would be difficult to find a man other than a judge of a Supreme Court who was absolutely free from prejudice, and still more difficult to convince both parties to a dispute that they would get as satisfactory a deal from a layman as they might reasonably expect from a judge of the Supreme Court. Hitherto we had had a judge of the Supreme Court as president of the Arbitration Court, and although at times one party or the other to a dispute might not have been absolutely satisfied with the decisions of that

judge, still it was becoming generally recognised by both sides that the trouble had been not so much with the judge as with the Act which, although made in all good faith, was not as clear as it should have been. Here was an Arbitration Bill going further than anything which had ever been considered before, a Bill that would require to be interpreted by men in whom the whole State could feel every confidence. The representative of the employer was elected by the employers, and his views must be affected by that fact; the same argument applied to the representative of the employees. Those men must even unconsciously be biassed, and it was necessary to have co-operating with them one person who could not be considered as having had a favour from one side or the other. Moreover he should be one whose life's training had placed him beyond class prejudices. Assuming that a judge of the Supreme Court might not be taken, and that a president was elected from either the employing class or the employed class, he could not help having some sympathy with those with whom he had been associated. The Bill could only be given a fair trial by being placed in the hands of the best man who could be got hold of.

The MINISTER FOR LANDS: The argument of the member for Murray-Wellington was that unless a judge of the Supreme Court was elected to this position, it would be utterly impossible to secure anyone else who was not actually identified with the employers or employees, but if the hon. member would think for a moment he would know that there were probably a considerable number outside those at present on the judiciary who could be appointed and who would not be directly identified with the interests of either side. For instance there were the magistrates, a number of whom had been employed on the magistracy for a number of years. Then there were a large number of gentlemen who had been employed in a professorial capacity, such men as professors of economics who were brought into intimate contact with economic questions and who would be eminently fitted for a position of this kind. Again, the mere fact of a man being a member of the judiciary did not argue a complete absence of prejudice on industrial matters. With all due deference to those gentlemen who occupied seats on the Supreme Court bench, there was a possibility, and even a probability, of what might be termed unconscious prejudice. Every day of their lives they came in contact with the employers and on very rare occasions indeed, except in their capacity as judges, did they come in contact with the workers. Was it not reasonable to suppose that judges, who were frequently associated with employers as fellow club members, dining at the same table and meeting them in their ordinary social intercourse, should have an unconscious bias towards the views of that class? It would be in no way imputing their own knowledge of an impartial attitude to say that unconsciously the members of the judiciary, coming into contact with the employers frequently and constantly hearing their views, and never hearing the views from the workers' standpoint, would have a prejudice in favour of those with whom they were brought so much into social contact.

Mr. Wisdom: That is not your experience of the Federal arbitration court.

The MINISTER FOR LANDS: The impartiality of the president of the Federal arbitration court had been most vehemently impugned, probably because that gentleman had been a deep student and had dipped further into economic and social questions, as distinct from party questions, than any other occupant of the Supreme Court bench in Australia. That fact was only quoted to show that the view held by the member for Murray-Wellington was not generally held in regard to the occupant of the presidency of the Commonwealth Arbitration Court. It was no argument to say that the only suitable persons for this position were to be found amongst the judges of the Supreme Court. On the other hand there was good reason for a considerable widening of the field of choice without interfering in any way with the idea of having

a thoroughly impartial president of the court.

Mr. WISDOM: The Attorney General had expressed the hope that the Bill would ensure industrial peace, but if that hope was to be realised the position of president must be unassailable from every point, and must be one that could not be touched by outside influence at all. There was only one position in the State that fulfilled that requirement, and that was the position of a judge of the Supreme Court. It was true that men might be found outside the judicial bench who were quite capable of carrying out the functions of president of the court, but when we considered the enormous powers that had been given to the court, the delicate and difficult work that would have to be done, the large amount of evidence that would have to be sifted, and the far-reaching importance of the court's decision, it was of the highest importance that a man with a thoroughly trained mind should be selected. An equally important consideration was that the judge should be a man above all influences of any sort. The next clause, however, provided that the president should be appointed for seven years. At the end of that term somebody else might be appointed, and the retiring president would lose his means of livelihood. In the case of a Supreme Court judge that was not the case. Even if he were succeeded by another president, he still remained a Supreme Court judge. It was to be hoped the Attorney General would return to the decision he arrived at last session when he agreed that the position should be filled by a judge of the Supreme Court or someone qualified to be a judge of the Supreme Court. Evidently up till quite recently, it was supposed that the Minister still held that opinion, because the member for Leonora had stated in the House the other day that that was his impression. This Bill allowed of no appeal from the decision of the court, and as the president was the court, it meant that a greater responsibility was thrown on him than was placed on the judge of any other court in the State. Consequently, the responsibility of that position was very much greater, and it behoved us to have the very best man and one entirely above all party or other influence. If the Attorney General's hopes were to be realised, and we all hoped they would be, it could only be by appointing as president a man who was as unassailable at least as a Supreme Court judge, and the only person who seemed to fill the bill was a Supreme Court judge.

Hon. J. MITCHELL: The Attorney General in an interview with the Press some time ago stated that the president would be a judge of the Supreme Court, or a lawyer qualified to become a judge. The Minister admitted during the debate that every decision would be based upon the evidence adduced. It was obvious that the president should be a lawyer because he must know what constituted evidence and be able to come to a determination from the evidence before him. He would have to hear evidence on practically every industry carried on in the State and it would be difficult to get any other man than a Supreme Court judge who would be capable of dealing with it. If we were dissatisfied with other classes of the community we must appoint a Supreme Court judge. Under the Commonwealth Act the president comprised the court, and he sat alone and determined what an award should be. Under this measure the president was to have the assistance of two members of the court, but it was understood that the president really made the decision. Of course it would be concurred in by one or other of the members sitting with him. It was difficult to understand why the Attorney General had departed from his original intention. If we had a man with the wisdom of Solomon it would be a different matter, but it was understood that if the president was not to be a judge he would probably be a party man. He did not say that because the Ministry represented the Labour party. In seven years another party might be in power and probably a change would be made by appointing another judge. In any event it seemed possible that a party appointment was likely to be made. Another ob-

jectionable feature was that the president would be appointed for a limited term at a salary less than that paid to a judge of the Supreme Court. He hoped the Attorney General would accept the amendment proposed by the member for Murray-Wellington. That member favoured the appointment of a lawyer, and in every way it was advisable that the president should be a judge of the Supreme Court, a man whose position could not be assailed, and who would not lose if the position were taken from him, and one not connected with any of the ordinary business concerns of the country.

Mr. DWYER: The amendment would have his support as it would greatly improve the Bill. Most of the common sense people of the country agreed that the president should be a judge or a person eligible for such a position. It was sometimes said in the Arbitration Court that because the rules of evidence, which obtained in ordinary courts, were disregarded, the president ought not to be a judge, but the fact that a judge's training enabled him to estimate the value of evidence, even though he disregarded the rigid rules laid down in a court of law, would stand him in good stead. There was an even wider reason, and that was the confidence of the community in the uprightness, strictness and honesty of our judicial system and of our judges.

Mr. Green: You are obsessed with the legal idea.

Mr. DWYER: Perhaps so, but he thought the greater part of the community was obsessed with the same idea. The court would be improved if one of the fundamental principles of the measure was that the president should be a judge, or one eligible or qualified to be a judge. The public would have more confidence and the applicants would have more confidence, and no one was better fitted to say what was right between two contending parties than a judge or one who had the training which made a judge.

Mr. DOOLEY: One of the chief complaints against the Arbitration Act which had been made in and out of season by workers and employers was that a judge of the Supreme Court was not sufficiently versed in industrial matters to be able to understand the difficulties, technicalities and ramifications of the various industries. The workers had known by bitter experience that when it had come to a question of deciding the pros and cons of an industrial dispute, conservatism, expressed through the judge, had always prevailed. The profession and position of a judge made him conservative.,

Mr. Dwyer: No; what about Mr. Justice Higgins?

Mr. DOOLEY: There were exceptions, but the lawyer or judge was conservative; his training was conservative, that was, it led him to stand by the letter of the law. Anything from the source of workers' cases was practically foreign to him; he was on absolutely new ground, and he fell back on his conservative ideas when it came to the matter of a decision. A judge's social prejudices were also against him. A judge in this State had definitely stated that he would throw up his commission rather than accept the presidency of the Arbitration Court because, he said, it was foreign to both his social and legal training to think that a body of men could go to the court and ask for a judicial decision which would apply to the whole of such body, and that he could not consider legal decisions from that point of view.

Mr. Monger: Did he express himself in that style?

Mr. DOOLEY: Very nearly.

Mr. George: Was it not part of the agreement made with him before he came to the State?

Mr. DOOLEY: That had nothing to do with the question, and it had never been brought forward as an objection. It may have been an objection, but he could hardly imagine that was so because this judge came from a country in which industrial arbitration did not exist, and it was reasonable to suppose that he would not anticipate what he was coming to in Western Australia. Arbitration in this State had not been long in existence at that time. There was another phase of the question which he regarded as being simply guff. It was peculiar that a lawyer, practising in a police court, familiar

with the sordid side of life and with the ordinary human weaknesses, until he had reached an age of 50 or 60 years when it was impossible for him to alter his character in the slightest form should, by being put on a pedestal or a piece of furniture, become unassailable. By the mere fact of walking from the floor of the court to the judge's chair it was considered by some people he had left all his weaknesses behind him. It was worthy of Gilbert and Sullivan to say that once a man stepped from the lawyer's table into the judge's chair, all his weaknesses and foibles departed from him like a serpent shedding its skin. There were several instances where laymen had been eminently successful in adjudicating on industrial troubles. In the strike of the railway fettlers many clergymen strongly urged that Bishop So-and-so should adjudicate. On that occasion the name of the member for Greenough was mentioned, and had the men agreed to put him in the chair the hon. member would have given them a very good deal. Finally the mayors of Perth and Fremantle decided the trouble to the great satisfaction of the whole community, and the mayor of Perth at that time was the present Chief Justice who then claimed the men had a splendid case, but afterwards, when he became president of the Arbitration Court, renegged on what he had previously decided, and in fact, before the case was opened before him, told the secretary of the workers' organisation that gentleman would be sorry for going to the court. It was all guff about a judge being so immaculate once he left the floor and got on the bench. He was not immaculate previously, because he was assailable, but once he got on a pedestal he was unassailable. In the recent trouble in the Railway Department when things were at a deadlock it was a parson who lifted the country out of its difficulties, and, leaving spiritual affairs on one side, came down to sound, practical, secular matters in a spirit our Supreme Court judges should emulate in trying to solve serious economic difficulties. If they would do this the trouble would be over. The attitude of our Supreme Court judges of late in connection with industrial matters forced one to the conclusion he was pointing out. They recognised their inability as judges to deal with industrial matters that were so far away from their sphere of training and their legal environment that they wished to get out of it. One could believe that their object in giving contradictory decisions of late was to get out of their responsibilities, recognising that laymen were best suited to deal with matters of the kind.

Hon. H. B. LEFROY: Laymen might perhaps be able to decide on points of fact in regard to the ramifications of the different industries concerning which the court was arbitrating, but there were great questions of law to be decided in the Bill which laid down the method of arriving at industrial agreements and solving industrial disputes. It was the duty of the president to direct the court with regard to these questions of law, therefore he should be a man of legal training and knowledge.

Hon. W. C. Angwin (Honorary Minister): We want common sense, not law.

Hon. H. B. LEFROY: An Arbitration Act must be administered according to the law, and a judge would be better able to direct the court in regard to questions of law than a layman. The member for Geraldton was under a misapprehension in regard to the objection of judges of the Supreme Court to sit in the Arbitration Court. The objection was not that the judges thought they were not *au fait* with the workings of the different industries, but because the awards of the court were not carried out. Unless the awards of the court were carried out, the Bill would be useless. The president of the court would hold the balance of power between the other two members of the court, who would be practically counsel for the two parties to any dispute before the court, and necessarily the president should have legal training and legal knowledge in order that the statute might be carried out in its integrity.

The ATTORNEY GENERAL: If there were a fitting member of the Bar

who desired to be a judge and was offered an appointment as president of the Arbitration Court, where did the clause prevent the billet being given to him? The clause gave a perfectly unlimited sphere of choice. A magistrate who was a better man than any member of the legal profession could be offered the situation, or a man who, by virtue of his mental attainments, his wide knowledge of the world, his clear judgment and his known integrity, though a layman, was fitted to be chosen for the post. We were in no way limited in our choice as the clause stood. There was a danger in confining it to Supreme Court judges, inasmuch as it was well known that there was no desire on the part of the judges to occupy this position. There were practically only two who could be utilised for the purpose, and in all these cases the Arbitration Court had to wait upon the convenience, if he might say so without being disrespectful, of the Supreme Court.

Mr. George: Can you not appoint another judge to the Supreme Court?

The ATTORNEY GENERAL: Twenty judges could be appointed if the Government were justified in doing that, but he did not think there was any justification for appointing another judge under the existing circumstances. What was required was a permanent president for this court, and we could not get a permanent president from the Supreme Court without appointing another judge.

Mr. George: Why not do it?

The ATTORNEY GENERAL: We might just as well appoint a president for this court; why necessarily lift him to the Supreme Court, and then bring him down, if he might say so without being disrespectful, to the Arbitration Court. The Bill provided for a permanent president at a salary of £1,000 per annum, and the term would be for seven years.

Mr. Wisdom: That is not permanent.

The ATTORNEY GENERAL: The president could be reappointed, and it would be wise to have a limitation of the term of office. In a growing country like this we required to be able to supersede one who, by virtue of his habits or his conservatism, or inability to keep pace with the growing conditions, required supercession.

Mr. Wisdom: You can do that with a judge.

The ATTORNEY GENERAL: No.

Mr. Wisdom: It is possible under the Commonwealth Act.

The ATTORNEY GENERAL: The Bill gave a certain degree of security of permanency for at least seven years. As things were at the present time, we could have a judge this week, another judge next week, a third on the following week, and then back again to the first, and as a result we got no consistency in decisions. If we got a capable man, would it matter whether he was a Supreme Court judge or not? If we had a man who was capable of filling this office, what did it matter whether he wore ermine or a common felt hat. The Government of the day would be responsible for the appointment, and surely they would never risk their reputations by appointing one who was not competent. There was no limitation, and we could look around for the best man, and with every respect to the judges, he was bound to say that it was possible for this particular kind of work that had to be done in this court of conscience and equity, that the training of a judge might sometimes stand against him rather than in his favour. That was to say, there was more than the mere judging of evidence. There was more than the mere regard to decide cases or the methods of interpretation laid down in the legal text books. There was more than that to do. He submitted respectfully that it was impossible for a judge to do his duty in the Arbitration Court unless his sympathies were attuned in harmony with the march and progress of events.

Hon. J. Mitchell: Why should he not be?

The ATTORNEY GENERAL: They were in some instances, but the course of legal study for the most part depended on a constant reference to precedent. He would admit that the world owed very much indeed to lawyers. Liberal minded

men had been in those ranks and had been leaders of reform, but when it came to the question of legal training he submitted that legal training was the training of the mind to discover the application of precedent. In their adherence to the rules, in their strict following in the line of trained logic, the mental power was supreme at the sacrifice often of those wider, deeper and broader sympathies which were necessary for a man in this position. He argued and concluded on cold logic.

Mr. George: He has no illusion.

The ATTORNEY GENERAL: He should have no illusion. In other words, he should be able, like the man doing a sum in arithmetic, or solving a problem in algebra, to understand the exact value of every factor of the case he had in hand, and to draw a conclusion according to the logic. This court was of no value, and would never be of value, if apart from the strict logic of the case, there was no room for the warm glimpses of human sympathy, and sympathy not only with those who were parties to the case, but sympathy with the march and trend and spirit of events in the whole body corporate of society. It was a rare thing to find men who had the capability to do that, but it was quite possible to find such characters, and if we could find them, they were not only as capable, but possibly more capable than a judge of the Supreme Court for the post. We desired to have a chance to get such a character upon this bench, but it should not be forgotten as the case stood now, the Government were limited in their choice.

Mr. Wisdom: You could make him a judge.

The ATTORNEY GENERAL: It was not necessary to do that. We could appoint one person who had the requisite qualification to that bench without making him a judge of the Supreme Court.

Mr. George: Why not make the salary commensurate with that of a Supreme Court judge?

The ATTORNEY GENERAL: It was imagined that we could get a competent man for that salary. Personally, however, he would not grudge twice the salary for the position, but we had even in this matter to consider the adequacy of our finances. We had to go on economic lines, but if in the performance of the duties, the salary of the president was found to be inadequate, he was convinced that the Government, having regard to its obligations and its resources, would increase that salary. This was a beginning salary, so to speak, and had been fixed at what was considered to be a fairly good salary for a man devoting his whole time to a professional career of this character. Under these circumstances, he would ask that the clause be passed as it was printed in the Bill, because it did not narrow the choice. Any other definition would narrow the choice, and for the position we wanted the best man it was possible to get.

Mr. NANSON: The speech of the Attorney General made it clear what we might expect if this and the succeeding clauses were passed in the form in which they appeared in the Bill. There was nothing, immediately the Bill became law, to prevent a judge of the Supreme Court, who for the moment happened to be the arbitration court judge, from sending in his resignation, and immediately that resignation was sent in, the office became vacant. Listening to the words of the Attorney General it was impossible to doubt that he—and it was supposed that the Attorney General also spoke for his colleagues in this matter—was strongly in sympathy with the idea that there was a greater likelihood of obtaining a suitable president of the arbitration court from among laymen than from among lawyers. This point had already been debated by a number of speakers, namely, as to the relative capability of a lawyer and a layman. The Minister for Lands pointed out with evident truth that a judge might be unconsciously biassed, and in the same way the member for Geraldton pointed out that a judge was not necessarily infallible. He (Mr. Nanson) was perfectly at one with both those hon. members in subscribing to those doctrines. They were self-evident, and no one on the Opposition side of the Chamber con-

tended for one moment that there was any member of the Supreme Court bench or any bench in this State, or in any part of the world who was infallible, or was incapable of unconscious bias. But what was contended was that there was less likelihood of unconscious bias in his judgments from one who had had a training on the judicial bench than might be expected from the ordinary layman. A judge was backed up by a magnificent tradition, a tradition unfortunately not of a very great age, not less than two centuries old, and we could not forget that at the time when judges held office at the will of the sovereign the impartiality of the judicial bench was very much more honoured in the breach than in the observance. Neither could we forget that the Bill brought into force one of the very evils which were so glaring in those old Stuart days. The dominant power to-day was not the sovereign monarch, but the sovereign people, and the Bill as framed by the Government made the president of the arbitration court dependent upon the will of the people. The president would be appointed for seven years. If, during that time, he achieved popularity and won the approval of the majority of the people he would be re-appointed, but if he failed to raise wages as high as the majority of the people thought they should be raised, then if we happened to have in power a Government who regarded themselves, not as representatives of every class in the community, but in a special sense as representatives of the wage-earners, it was very doubtful whether that president's tenure of office would be extended for a further period of seven years.

Hon. W. C. Angwin (Honorary Minister): The same argument applies to a judge to-day. He can be removed by Parliament.

Mr. NANSON: The removal of a judge did not rest with the Executive, nor with one Chamber, but with both branches of the Legislature. When we considered the enormously wide powers given to the president of the court it should be accepted as an argument for appointing to the position a person who by training and by knowledge was likely to adorn it. We could not, of course, hope to get an infallible president. Clause 65 provided that the president was to decide according to equity and good conscience. In the event of that clause becoming law, it meant that the final decision in disputes involving the welfare of, perhaps, thousands would rest on the opinion of one man, an opinion not governed by precedent, not governed by any law, but capable of changing from time to time, an opinion as incapable of being checked as the opinion of the greatest Oriental despot who had ever lived. When we remembered that there was absolutely no power of appeal provided, that it was a tribunal which could be moved by either party, we should be careful to fence round the appointment with every possible safeguard. The Attorney General had pointed out that the full responsibility for making the appointment would rest upon the Government of the day. It was a pity the Attorney General had not gone a little further and told the Committee precisely on what principle the Government proposed to go in making the appointment. Because one could not forget that only a few months ago the Attorney General himself had laid down a specific principle in regard to the making of Government appointments, a principle which was endorsed by one of the Attorney General's colleagues, and which had never been publicly disavowed by any member of the Government. In the notorious Chinn case the Attorney General had laid it down as a principle that, other things being equal, party service should be rewarded by public office; and the Minister for Mines had affirmed the same principle in similar language.

Mr. E. B. Johnston: In a confidential letter.

Mr. NANSON: It was a very good thing that we should be privileged to peruse confidential letters of this nature, because these two letters had served to throw an illuminating ray of light on the opinion of Ministers as to the method which should be followed by the Government in making appointments. Discreetly

enough the Attorney General had inserted the qualification "other things being equal," but even thus qualified the principle was essentially a vicious one. If the Attorney General were going to appoint a lawyer as president of the arbitration court, it was pretty certain that if of two applicants of equal ability one had been active in the cause of Liberalism while the other had avoided politics, the Minister would not follow out the principle which he had enunciated in that famous letter of a few weeks ago.

Mr. Heitmann: What about your appointments to the licensing court?

Mr. NANSON: The appointments referred to would bear the strictest scrutiny.

Mr. Underwood: You did not worry about all things being equal.

Mr. NANSON: For his part he was perfectly willing to defend any and all of his actions. Just now he was giving Ministers an opportunity of defending the sentiments put forward in those much discussed letters. Probably the two members who had interjected associated themselves with the principles then enunciated by the Attorney General. It might even be that all the hon. members opposite associated themselves with those sentiments. It was a matter of great interest to he public, especially when an. appoinment to the presidency of the arbitration court was tendered.

Mr. Underwood: What about your brother-in-law in Greenough, and the appointment you gave him?

Mr. NANSON: The hon. member was merely endeavouring by irrelevant interjection to draw him from his argument. At a time when, according to the remarks of the Attorney General, we might expect that a new appointment would be made to the arbitration court, it was well that we should know whether the Attorney General and his colleagues proposed to make an exception to their ordinary ethics in respect to this particular appointment. An assurance on this point would go a long way towards removing the uneasiness which existed in the public mind. The member for Geraldton had argued that a judge of the Supreme Court was not sufficiently versed in worldly matters to decide the pros and cons of an industrial dispute. This argument could be used against the appointment of any judge at all, for a judge of the Supreme court was continually being called upon to decide matters calling for the greatest possible acumen. But in respect to the arbitration court, the Attorney General, recognising the difficulties of the position, had inserted a provision under which the president could call in experts to help him in the discharge of his duties, And, apart from this, Clause 65 would enable the president to inform his mind in any way he might think fit, even to the point of disguising himself either as a worker or an employer and taking an active interest in an industry. So it would be seen that even if the president had not the pros and cons of every industry at his fingerends, at any rate the widest means were provided to enable him to inform himself, and the fullest power was given him to refer to experts any perplexing point which might arise. The argument used by the member for Geraldton was rather in favour of wages boards than of an arbitration court, because in the case of a wages board the chairman had twelve assistants on one side and twelve on the other, specially picked from the industry whose wages and conditions of employment were under review, and comparing the relative capabilities of a judge of the Supreme Court with those of other portions of the public, there was a much stronger likelihood of obtaining the best possible president—he would not say an absolutely perfect one, because it would be necessary to go to another planet to get such an one—if they limited this employment to one who by training and tradition was most likely to weigh the facts and arrive at a just decision.

The ATTORNEY GENERAL: As there was a kind of veiled innuendo against the Government that seemed to imply that they were capable of making appointments for purely political purposes, it was necessary to say a word upon that, because that had been the argument used all through the last Legislative Council election—that the Government had

specially put this clause in for the purpose of getting some creature of their own. The cry was now revived by the member for Greenough, and fortunately members were able to see now exactly what he was driving at. He thanked the hon. member for having done him the justice of reporting correctly what he had written in regard to the appointment of Mr. Chinn. He had written that he was incapable of judging of the man's professional qualities, but he had put the Commonwealth Government on their guard. He had said that if the professional qualifications were satisfactory then they might consider Mr. Chinn's services to the party at the election. What party that had ever been in power had not followed the same course? But in other cases there had been no consideration of equality or fitness. He had insisted as a stipulation before ever his private friendship or political proclivities came into play, that they must first find the fitness of the man. Believing, as he did, that his cause was the right one for the country and for generations to come, if he could find in the ranks of those who had the same cause at heart men as capable, or more capable, than the men who had not those capabilities, he would link in the public service every time those who would help humanity along. That was what he would do if he had absolute power, but first of all he must know a man's fitness, his qualification to do. In the times when the other party had been in power, where had they given justice in the appointment of workers? Where had they ever pointed to a case where the present Government had turned down men on the other side, where they had known their fitness for the position and had not others to take their place? In other words, where had they ever done an injustice to the other side? In not one single instance. The Government had wronged no man because of his political opinions; but when there was an opportunity, and a vacancy occurred, all other things being equal, and fitness being established as the first requisite, then surely no wrong was done in the exercise of that natural human gratitude which gave a chance to the side that had been so long neglected and despised.

Mr. Nanson: Would you make an exception in this position?

The ATTORNEY GENERAL: No. If there were two men each capable of being a judge of the Supreme Court, equally learned in the law, equally capable in judgment and character, in all other respects either of them capable of filling that position with dignity and with honour to the State, and there should be just one difference between them, and that difference was that one of them was a conservative in spirit and tendency, incapable of receiving the spirit of the times as his inspiration; and the other, in line with the march of human development, his heart and his sympathies being with the cause of his fellow men, then that should be the extra weight in the scale.

Mr. Nanson: Suppose one was a partisan and the other was not associated with politics?

The ATTORNEY GENERAL: This was the way that such a position would be decided: There were two men, one learned and in every way fitted but who had never taken an interest in politics, who had been in fact a perfect nondescript in that respect; the other had been a politician, actively living in public events. How would he decide between the two? He would say that in all other matters the two men stood equal, but the second showed a more keen sympathy with the world in which he lived, and had shown an active participation in the times and events around him, he had exercised and displayed one shade more intelligence than the other, he had been a politician as well as a lawyer, and that much weighed in his favour and he should have the billet. It was no disgrace to belong to politics; it was the finest training a lawyer could have. We had seen a number of instances of men who, the moment they aspired to distinction at the bar, had used this Chamber to practice in.

Mr. George: You should not give the game away like that.

The ATTORNEY GENERAL: There was no occasion to conceal it. Had not the best of our judges come to Parliament first for their training and discipline in public life? Was it not the way to the

summit of the profession, the bench, even in England itself, and was it not the custom of British Governments in power to select judges from their side of politics?

Mr. O'Loghlen: In the Eastern States as well.

The ATTORNEY GENERAL: That was the practice everywhere and it was a farce to talk about that sort of thing. It was no accusation against the Government that when all other things were equal they preferred to show gratitude to those who were in sympathy with them and their aspirations.

Mr. George: Spoils to the victors.

The ATTORNEY GENERAL: Where were the spoils?

Mr. George: That is what you are arguing for.

The ATTORNEY GENERAL: The argument was for doing justice to a long neglected party; a party numerically strong and powerful in the land, that had been ignored, calumniated, down-trodden, misrepresented, and vilified for all the years of its existence; and now when it claimed its right and had come into power by its own inherent strength, and for the first time offered a hand to help its members, the party was accused of spoils to the victors. There was no more of spoils to the victors in that than there was in moving side by side with one's companions through life. The Government were not going to buy quietude by appointing their enemies; they were not going to free themselves from criticism by giving to the other side all the plums all the time. The other side had not only their thumbs, but their whole fists in the plum bottle, and the Government were now determined to give their side a chance.

Mr. GEORGE: The statement of the Attorney General was that human nature prevailed and that we all had to help those who, we considered, had helped us. But if the doctrine that had been propounded by the Minister were not carefully dealt with and watched, we should have repeated in this State the methods which had disgraced the United States and were known as the methods of Tammany Hall.

Mr. Lander: It has been going on for years.

Mr. GEORGE: Then what had the hon. member been doing that he had not exposed it? If Mr. Lander had not had an opportunity before, he had an opportunity now, and what was he going to do? The proper question to ask with regard to matters of this sort was, whether it was a fit and proper thing for our public life that people should render aid in getting a certain party, Liberal or Labour, into power for the purpose of sharing amongst them what they might be able to earn. The Attorney General must know that he was talking nonsense when he spoke of the Labour party being down-trodden and of the Government now handing the spoils to them. The Committee were dealing with a Bill which members believed was intended by the Attorney General to be an honest attempt to give justice in industrial matters to both employees and employers, and it was degrading the Minister's high intention to bring in questions such as he had just been speaking of. It was desirable that we should have as president a judge of the Supreme Court. The argument against such an appointment had been that it was impossible for a judge of the Supreme Court, by the restrictions of his social life, to be acquainted with the different industries and trades with which he would have to deal. He had argued for years that even with lay members of the court it would be impossible to deal fairly with the parties unless they had a man to adjudicate who was a member of the trade. That objection had been removed, because it was provided that the president might call in experts from any trade to assist him in dealing with the technicalities of any award. He could also call in experts, one to be elected by a majority of the employers and another by a majority of the employees. Therefore we had done away with that great objection, the lack of intimate knowledge of the peculiar conditions of a trade, and on top of the court we should now set a gentleman as far as possible without bias or unconscious prejudice whose training would enable him to weigh evidence and

conduct the inquiries in a manner that would elicit the facts and the truth. Seeing we had done away with the objection regarding lack of knowledge of technicalities, we should have a gentleman as president who was a judge of the Supreme Court. The member for Geraldton said that one of the judges had stated he would refuse to sit in the Arbitration Court. His objection was, not that he had any doubt as to his capabilities to give a fair and impartial judgment, but that under the present law it was impossible to enforce awards.

Mr. Dooley: No, no.

Mr. GEORGE: The Bill provided penalties for both sides and the president was given powers greater perhaps than those given to a judge of the Supreme Court. A judge of the Supreme Court sat for only a portion of the year, but the president of the Arbitration Court, as affairs now were, would have little leisure from the 1st January to the 31st December. If the president did his work as the Attorney General desired and as would be necessary to give satisfaction, he would have to make closer inquiry than a judge of the Supreme Court, because he would be not only the judge, but the director of the proceedings, and the responsibilities upon him would be so heavy that he would have to decide, not upon the evidence which might be placed before him, but as to whether it was necessary that further evidence should be called. A judge of the Supreme Court had simply to decide on the evidence placed before him. The president of the Arbitration Court had to be judge, counsel, adviser, and sympathetic pleader right through. To compare the two was impossible.

Mr. Dooley: You are arguing from my point of view now.

Mr. GEORGE: So much the better for the hon. member. Employers and employees would be better satisfied if a judge of the Supreme Court was appointed. With a measure of such wide scope we must have the best machinery possible or the provisions would not be carried out. The only thing not provided in the Bill was that the employer should receive for the product of the labour of his men sufficient to pay not only the wages and cost of production, but all the expenses and some profit for himself. Provision had been made for the working man in every shape and form and it could not be wrong that the employer should receive consideration such as he had indicated.

The CHAIRMAN: Order! The hon. member is going outside the scope of the amendment.

Mr. GEORGE: That was so, but he would remain inside the scope of the amendment now.

The CHAIRMAN: The hon. member is not in order.

Mr. GEORGE: The amendment was one which he commended to the Committee.

Mr. THOMAS: The member for Greenough had stressed the fact that it was not altogether the question of the appointment of a judge, but the question of the length of the appointment that troubled him most. It might be a strong point that a president appointed from the people might be inclined to make an effort to secure popularity. If that was the greatest difficulty, it should be made a lifelong appointment and the president should be placed in the same position as a judge of the Supreme Court. It had been pointed out that the lifelong training of a judge fitted him to occupy a judicial position as it removed him from all influences which would be likely to prejudice him. Lawyers formed the recruiting ground for the Supreme Court bench, and what were the training and traditions of a lawyer in Western Australia? Much of his time was spent in dealing with the unsavoury details of the Divorce Court; and very often he had to defend a soiled lily before the police magistrate. He took any side upon which he happened to be briefed. Throughout his life he did nothing else but take sides, that was the glorious tradition of the profession for more than two hundred years and the glorious tradition upon which we were asked to build infallibility. He agreed with the member for Geraldton that while a lawyer was at the table in the Divorce Court he could take any side and be as

biassed as possible, and yet the member for Greenough said as soon as such a lawyer became a judge of the Supreme Court he was freed from the slightest tinge or possibility of bias. He regretted that he could not follow that argument.

The Premier: They have not said so about Mr. Justice Higgins.

Mr. THOMAS: No.

The Premier: It all depends on which side they happen to be.

Mr. THOMAS: The member for Greenough inadvisedly referred to a private letter written by the Attorney General to a friend in Melbourne in which something was said about appointments. If all the private letters which the gentlemen who represented the flats of Greenough had written during the various phases of political development through which he had passed before attaining his present position were placed on the Table, we would have a most enjoyable entertainment. We would see as many sides to his political and other opinions as there were faces to a diamond. He also said the Attorney General would appoint a man of his own political opinions, all things being equal. What had the hon. member done except to advocate the appointment of one of his own profession. It had been nothing but a piece of special pleading for the appointment to this lucrative position of a man from the profession to which he belonged. We had a concrete example in himself of what he was blaming another for doing. Both legal luminaries of this Chamber had, with shocking lack of taste, advocated an appointment from their profession exclusively.

Mr. Dooley: Preference to unionists,

Mr. THOMAS: No substantial grounds had been advanced why we should select a member of the legal profession for the position of president. Nobody could get within the charmed circle of the Supreme Court bench except a member of the legal profession, and there was no logical reason why such an appointment should be made. Tradition did not always credit the legal profession with being of the highest moral standing in the community or with having all the virtues of the world.

Mr Green: The devil's brigade.

Mr. THOMAS: The temerity was to be admired of those who advocated that the appointment should be confined to these individuals trained in defending one side only, always biassed on the side they were engaged on, never permitted to express their honest opinions, whose frailties fell from them when they wore the wig and gown, who were the only persons who could develop so rapidly from what were credited by the public generally as possessing so many bad qualities to individuals possessing absolute infallibility. The amendment sought to narrow the appointment of members of "our profession," or the issue was narrowed to the four Supreme Court judges of Western Australia. Certainly we had excellent confidence in these four individuals and would feel proud of the traditions of our Bench, but there was such a thing as unconscious bias. Knowledge of equity and good conscience was more possible to a layman than to a judge or a gentleman in course of preparation for a position on the Supreme Court Bench. No perfect individual could exist, all were liable to error with human nature as it was, but it was possible, one was confident in believing, to find in Western Australia a man as near as it was possible to be free from prejudice, with broad sympathies and a progressive mind and with development of intellect, who would fill the position with credit to himself and benefit to the State. It would be a great blunder and a concession to prejudice to accept the amendment. One could not be convinced that in the narrow field of four men we could make a better choice than if we had the whole wide field of Australia, or, if necessary, the world. A lawyer's training, and a judge's surroundings were continually creating unconscious bias. There was one bright and shining exception in the case of Justice Higgins, but the whole training that placed a man on a Supreme Court Bench had the tendency to lead him in one direction. No matter how just he might be, how lofty his sentiments, how high his moral attainments,

there might be a tinge of bias to lead him astray in giving a decision that might mean so much to the happiness of a very large section of the community. In this clause there was a great principle, the possibility of doing great good for the State, the possibility laying the foundation which would enable us to achieve that we had been fighting for so long, and one must decline to believe that any Ministry would so far forget the traditions of their office, their responsibilities, and the confidence of the people in them, as to use their power in making an appointment purely to satisfy their individual inclination. No Ministry would sink so low as to degrade their office in such a way. The clause should be maintained unamended because an individual could be found who would fill the position without bias or prejudice and who would try to do justice to all sections of the community.

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

Ayes	12
Noes	26
Majority against ..	14

AYES.

Mr. Allen	Mr. Moore
Mr. Dwyer	Mr. Nanson
Mr. George	Mr. A. N. Piesse
Mr. Lefroy	Mr. Wisdom
Mr. Male	Mr. Layman
Mr. Mitchell	*(Teller).*
Mr. Monger	

NOES.

Mr. Angwin	Mr. Mullany
Mr. Bath	Mr. Munsie
Mr. Carpenter	Mr. O'Loghlen
Mr. Collier	Mr. Scaddan
Mr. Dooley	Mr. B. J. Stubbs
Mr. Foley	Mr. Swan
Mr. Gardiner	Mr. Taylor
Mr. Gill	Mr. Thomas
Mr. Green	Mr. Underwood
Mr. Johnson	Mr. Walker
Mr. Johnston	Mr. A. A. Wilson
Mr. Lander	Mr. Heitmann
Mr. Lewis	*(Teller).*
Mr. McDowall	

Amendment thus negatived.

Clause put and passed.

Clause 43—agreed to.

Clause 44—Salaries:

Mr. GEORGE: The salary of £1,000 a year for the president was not enough, as the work in the court would take up more time than a Supreme Court judge had to devote to his work. The clause should be amended to read, "not more than £1,500," leaving it to the Government to fix it at a smaller amount if necessary.

The ATTORNEY GENERAL: It could not be done in the clause; it would have to be done in another way.

Mr. WISDOM: Was there any proposal to pay the deputy members?

The ATTORNEY GENERAL: That was taken for granted. If deputy members occupied positions on the bench they would receive the pay of the member.

Mr. GEORGE: Would it be possible to increase the "£1,000"?

The CHAIRMAN: It was not possible for the hon. member to do that.

Mr. GEORGE: Who had the power?

The CHAIRMAN: The front bench.

Clause put and passed.

Clause 46—Provision in case of illness or absence of president:

Mr. GEORGE: Someone would have to be appointed to act as president in the absence of the president. How would that gentleman be paid?

The ATTORNEY GENERAL: Out of the appropriation. He would be president in the interim and he might be a judge of the Supreme Court in which case he would draw his regular salary.

The Premier: Clause 45 covers it.

Mr. Dwyer: Clause 127 also deals with it.

The ATTORNEY GENERAL: If the hon. member turned to clause 127 he would find in Subclause 6 that there was power given in the court to make regulations among other things for prescribing what fees would be paid to the deputy members of the court.

Clause put and passed.

Clause 47—agreed to.

Clause 48—Method of recommendation and selection of ordinary and deputy members:

Hon. J. MITCHELL moved an amendment—

That the following proviso be added to Subclause 2 "Provided that the Governor shall give preference to the persons recommended in accordance with the number of recommendations respectively received by them."

The amendment merely sought to give preference to those who received the greatest number of recommendations from the unions.

The Attorney General: I will accept it.

Amendment put and passed.

On motion by Hon. J. MITCHELL, Subclause 3 amended by the addition of a similar proviso.

Clause as amended put and passed.

Clause 49—agreed to.

Clause 50—Existing court and members continued:

Hon. J MITCHELL: Was it possible under this clause that the present president might remain in his position for seven years?

The ATTORNEY GENERAL: It was possible, but it was not likely. As soon as assent was given to the Bill it did not mean that the present court, which was a legal court, would drop out of office. A judge could still be president of the court and the present president might become president of the new court.

Clause put and passed

Clauses 51 to 53—agreed to.

Clause 54—Power of removal by Governor:

Mr GEORGE: Would the Attorney General give an explanation of paragraph (c) which provided that the Governor might remove a member who had been proved to be guilty of inciting any individual union or any worker or employer to commit any breach of an industrial agreement or award.

The ATTORNEY GENERAL: The member of the court had to be proved guilty of inciting a union worker or employer to make a breach of the Act or an agreement.

Clause put and passed.

Clauses 55 to 58—agreed to.

Progress reported.

[*The Deputy Speaker took the Chair.*]

House adjourned at 10·33 p.m.

Legislative Council,

Tuesday, 27th August, 1912.

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

PAPERS PRESENTED.

By the Colonial Secretary: 1, Annual Report of the Chief Inspector of Liquors, 1911-12. 2, By-law of Broad Arrow roads board. 3, Coolgardie Water Scheme: Return of land privately owned and area purchased or resumed since the inception (ordered on motion by Hon. A. Sanderson). 4, By-laws of local boards of health—(a) Coolgardie, (b) Kalgoorlie, (c) Norseman. 5, Mining Development Act, 1902: Statement of expenditure for year ended 30th June, 1912.

WONGAN HILLS—MULLEWA RAILWAY SELECT COMMITTEE.

Extension of Time.

Hon. R. J. LYNN (West) moved—

That the time for bringing up the report of the select committee be extended until the next day.