

Lately the management appear to have been catering for tourist traffic, which I regard as of little or no use to the service from the financial aspect. I do not know either that the traffic is a good advertising agency for the State. It takes the vessels off the coast just at the hottest period of the year, when they are needed for the convenience of our own people. I hope the Minister controlling the service will go into that question closely, and determine whether the method is good or bad, and whether it should be continued. Personally I see no benefit accruing to the service from the tourist traffic. Again, I noticed recently that the general manager has adopted the peculiar idea of advertising the service by turning a vessel into a jazz hall at Fremantle. I do not know the reason for that step, unless it is publicity. In any case, I do not agree with it. Does the Minister know the extra cost entailed in supplying foodstuffs and catering for the jazz proceedings recently held on the "Koolinda" at Fremantle? Further, does he know what was taken away from the boat by way of souvenirs?

The Minister for Mines: I admit I have no information on that point.

Mr. COVERLEY: I am not concerned about what was souvenired, but about what was not souvenired. I wish the visitors had souvenired the general manager, but unfortunately they left him behind. I hope the Treasurer will take into consideration the question of giving us another boat for the North-West.

Hon. P. COLLIER: On the main point raised by the hon. member, another ship for the North-West, the Government have not yet had time to consider the matter. I do believe, though, that we could more efficiently meet the requirements with the existing ships if another service were there to co-operate. I am glad that the "Koolinda" has functioned effectively. If her trips to Singapore interfere in any way with the purpose for which the ship was secured in the first place, I shall also bring that before the Minister. I look upon the "Koolinda" as my own, because I arranged for the purchase and finance while in Melbourne. I regret that she has degenerated into a jazz hall. That matter, too, will have to be considered. I am quite sure that if an opportunity presents itself to find the money to finance another ship, that proposal will be unanimously endorsed by the members of this Chamber, because our

friends of the Opposition, when I was on the North-West coast last year, were the most enthusiastic supporters of the State Shipping Service that I ever heard; so that the work will be able to go forward with the unanimous support of all hon. members.

Division put and passed.

*Divisions — State Sawmills, £372,886; Wyndham Freezing, Canning and Meat Export Works, £240,000—agreed to.*

This concluded the Estimates of the Trading Concerns for the year.

Resolutions reported.

*House adjourned at 11.35 p.m.*

## Legislative Council,

*Thursday, 16th November, 1933.*

	PAGE
Question: Road Districts Act, consolidation ...	1956
Motion: Bees Act, to disallow regulation ...	1957
Bills: Forests Act Amendment, 8r., passed ...	1957
Constitution Acts Amendment, 2r. ...	1957
Metropolitan Whole Milk Act Amendment, Assembly's message ...	1972

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

### QUESTION—ROAD DISTRICTS ACT, CONSOLIDATION.

Hon. J. CORNELL asked the Chief Secretary: 1, Has the consolidation of the Road Districts Act been completed and printed? 2, If so, when will copies be made available to road boards throughout the State?

The CHIEF SECRETARY replied: 1 and 2, The consolidation is completed, but it is not desirable to print it while there is an amendment before Parliament which, if passed, should be incorporated in the consolidation (Road Districts Act Amendment Act, 1933, No. 2).

**MOTION—BEES ACT.***To Disallow Regulation.*

Debate resumed from the previous day on the following motion by Hon. V. Hamersley (East):—

That the regulation amending Regulation 6 of the regulations made under the Bees Act, 1930, as published in the *Government Gazette* on the 20th October, 1933, and laid on the Table of the House on the 24th October, 1933, be and is hereby disallowed.

**THE CHIEF SECRETARY** (Hon. J. M. Drew—Central) [4.35]: The amendment to Regulation 6 under the Bees Act applies only to bees, hives, honey or beekeepers' appliances imported into the State, and has nothing to do with those within the State. The necessity for the amendment to the regulation arose as a result of a conference of Ministers for Agriculture, held in Sydney in May, 1933, when the following resolution was passed:—

That the Western Australian Department of Agriculture should be asked to consider the question of reducing the radius prescribed in the Interstate Certificate from 5 to 2½ miles. Further, in view of the fact that it is desirable to have uniform regulations covering interstate trade, it was decided to ask the Queensland Department to consider the advisability of adopting certificates similar to those which have proved so satisfactory in Western Australia, but including the reduction in radius.

Before giving effect to this resolution, and following on correspondence with the Ministers for Agriculture in New South Wales and South Australia, it was decided to refer the matter to an independent authority, and the Department of Agriculture, of Wellington, New Zealand, was suggested. The Department of Agriculture in South Australia intimated that if the New Zealand authorities ruled that a radius of five miles was necessary, then they would not voice any further protest. In response to the inquiry, the Director General of Agriculture, Wellington, replied by letter on the 21st July, 1933, and concluded by saying—

The provision to enforce a distance between clean and diseased apiaries to ensure only the product from clean apiaries is sound in principle, and should have the effect of stimulating a general clearing of disease in the States desirous of trading with you. However, it is the considered opinion of this Department that the radius could be safely reduced to three miles.

Another expert, Mr. Currie, of the Council for Scientific and Industrial Research,

chanced to be in this State at the time, and he also was consulted in this matter and confirmed the New Zealand authorities. It was, therefore, decided to reduce the radius to three miles and I am advised that the beekeepers in the State are not incurring any greater risk of the introduction of disease through the reduction of the radius from five to three miles. I desire to draw members' attention to the fact that the amendment of this regulation does not affect the movement of bees, honey, etc., within the State, for neither the Act nor the regulations at present in force prevent the movement of hives, unless some portion of the State has been proclaimed an infected area under Regulation 6 of the Act. I have given the history of the regulation. It was initiated as a result of a resolution passed at a conference of Ministers for Agriculture held in Sydney last May, and it was not adopted until the matter had been fully investigated. Mr. Hamersley has given insufficient reasons why the regulation should be disallowed, and I trust the motion will not be agreed to.

On motion by Hon. C. F. Baxter, debate adjourned.

**BILL—FORESTS ACT AMENDMENT.**

Bill read a third time and *passed*.

**BILL—CONSTITUTION ACTS  
AMENDMENT.***Second Reading.*

Debate resumed from the previous day.

**THE CHIEF SECRETARY** (Hon. J. M. Drew—Central) [4.40]: The main purpose of this Bill is to indemnify a member of Parliament against a possible infringement of the Constitution Act, which may have been involved in his accepting a position on the Lotteries Commission, appointed under legislation passed last year. When the Lotteries (Control) Bill was before the legislature last year, it was no secret that, because of their special qualifications for the post, two members of Parliament would be chosen for a place on the commission, and provision was originally made in the Bill with the object of enabling them to take up the duties without incurring any liability under the Constitution Act. The commission was to be a corporate body: no portion of the revenue it

was to handle would come from the Crown. Eventually the Government were satisfied that the clause designed to protect members of Parliament was unnecessary, and it was removed in another place. When the Bill came to this House, the indemnifying clause—owing to some oversight—still appeared in it. I saw the Minister, who introduced the Bill in another place, with the object of expressing my opinion that the clause should be more comprehensive than it was. He then told me it had been struck out in the Assembly as it was considered unnecessary. I am mentioning this to show that the Minister, who subsequently appointed two members of Parliament to the commission, sincerely believed that in doing so he was not involving them in any liability under the Constitution Act. No one will doubt that either member would have left himself open to litigation if he had thought there was the slightest reason to believe that his seat would be in jeopardy, with the possibility also of incurring a heavy pecuniary penalty. It can well be understood that both members relied upon the assurances of the Government of the day that everything was right. Everything may be right, but, at the same time, there may be a long process of costly litigation ahead for the member who still retains his seat in Parliament, and the question may well be asked, "Would it be fair, in view of all the circumstances, to allow him to become the victim of his desire to meet the wishes of the Government then in power, and give his services in the cause of charity?" And for what monetary reward? Paltry fees from the funds that he would help to organise, fees which could not possibly requite him for his labours. If there were a suspicion that the appointments to the Commission had been framed for political purposes, or to serve party ends, and not in the interests of the successful administration of the Lotteries Act, the Bill would not be entitled to a moment's consideration. No one is likely to make this the ground of his objection. There is no room for such a suspicion. The selection was made without regard to party, and it so happens that the gentleman who is now involved in a law suit holds political opinions contrary to those of the Government which appointed him. There is a precedent for the legislation. In 1894, a member of Parliament, who was carrying

on a job printing business in Perth, gave a quote to a Government body then known as the Bureau of Agriculture. The quote was for the production of a monthly journal which that body issued. The Bureau of Agriculture was administering funds on behalf of the Crown, and the money it was using had been voted by Parliament. A city printer took action against the member with the object of unseating him and recovering the penalty stipulated for a breach of the provisions of the Constitution Act relating to members of Parliament entering into contracts with the Crown. The Forrest Ministry, then in power, brought in a Bill for the purpose of amending the Constitution Act, and of nullifying the proceeding which had been taken. The ground given was that the member had unwittingly made the contract, and was not aware at the time that he was breaking the law. The validating section of the Act reads as follows:—

No action or other legal proceedings shall lie or be further maintained or continued, if already commenced, against any member of Parliament for any violation of Sections 24, 25, or 32 of the Principal Act alleged to have been committed before the passing of this Act.

The Bill passed the second and third readings in both Houses without a division. In the Legislative Council the Standing Orders were suspended to enable it to pass through all its stages at one sitting, which it did. The late Mr. Sept. Burt, who was Attorney General in the Forrest Ministry, introduced the Bill in the Legislative Assembly and Mr. S. H. Parker, then Colonial Secretary, introduced it in the Legislative Council. The Bill included some amendments of the Constitution Act. In his second reading speech Mr. Burt pointed out several of the pitfalls to be found in our Constitution Act. In "Hansard," 1894, at pages 1016 and 1017, he expressed himself as follows:—

The same difficulty that we are dealing with arose in Canada, some years ago, and a select committee of the House of Commons in that country reported on the subject; and, perhaps, I may be permitted to quote from a work on "Parliamentary Practice and Procedure," by a Canadian author. The writer says:—

In the Session of 1877 attention was called in the House of Commons to the fact that a number of members appeared to have inadvertently infringed the third section of the Act, which is as follows:—"No person whosever 'holding or enjoying, undertaking or executing directly or indirectly, alone or with any other, by himself or by the in-

terposition of any trustee or third party, any contract or agreement with Her Majesty, or with any public officer or department, with respect to the public service of Canada, or under which any public service of Canada is to be paid for any service or work shall be eligible as a member of the House of Commons, nor shall he sit or vote in the same.' Some doubts arose as to the meaning of the word 'contract' under the foregoing section, and all the cases in which members were supposed to have brought themselves within the intent of the statute were referred to the committee on privileges. In the several cases so referred, it was alleged—(1) that Mr. Anglin, the Speaker, who was editor and proprietor of a newspaper, had received public money in payment for printing and stationery furnished 'per agreement' to the Post Office Department; (2) that Mr. Currier was a member of a firm which had supplied some lumber to the Department of Public Works; (3) that Mr. Norris was one of the proprietors of a line of steamers upon the Lakes, which had carried rails for the Government; (4) that Mr. Burpee was a member of a firm which was supplying certain iron goods to Government railways; (5) that Mr. Moffat was interested in, and had been paid for, the transport of rails for the Government; (6) that Mr. Workman was a member of a firm interested in the supply of hardware to the Department of Public Works; and (7) that Mr. Desjardins was editor and publisher of the 'Nouveau Monde,' which had received public money for Government advertisements and printing. Both Mr. Currier and Mr. Norris believing that they had unwittingly infringed the law, resigned their seats during the session. In only one case, that of Mr. Anglin, were the committee able to report, owing to the lateness of the session. In this case, which caused much discussion, the committee came to the conclusion that the election was void, inasmuch as Mr. Anglin became a party to a contract with the Postmaster General, but 'that it appeared from Mr. Anglin's evidence, that his action was taken under the bona fide belief, founded on the precedent and practice hereinafter stated, that he was not thereby holding, enjoying, or undertaking any contract or agreement within the section.' In the Russell case of 1864 (the precedent referred to in the report), an election committee of the Legislative Assembly of Canada found that the publication, by the member for Russell, of advertisements for the public service, paid for with the public moneys, did not create a contract within the meaning of the Act. On the other hand, the committee of 1877 came to the conclusion that the decision of 1864 was erroneous. It appeared from the evidence taken by that committee and from the public accounts of the Dominion, that 'between 1867 and 1872 numerous orders, given by public officers, for the insertion of advertisements connected with the Public Service were fulfilled, and various sums of public money were paid therefor to

members of Parliament.' It was never alleged at the time that these members were disqualified, but the committee were of opinion, nevertheless that according to the true construction of the Act for securing the independence of Parliament, the transactions in question did constitute disqualifying contracts.' The result of this report was the resignation, during the recess of Mr. Anglin, Mr. Moffat, and some other members who had entered into 'disqualifying contracts,' according to the strict interpretation of the law given by the committee. In concluding their report the committee of 1877 stated their opinion that the Act required careful revision and amendment. During the debate on the Act there was a general expression of opinion that the penalty (2,000 dollars a day) was exorbitant. Some actions for the recovery of the penalty having been entered against several members for alleged violations of the Act, the Government introduced a Bill for the purpose—as set forth in the preamble—of relieving from the pecuniary penalty under the statute such persons as may have unwittingly rendered themselves liable to the same. The Act applied, however, only to those persons who may have sat or voted at any time up to the end of that session of Parliament."

It will be seen that in Canada they dealt with the question by passing an Act to indemnify those members who had unwittingly rendered themselves liable.

Mr. Burt gave his interpretation of the Act. He said, on page 1019—

It might, for instance, include those who give bonds or enter into securities for the performance of contracts with the Government—mail contracts and other contracts requiring a bond or surety for its due performance; or even in the case of Government officers who are required to provide bonds or sureties. It is a moot question whether those who enter into these bonds have not a contract with the Government. In fact there are such an infinity of cases—the ramifications of these disqualifying clauses are so far-reaching—that I verily believe three-fourths of the members, if not almost everyone, in this House would come within the provisions of the Act as it now stands. I feel confident the House will assist the Government in putting some legislation on the statute book to remedy this state of things, while, at the same time, not opening the door to abuses.

And on page 1022, the late Mr. George Leake said:—

The principal Act aimed at railway contracts and contracts for public works, and contracts for annual supplies for the different departments of the public service; it was to keep those who entered into such contracts as these out of the House that the clauses in the Constitution Act were directed. I do not think it was ever intended to prevent all dealings, in the ordin-

any course of daily business, between a storekeeper who happened to be a member of the House and the Government. If the Commissioner of Railways wants to buy a tin of nails or a bar of iron from any retail storekeeper who also happens to hold a seat in Parliament, it is rather hard that, under such circumstances as that, the member selling the bar of iron or the tin of nails should be disqualified, and liable to a penalty of £500. So, too, it is rather hard that contracts for Government advertisements, for instance, should not be taken by a member who may happen to hold a seat in this House, and who also may be the proprietor of a newspaper, or the owner of the necessary plant or machinery for publishing those advertisements.

... and it would be rather hard if the mere publishing of an advertisement, under the Royal Arms, by the Commissioner of Railways, for the information and convenience of the public, should disqualify one of these members from sitting here, and subject him to a penalty of £500. . . . It was never meant, in such cases as I have referred to, that an opening should be made for any speculative person who saw a prospect of getting £500, to lay a trap, or to watch until some member happened to trip. . . . It must be remembered that this £500 does not go into the public Treasury, but into the pocket of the enterprising individual who brings this action.

A number of amendments were made to the Act, but it was found difficult to draft a satisfactory clause dealing with contracts, and, as there was no time to give the matter proper consideration, nothing was done in that respect. The Act remains to a large extent in the same condition as it was then, except that there is a limit to the time in which action can be taken and the penalty has been reduced from £500 to £200. Personally, I have had experience of the tricky character of the provisions of the Constitution Act in relation to members of Parliament. In 1905, when I was Minister for Lands, I desired to appoint a Royal Commission to make an investigation into forestry matters. There was only one person—and he was a member of Parliament—whom I considered competent to make the investigation. He did not belong to the party to which I was attached.

Hon. G. W. Miles: Were there parties in those days?

The CHIEF SECRETARY: Yes, three parties. I approached this gentleman, who expressed his willingness to act. The question then arose in my mind whether he could accept the usual fees without committing a breach of the Constitution Act. I referred the matter to the Crown Law department and was advised that not only could he not

accept the fees, but that he could not accept the office in an honorary capacity, for it was an office for which fees were provided and therefore was an office of profit. Subsequently I submitted the point to a leading K.C. of the day, who confirmed that opinion. I turned the papers out this afternoon and satisfied myself that that is so. A more recent ruling, I understand, has confirmed that opinion. Members of Parliament have in the past been appointed Royal Commissioners. They have drawn travelling expenses, if not in some cases fees. They therefore committed breaches of the Constitution Act or did something which could have given ground for action. I was nearly involved in a breach of the Constitution Act myself many years ago. I was a member of Parliament. A man whom I knew was the successful tenderer for the supply of cord wood to the Railway Department. He asked me to become surety for him and I agreed. When I read the bond I thought I could see that a breach of the Constitution Act might be committed. Only one surety was required. I refused to sign the bond, which I received the next day. It consisted of three foolscap pages of typewritten matter, which I carefully read. I referred the matter to the Crown Law Department, and stated my objection to signing the bond. They said my objection was sound and that I would be acting very wisely indeed if I did not append my signature to the document. I have, on many occasions, been the means of preventing new members of Parliament from innocently jeopardising their seats. In the case of the member of Parliament who accepted a place on the Lotteries Commission, he, it seems to me, is entitled to more consideration than was the member of Parliament who made a printing contract with a Government body in 1894. The former took the position on the Lotteries Commission on the assurance of the Government of the day that everything was in order—that the Constitution Act did not come into the question. In the 1894 case, the member of Parliament involved was well-versed in constitutional procedure, and should have known better. There was no doubt that the Act had been flagrantly violated in his case. Yet we find men of high standing like the late Sir John Forrest, the late Mr. Burt, Q.C., and the late Mr. S. H. Parker espousing his cause, and the Legislative Council of the day passing without a division the second and

third readings of the Bill, which was to indemnify him, and suspending the standing orders to enable the Bill to go through at a single sitting. The present Government was in no way responsible for the appointments to the Lotteries Commission. But we feel committed to take such action as our predecessors would have felt bound to take had they remained in office, and I trust that in view of the circumstances the House will act on the precedent set in 1894 and pass this Bill.

**HON. J. J. HOLMES** (North) [5.4]: I am sorry I cannot agree with the views expressed by the Chief Secretary.

**Hon. E. H. Gray**: That is nothing unusual.

**Hon. J. J. HOLMES**: I never agree with the hon. member who has just interjected. Probably it would be difficult to get down to his level. I am bound to express an opinion on this question as it appears to me. I propose to deal with the matter as one between a plaintiff and a defendant, leaving out Parliamentarians altogether. I am very much concerned about Parliamentary interference with the course of justice. The British courts of justice have done more to keep the Empire together than even the battleships and the army; it is recognised throughout the world that you can always get justice in a British community, even though the individual may not be one of that nationality. What concerns me, as I have just said, is that we have a case pending before the court, and the court has been asked to decide the validity of the appointment of a member of Parliament to a seat on the Lotteries Commission. From my standpoint, that case must go on, and there must be no interference with the procedure in the courts of justice. Any such interference will be a boomerang that will hit the Parliament of this country harder than anyone else. The Bill before us sets out that no action or other legal proceedings shall lie or be further maintained or continued, if already commenced, against any member of the Parliament of Western Australia. It may be done; I do not know that it has been done—

The Chief Secretary: It has been done.

**Hon. J. J. HOLMES**: It was done in the dark ages in Western Australia, and 67 years ago in Canada. It may be that Parliament has the right to intervene, but be-

cause Parliament has that right, it was given the right presumably to uphold the prestige of Parliament and to treat every section of the community alike. The question is whether it will be wise for Parliament, in its own interests, to intervene at this stage and stop a case that is already before the Supreme Court. That is the question we have to answer, and also how it may affect Parliament in the immediate future if we should take that course. Whether we do so or not, the public of this State look to Parliament to set a standard of morality. No matter how serious the case may be, we cannot allow a position to be created in the community that will permit Parliament to step in and prevent an action that has been set in motion against a member of Parliament. It would appear that when it comes to ordinary citizens, the proceedings must go on, and the judgment of the court must be accepted. I am not at all concerned with either the plaintiff or the defendant in this matter, but what I am concerned about is that we have a plaintiff and a defendant before the court, and Parliament is asked to prevent the court from giving its opinion on the question of the validity of an appointment that is said to conflict with the Constitution Act.

**Hon. Sir Edward Wittenoom**: It goes further than that.

**Hon. E. H. Gray** interjected.

**Hon. J. J. HOLMES**: I have already told the hon. member that I cannot get down to his level. Another question is raised and that is that the defendant in the action has unwittingly and unknowingly been put in a false position. That question arises from the standpoint of justice and what is right. The House has to remember the circumstances that led to the appointments being made. They are such that the Lotteries Act was passed and as it was thought certain gentlemen were desirable people to act as members of the commission, they were offered and they accepted the appointments.

**Hon. E. H. Gray**: In good faith.

**Hon. J. J. HOLMES**: I do not take a one-sided view of the position, as some people do. Whilst it might be argued, and can be argued and has been argued, that ignorance is no defence, I do not know that that applies in this case. In the eyes of the law ignorance is no defence. The court, how-

ever, has yet to decide whether an offence has been committed.

Hon. A. Thomson: You are now deciding whether an offence has been committed.

Hon. J. J. HOLMES: The court has to decide, and as far as I am concerned no other tribunal can be set up. If the case goes in favour of the defendant, he can continue as heretofore and carry out both jobs. Mr. Thomson has told us that the position held by the defendant is not an office of profit under the Crown.

Hon. A. Thomson: I said it was a matter of opinion.

Hon. J. J. HOLMES: The hon. member did not say in his speech "in his opinion;" he went further and said it was not an office of profit. If it is not, why not allow the defendant to accept the verdict which then must be in his favour, and continue in the two jobs? But if the Court should decide in favour of the plaintiff, then in the name of decency it is the clear duty of the Government to see that the defendant's costs are paid because he was offered the position by the Government, a position that he did not consider carried any liability. Even if a Bill should be necessary to liquidate the liability, it would have my support.

Hon. G. Fraser: That would not repair the damage done.

Hon. E. H. Gray: That would be only a small part.

Hon. J. J. HOLMES: If the case should go against the defendant, then the defendant is in a position that he has to choose between being a member of Parliament and being a member of the Lotteries Commission. The question of expenses will not influence me. In order to protect the Constitution I would go even further if necessary. If the hon. member had to contest an election, I would see that the costs of that election did not come out of his pocket. What I am seeking to do is to preserve the Constitution under which we live.

The Honorary Minister: Suppose he got a verdict, what about the expenses to which he has already been subjected?

Hon. J. J. HOLMES: If the hon. member should be out of pocket by the transaction, the Government should foot the bill. I repeat that the State should reimburse the hon. member if the case went in favour of the plaintiff, because the defendant was in the position of not knowing the

liability his membership of the Lotteries Commission involved. From my standpoint, nothing else could be equitable. In order to justify my attitude towards interference with courts of justice, let me take members back to a time when we were dealing with the Arbitration Bill late one night. The late Mr. Lovekin had an amendment put into the Bill which made the rules and regulations of the Supreme Court subject to perusal and adoption by Parliament. Mr. Drew, in order to separate Parliament from the Supreme Court, at once moved to report progress. Next day he came along with a motion to discharge the Bill from the Notice Paper. He tried to get the Bill out of the House, that they might go to the country and flog this House for attempting to interfere with the courts of justice. We then gave notice that the Arbitration Bill should be the first to be proceeded with on the following day. After a considerable time, during which I was asked to assist the Chief Secretary to find a way out of the difficulty, we withdrew our notice and the Chief Secretary withdrew his notice, and we went on with the Bill, keeping clear of interference with the courts of justice. That is what I ask the House to do on this occasion. I am trying to uphold the prestige of Parliament and to do as the Chief Secretary did then, namely, keep Parliament separate from the procedure of the Supreme Court. In tampering with the Constitution we are setting up a precedent. It may be that at no far distant date I might be charged with embezzlement, and some members might say, "Well, he is a decent sort of chap, he has been in Parliament a long time, let us pass an Act to prevent the case going on." When we establish a precedent, we never know where it is going to finish, or whose turn it may be next. So we have to be very careful about what we do in that regard. In my opinion the defendant has been badly advised. If he would but listen to reason he would win clear of this and come out on top, as he could do, and no reflection would be cast upon Parliament to the effect that we are seeking to do something for one of our own members which we would not do for anybody else. There has been too much legal advice about this matter, and not enough common sense. There is an old saying to the effect that doctors bury their mistakes, but lawyers make us pay for theirs. I have been mixed up in a some-

what similar case, and the lawyers made me pay to the extent of about £800. The case was just as wicked and vindictive as one as this under consideration. I did not ask anyone to come to my rescue, but I had on my side the best brains in Australia, the master brain of the present Governor General. He was advising me, yet I went down and, as I say, it cost me £800. But I was not debarred from entering Parliament. The election was declared null and void. I did not attempt to enter Parliament then, and I declared I never would enter Parliament until they amended the Act, which they did. The whole case hinged on 22 voters who voted though having no right to vote. My majority was 20, and the judge rightly said that the 22 might or might not have affected the election. But it was well known that 20 out of the 22 were Labour supporters, who were not at all likely to have voted for me. Eventually the election was declared null and void. The present defendant is in much the same position as I was. When he gets his verdict, if it goes against him he can carry on with the commission, or nominate for Parliament, whereas if the verdict be in his favour he can continue in both offices. The Honorary Minister, when moving the second reading, said there was an element of doubt about the position. Doubt having arisen, surely it is for the court, not for Parliament, to decide the point. The Honorary Minister said we were bound to assist the defendant. Of course we are. On that point I am just as sincere as any other member of the House; perhaps I am more sincere than most of them in my desire to see that the defendant does not suffer. But when we come to Clause 3, I do not know where we are getting to. Clause 3 provides for any case that may arise hereafter, until the Constitution is again amended. According to the Chief Secretary, it has been known in this country for the past 40 or 50 years that it was necessary to amend the Constitution in certain directions, yet nothing has been done. Mr. Baxter has told us that when the previous Government were in power they took steps to have the Constitution amended, but did not finish the job. During the last 40 or 50 years, if the position is as stated by the Chief Secretary, it should have been somebody's job to look into this matter.

Hon. C. F. Baxter: An attempt was made in 1919, but you voted against it.

Hon. Sir Edward Wittenoom: Clause 3 is the best part of the Bill.

Hon. J. J. HOLMES: The greatest surprise of all was the statement by Sir Edward Wittenoom last night. First he said he was entirely opposed to the Bill.

Hon. Sir Edward Wittenoom: No; I said I was opposed to the previous Bill, and I congratulated the President on having thrown it out.

Hon. J. J. HOLMES: The previous Bill was the same thing under another title. Then the hon. member said he was inclined to favour it. I hope that by the time the debate is concluded, he will be seeing eye to eye with me. But the hon. member went farther and said that a man qualified as a member of Parliament was qualified for any position in the State which he might choose to occupy. I wish I could agree with that. In view of the opinions the hon. member has expressed about the University, and about the State trading concerns, I wonder if he really thinks the one or the other could be properly handled by a member of Parliament, handled better than by any man outside Parliament. I cannot agree with Sir Edward on that point. The point that concerns me is that if we give the power asked for in the Bill, not merely to the present Government, but to all future Governments, there will be no end to this legislation. If we give this power to Governments still to come, we shall be putting into their hands the right to appoint political supporters to political positions. We ought not in this State get down to a condition of politics which we have never had in the past. One thing I can say about politics in Western Australia is that they have been above suspicion. But when we think of the future, and consider all that is happening in Australia, we see that it would be exceedingly dangerous to give any future Government the power to offer political positions to political opponents, thus buying their support outside of Parliament, and still having their services in Parliament to vote for the party. Consider what happened in New South Wales under the Lang Administration. Men were put into positions which they knew nothing about, and were paid huge salaries. The present Government of New South Wales have had to pay enormous sums in compensation to get rid of them. That Government dismissed them, but those men brought actions against the Government for



wrongful dismissal, and the Government preferred to pay the amounts prescribed by the court rather than keep those men in their positions. It is that sort of thing I am striving to avoid. Mr. Thomson has said that he still contends that a seat on the Lotteries Commission is not an office of profit under the Crown. Yet he wants to amend the Constitution to get over a difficulty which he is satisfied does not exist.

Hon. A. Thomson: And you are satisfied that it does exist; so it is a matter of opinion.

Hon. J. J. HOLMES: Mr. Thomson was not putting it forward as a matter of opinion; he was most insistent about it. Then we have Mr. Cornell's speech. Strange to say he did not attack the Bill, as is his usual custom, with horse, foot and artillery. He said, "I submit in all humility we should be subjecting ourselves to proper and honest criticism if we amended the Constitution so as to permit members of Parliament to sit on the Lotteries Commission." I entirely agree with him. We should be holding ourselves up to ridicule if we did so. Not a word can be said against the defendant as to the past, and I do not think anything can be said as to the future. The right thing to be done in this case is to let it go on. If it is decided against him, then will be the time to see that he does not suffer by the decision. When we find ourselves in difficulties, we should take each hurdle as we come to it. If we adopt that principle, we can take the hurdle in question if the case goes against the defendant. I am sure that ultimately the hon. member will come out of it with credit to himself. By doing as I suggest, there would be no interference with the Constitution. I am concerned that it should not go abroad that a special Act of Parliament had to be put through for any special member of Parliament. I would go further and urge, and almost beseech, with most profound humility—to use Mr. Cornell's words—that the friends of the defendant should endeavour to persuade him not to be a party to interference with the case already listed before the Supreme Court. I am as certain as I stand here that, if interference is attempted, the pendulum will swing back. Suppose the court said we have no right to do this. In what position would Parliament and the defendant stand then? I should say that in the eyes of the public it would be a pretty bad position. We ought to be, if we are not, an institution that the public can

look up to, to do the right thing. We are the law-makers of the country, and we should set an example of which the public may be proud. The line I set out upon is the line I propose to follow right through. If other members do not see eye to eye with me I cannot help it. It is an equitable, reasonable, and honest way out of the difficulty. If the defendant is likely to suffer by following that procedure, then I shall not be wanting in my efforts to see that he suffers no monetary loss. I must oppose the second reading of the Bill.

**HON. R. G. MOORE** (North-East) [5.35]:

It is not my intention to express an opinion as to whether or not the position in question is an office of profit under the Crown. I do, however, wish to offer a few opinions concerning the Bill and the remarks which have been made by previous speakers. Mr. Thomson said the integrity and ability of Mr. Clydesdale had been brought into question, because of certain action that had been taken in the House. I most emphatically protest against that statement. I interjected that there was no suggestion of anything of the kind. Neither by suggestion nor inference was the integrity or ability of Mr. Clydesdale questioned in any way.

Hon. A. Thomson: I did not say that. "Hansard" will bear me out.

Hon. R. G. MOORE: All I can say, concerning the remarks he did make, is that there is a distinction without a difference. I intend to oppose Clause 3 of the Bill, because this is a most inopportune time at which to introduce the principle contained in it. We have repeatedly been told that it is almost impossible for the Government to find enough jobs to go round, even to give relief work in anything like the manner desired.

Hon. H. V. Piesse: There are 140 jobs awaiting men on the land, but the men cannot be secured in Perth.

Hon. R. G. MOORE: We have just passed legislation which makes it a criminal offence for any man who is hard up and out of work to sign a false declaration in an effort to get a job, and he can be put into gaol for doing so. I believe that civil servants have been informed by the Government that they are not to take on any remunerative work other than the office they hold, if it is possible to find a competent person to do it. The reason given is that there are not enough jobs to go round.

Hon. Sir Edward Wittenoom: At 6s. a day.

Hon. R. G. MOORE: They were advised not to take the work because of the stringency of the times. I cannot reconcile the action of the Government in their endeavour to legalise the appointment of members of Parliament to the Lotteries Commission, and the payment to them of remuneration in addition to their parliamentary salaries, when no restrictions are placed upon their earning other money outside.

Hon. Sir Edward Wittenoom: Why should they not appoint members of Parliament? They ought to be better than other people.

Hon. R. G. MOORE: There are many men who are not members of Parliament, but who are good and honourable men possessing high qualifications.

Hon. Sir Edward Wittenoom: Why do they not get into Parliament?

The PRESIDENT: I must ask members to allow Mr. Moore to proceed with his speech.

Hon. R. G. MOORE: It is not the ambition of everyone to get into Parliament, and not everyone who has the ambition can get in. A man cannot say, "I am going to be a member of Parliament," and become one; otherwise there would be more members than there are to-day. I am opposed to tinkering with the Constitution merely to evade penalties, but this is a peculiar case. Parliament has power to make laws and unmake them. When Mr. Clydesdale was appointed to the Lotteries Commission he was assured that this would not interfere with his Parliamentary position, and he accepted the office on that assurance. That being so, it becomes a duty of the Government to do all things possible to safeguard the hon. member.

Hon. Sir Edward Wittenoom: Do you mean the duty of this Government or the previous one?

Hon. R. G. MOORE: Of any Government that happens to be in power. A good deal has been said about justice. I believe in justice, but it is not always justice that is meted out by the law. Someone said the law is an ass; I think he was a wise man. Is it justice to victimise a person for accepting a position at the hands of the Government when he had the assurance that his Parliamentary position would not be jeopardised thereby? There would be no justice in that, though it might be within the law. I do not

think the person who has proceeded against Mr. Clydesdale is in the least bit concerned about the justice of the case. I look upon him as I would upon a pimp. He is looking for the money he would get for a conviction. He sees an opportunity to make easily £200, and is going to endeavour to get it.

Hon. E. H. Harris: And the law says he can get it.

Hon. R. G. MOORE: If he can get it, very well, but he is only concerned about £ s. d., and not the individual.

Hon. J. J. Holmes: We should not be concerned about the individual either.

Hon. R. G. MOORE: We have to be concerned about the individual in meting out justice in this case. A little while ago a married woman lost her husband. She had been divorced in one State and re-married in another and reared a family. Her husband died. When she took out probate she was told that her children were illegitimate because the divorce laws in one State were different from those in another, and that because of this technical difference in the divorce laws she could not get any portion of her late husband's estate. Is that justice?

Hon. W. J. Mann: You could multiply that case by dozens.

Hon. R. G. MOORE: This happened within the last 12 months. That is law, for which some hon. members are so concerned. It is not justice. I am more concerned for real justice than for technical points of law. For the reasons I have already stated, I strongly oppose one clause of the Bill. A member of Parliament should not be a member of the Lotteries Commission, especially under present conditions. However, the circumstances of the case are such that if the Government can do something to protect a person who has been unwittingly led into a false position, they are quite within their rights in doing it. I support the second reading of the Bill, hoping that in Committee Clause 3 will be deleted.

HON. J. NICHOLSON (Metropolitan) [5.47]: The debate on this measure, following the removal from the Notice Paper of the Lotteries (Control) Act Amendment Bill, has served a useful purpose, because, as shown by the Chief Secretary's speech, it has thrown light upon occurrences of a somewhat similar nature which took place in years gone by. In the course of the debate on the

former Bill mention was made of the case which occurred in relation to the Harbour Trust Act; but what has been brought forward by the Chief Secretary serves to throw a new light for all members in considering the present Bill. I agree with the Chief Secretary that the case which occurred in 1894—and which he quoted as a precedent for this Bill—had not nearly the same recommendations for acceptance by both Houses of Parliament as the present Bill has. There are circumstances connected with this case which clearly render it necessary for us to take a reasonable view of the whole situation. In the first place we have to recognise that Parliament is the supreme legislative authority. I agree with Mr. Holmes that we must not thwart, or unduly interfere with, the rights of our courts of justice; nor should we seek unduly to strain or stretch our Constitution Act. We are bound to conserve the rights granted to us under the Constitution. However, circumstances arise, if not every year, yet at certain periods during the life of Parliament, when we have to give more liberal thought and consideration to cases which present themselves. It is because of certain circumstances connected with the case of the member of Parliament concerned in the present Bill that I feel disposed to give my support to the measure. Mr. Holmes has given expression to high ideals. To this I take no exception; I rather applaud him for doing so. He supports his contention as to the course which he considers should be pursued by suggesting that we are not justified, for certain reasons, in passing the Bill. He referred to the case of a member of Parliament who might be charged with a felony.

Hon. J. J. Holmes: I suggested it myself; I did not put it upon any other member.

Hon. J. NICHOLSON: He suggested that if he were charged with embezzlement his fellow members might turn round and say, "Mr. Holmes has been a very useful and capable member. Let us pass some enactment which will relieve him."

Hon. J. J. Holmes: No; "pass an Act to stop the proceedings."

Hon. J. NICHOLSON: I will not say that: I will say, "to remove disqualifications."

Hon. J. J. Holmes: You must quote me properly.

Hon. J. NICHOLSON: That particular case is of an extreme order, and really is

hardly analogous to the present case in which a member of Parliament is concerned.

Hon. J. J. Holmes: It is nearer to the point than you get sometimes.

Hon. J. NICHOLSON: I am glad to hear the hon. member suggest that. I hope he will give me at least this credit, that in my efforts to elucidate this difficulty I am right in pointing out that he has cited a case which is rather wide of the point, and one which is decidedly not similar to the case of the member of Parliament concerned in this Bill. That member of Parliament is not charged with any criminal offence.

Hon. J. J. Holmes: No more was I.

Hon. J. NICHOLSON: That member of Parliament is not charged with a felony. If a man has committed a felony, then the law must take its course and justice must be done, and the offence committed by the man can only be expiated by his suffering whatever penalty may be awarded.

Hon. J. J. Holmes: Why do you take that case instead of the case that actually happened?

Hon. J. NICHOLSON: I am leading up to the actual case. Mr. Holmes quoted a case of felony as supporting the conclusion to which he came. I hope that in the course of the debate he will realise that the fact of the argument put forward by him being fallacious should cause him to alter the views he has expressed. Comparing the case of embezzlement or felony with the actual case before us, we find from the explanations which have been so clearly given by the Honorary Minister and the Chief Secretary from our own knowledge of the circumstances, and even from the records of Parliament, that this particular member of Parliament was unwittingly and innocently induced, shall I say, to accept the particular office the holding of which by him has now been challenged. He is threatened; I understand proceedings have been launched against him in the Supreme Court. He was induced by the Government of the day—not the present Government—to to accept a certain office. The hon. member having undertaken those duties, does it not fall upon the shoulders of the Government to redress the wrong which has been done? As the supreme legislative authority, Parliament will not be doing anything that it has not done before if it passes such legislation as this to give freedom from proceedings which have been

instituted and freedom from disqualifications which the hon. member would suffer if he was found guilty of having violated the provisions of the Constitution. Mr. Holmes has argued, "Let the Courts decide the question." But the very preamble of the Bill states clearly and distinctly what is intended to be done, or what is the position. It states that doubts have arisen. Mr. Holmes, in his very able speech, quoted an experience which he himself unfortunately had after, as he explained, getting advice from the greatest brains of the day, brains including, I believe, those of the present Governor-General—a master mind, every one will agree. Despite the opinion and the views expressed by that great and eminent lawyer—and he is also a great and eminent man in his present office—the case went against Mr. Holmes, and he was muled in heavy damages.

Hon. J. J. Holmes: Not damages, but law costs.

Hon. V. Hamersley: A very different thing.

Hon. J. NICHOLSON: Possibly Mr. Holmes was a benefactor who little realised the benefaction he was bestowing upon a profession which no doubt greatly needed his aid in those earlier years when he was doubtless earning a large income such as men engaged on the land were reputed to be earning then. That is by the way. He has given us that as an instance in support of his conclusions, but, on the other hand, he has served, by quoting those particulars, to demonstrate the fact that those men who advised him at the time, although great and eminent in law, made mistakes and now it has been found—Mr. Holmes must not find fault with it—that some doubt has been expressed with regard to the position of a particular member of Parliament.

Hon. J. J. Holmes: The lower court was right in its decision, and was supported by the High Court on an issue that was as simple as possible. The lawyers got £800.

Hon. J. NICHOLSON: And Mr. Holmes lost his case—also his £800. I am sure he can feel that he conferred a great benefit on the legal fraternity.

Hon. J. Cornell: The operation was successful, but the patient died.

Hon. J. NICHOLSON: No, he survived and he will probably live—

Hon. J. J. Holmes: He will keep away from lawyers.

Hon. J. NICHOLSON: —to repeat the dose at a later date. There must have been a doubt in the minds of some of the lawyers even in the case in which Mr. Holmes was concerned.

Hon. J. J. Holmes: There was no doubt in the mind of the court.

Hon. J. NICHOLSON: The court undoubtedly came to the conclusion afterwards that the case should be decided in a certain way which, unfortunately, was adverse to the interests of Mr. Holmes.

Hon. J. J. Holmes: And decided in the right way, too.

Hon. J. NICHOLSON: If he had realised the doubt that existed, he would have recognised there was some reason for the introduction of the Bill and some force in the preamble to it wherein it is indicated that "doubts have arisen as to members of the Parliament of Western Australia having committed breaches of the provisions" of certain sections of the Constitution Acts Amendment Act. If there are doubts regarding the matter, and a member of Parliament finds himself in a similar position owing to his having undertaken the position under discussion, surely it lies with Parliament to redress the wrong that has been done.

Hon. J. M. Macfarlane: Who knows whether a wrong has been done?

Hon. J. NICHOLSON: Parliament should redress the wrong that has been done by removing the doubt that clearly exists. That can be done by means of the Bill, but I believe in making the provision as safe as possible so that it will not be left open to any member of Parliament to claim the benefit of any legislation that may be passed now.

Hon. C. F. Baxter: Do not you think it is time the Constitution Act was amended?

Hon. J. NICHOLSON: The instance referred to by the Chief Secretary and the view expressed by a very eminent lawyer, the late Mr. Septimus Burt, regarding any alteration to the Constitution Act, would be endorsed by every lawyer in Western Australia. The difficulties involved in introducing legislation to effect amendments we may desire, still maintaining, as far as possible, the integrity of the Constitution, are so great that I am not surprised that amending legislation has not been intro-

duced. Whatever legislation may be introduced hereafter should be framed with the greatest care, and the House should see to it that we safeguard our rights and powers, just as another place should do likewise. I believe the Honorary Minister has been informed that it is regarded as desirable to amend Clause 2. Probably he will indicate to members what he is prepared to accept so as to make the position clear and defined, so that it will not be possible for the provisions of Clause 2 to be availed of by all and sundry but will be limited to the one member of Parliament concerned at the present juncture. After thinking over Clause 3, I believe it is desirable to retain it in the Bill because I can see no harm in it so long as the scope of that clause is limited to one member and is not capable of application to all and sundry. I suggest the advisability of including Clause 3 because Clause 2 deals with the holding of office by members of the Commission up to the 31st December, 1933, whereas Clause 3 applies to the continuation of the Act. I believe it is desirable that a Bill should be introduced annually to continue the operations of the Lotteries (Control) Act, and if that were done, control of the legislation would more fully be in the hands of Parliament than if we agreed to the extension of the Act for three or four years. The particular member of Parliament concerned in this matter at present certainly deserves consideration because of the great services he has rendered in the cause of charity. He has played a very prominent part in those activities and, prior to his appointment to the Lotteries Commission, rendered fine service in many directions. I suggest that Clause 3 be amended by striking out all the words from the commencement to and inclusive of "and" in line 4, with a view to inserting the following:—

Any member of the Parliament of Western Australia now holding office as a member of the Commission appointed under Section 3 of the Lotteries (Control) Act, 1932, or any Act amending same may continue to hold such office during the continuance of the said last-mentioned Act or any amendments thereof, and the acceptance by such member of Parliament of or continuance by him in such office and the acceptance . . . . .

The effect of that amendment would be that the Bill would apply only to the particular member of Parliament holding office at the present time.

Hon. V. Hamersley: What if he lost his seat at the next election?

Hon. J. NICHOLSON: It would not matter; the provision would cease to be operative. I desire to limit the operations of the Act so that the continuation of the member of Parliament now on the commission in his duties associated with the commission, shall not expose him to danger of consequent disqualification under the Constitution Act, but the right of a member of Parliament to retain that office should be limited to the member of Parliament concerned at present. I intend to support the second reading of the Bill.

HON. G. W. MILES (North) [6.15]: I move—

That the debate be adjourned.

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

Ayes	..	..	..	..	8
Noes	..	..	..	..	15
					—
Majority against	..	..	..	..	7
					—

#### AYES.

Hon. V. Hamersley	Hon. G. W. Miles
Hon. E. H. Harris	Hon. Sir C. Nathaa
Hon. J. J. Holmes	Hon. A. Thomson
Hon. J. M. Macfarlane	Hon. R. G. Moore
(Teller.)	

#### NOES.

Hon. L. B. Bolton	Hon. J. Nicholson
Hon. J. Cornell	Hon. H. V. Piesse
Hon. J. M. Drew	Hon. E. Rose
Hon. J. T. Frankila	Hon. Sir E. Wittenoom
Hon. G. Fraser	Hon. C. H. Wittenoom
Hon. E. H. Gray	Hon. H. J. Yelland
Hon. W. H. Kitson	Hon. W. J. Mann
Hon. T. Moore	(Teller.)

Motion thus negatived.

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

#### Personal Explanation.

THE HONORARY MINISTER (Hon. W. H. Kitson—West) [7.30]: With your permission, Mr. President, I should like to make a personal explanation. There appears to have been some misunderstanding with respect to the Bill now before the House. While we are keenly desirous of making as much progress as possible with the Bill, it is not our wish that a vote be taken on it to-night. We hope that as many members as possible will speak to the Bill to-night, so that it may be dealt with expeditiously at the next sitting of the House.

*Debate resumed.*

**HON. C. H. WITTENOOM** (South-East) [7.32]: I shall support the second reading of the Bill, though I must confess that during the few years I have been a member of this House no Bill has caused me so much displeasure as this one. I was very pleased to hear the explanation made by the Chief Secretary this afternoon in regard to the manner in which the chairman of the Lotteries Commission came to be appointed. Many members were not clear on that point; they did not know whether Mr. Clydesdale was sure that his position was sound. I am also glad to know that his appointment was not due to any carelessness on the part of the previous Government. I did think at one time that sufficient care had not been taken to obtain proper legal advice on the appointment.

**Hon. C. F. Baxter**: But it was bad advice the previous Government got.

**Hon. C. H. WITTENOOM**: I am, however, quite satisfied on that point now. The preamble of the Bill sets out that doubts have arisen as to members of Parliament having committed breaches of the Constitution Act. It is rather surprising to me that a Bill such as this should have been brought down without that point having been absolutely decided. Like Mr. Nicholson, I look upon this case as a special one needing special consideration. I hope the difficulty will be overcome without the necessity for any permanent alteration of the Constitution Act. If Clause 3 of the Bill be excised, my hope will probably be realised. I shall follow the debate on Mr. Nicholson's proposed amendment with interest. Apparently, we have to decide between an alteration of the constitution or a change in the system of conducting the lotteries, a system that has been followed for the last eighteen months with so much advantage to the community. While I shall support the second reading, I reserve to myself the right to oppose Clause 3 when the Bill reaches the Committee stage. When Mr. Clydesdale was appointed, he apparently was assured that the appointment was in order, so that whatever happens, in no circumstances whatever must he be allowed to suffer financial or other loss. For that reason I will support Clause 2 which, if passed, will enable Mr. Clydesdale to continue to occupy his position on the Commission until a date to be fixed. Clause 3, however, is another matter. To alter the Constitution in

this case would be the thin end of the wedge to allow members of Parliament to occupy any position of profit under the Crown. That might not be for the public good. Quite apart from that, it should not be the policy of any Government to provide several positions for one man. That is why members of Parliament are paid. The position is most unfortunate. Our desire is to retain Mr. Clydesdale's services on the commission, yet we do not want to open the door for members of Parliament to occupy any position of profit under the Crown.

**Hon. Sir Edward Wittenoom**: Mr. Clydesdale is not indispensable.

**Hon. C. H. WITTENOOM**: I could not say. The Constitution Act was framed by picked and clever men who gave deep thought to every point in it, and their work should not be undermined. Mr. Clydesdale's work on the Commission has been a credit to himself and to those associated with him. No whisper or suspicion of unfairness or unbusinesslike methods has ever been breathed against him, and the appreciation of the public is shown by the support given to the lotteries. The fact that he has reduced the costs to four and a half per cent. over sellers' costs is an outstanding achievement. I support the second reading.

**HON. H. V. PIESSE** (South-East) [7.37]: It is my intention to support the Bill. When the Lotteries Bill was before the House I said I would support it. I was very pleased indeed to listen to-day to the Chief Secretary's explanation. We should give serious consideration to what he has told us. Many members of Parliament to-day must have guilty consciences, because some of them who have been dealing with Government institutions perhaps did not realise that they were accepting from the Crown, money to which they were not legally entitled. Unlike my colleague, Mr. Wittenoom, I think the present case rather proves that we should give careful consideration to the alteration of the Constitution. I listened with great interest to Mr. Nicholson's remarks. There is no doubt he put the position clearly and concisely before members, and I strongly support his remarks. Mr. Holmes said that the law courts should decide this matter before the Government is called upon to pay any penalty that might be inflicted upon Mr. Clydesdale if he should lose the action; but I think Mr. Holmes lost

sight of the fact that the fault does not lie with Mr. Clydesdale. He certainly would have to stand for his seat again if it were proved in the court that he had accepted an office of profit under the Crown.

Hon. Sir Edward Wittenoom: How many people do you know who are holding their positions illegally?

Hon. H. V. PIESSE: I did not say that any people were. I did say that the Chief Secretary explained to-day that possibly there are many people in business who to-day are dealing with the Government and must be accepting the Government's money illegally.

Hon. E. H. Harris: If a member committed such a breach of the Constitution Act his seat would become vacant.

Hon. H. V. PIESSE: Yes. While I shall support the Bill, I reserve the right to oppose Clause 3 when we reach the Committee stage. Mr. Clydesdale has carried out his duties as a member of the Commission in a thoroughly competent manner and so have the other members of the Commission. They are to be congratulated on the economical running of the lotteries. The fact that the cost is only four and a half per cent. above sellers' costs is, in my opinion, absolute proof that the Commission is not a Government instrumentality, because I have never heard of a Government instrumentality that has been run at such a low cost. Members should lend their support to retaining Mr. Clydesdale's services on the Commission.

**HON. J. M. MACFARLANE** (Metropolitan-Suburban) [7.42]: The Bill before us is very important, and should not be treated as a party measure. A question of principle is involved. When the Lotteries Bill was before us I thought we were doing the right thing by placing lotteries under proper control. Before then, lotteries were under police control, and the methods of conducting them, in my opinion, were somewhat questionable. Costs were not properly supervised, and speaking generally, it looked as if the lotteries might become a public scandal. When it was suggested that lotteries should be controlled by a commission appointed by Parliament, I gave the suggestion my support. At that time it was not known who were to be the commissioners, although it was well known that two members of Parliament, experienced in the conduct of lotteries, had for some time been

acting in an honorary capacity in the running of lotteries. It was my opinion that the then Minister would very likely select those two gentlemen to act on the commission if they were available.

Hon. G. Fraser: You would have been surprised if it had been otherwise.

Hon. J. M. MACFARLANE: Always supposing it was not considered an office of profit under the Crown. I am not concerned about that. That is a matter for the Government and the members of the Commission. They were too experienced to accept one man's word. They knew that the seats in Parliament of those who were affected would be in jeopardy and were content to take the advice that any experienced member would accept. I believe the Government thought they were getting the best advice, and that the members concerned thought they were quite safe in taking these positions. There is a responsibility attached to Parliament. We are assuming that these positions are offices of profit under the Crown, but the facts seem to point to the contrary. We are, however, discussing the matter from the basis of an office of profit under the Crown. The existing Act will terminate at the end of December. Parliament could well protect the work that has already been done by allowing it to continue until the end of December. The defendant could then decide whether he would remain a member of Parliament or a member of the Commission.

Hon. E. H. Harris: Up to date there is no defendant.

Hon. J. M. MACFARLANE: He will be the defendant when the case is before the court.

Hon. G. Fraser: If there is no defendant, Mr. Holmes's case falls to the ground.

Hon. J. M. MACFARLANE: The hon. member in question is wrapped up in this work, and he could do it in an honorary capacity and remain a member of this Chamber.

Hon. E. H. Harris: You mean that the other members of the Commission would be paid but not this one.

Hon. J. M. MACFARLANE: A precedent for that is afforded by our having an Honorary Minister in this Chamber.

Hon. E. H. Harris: Is he not paid by his colleagues?

Hon. J. M. MACFARLANE: I do not know.

Hon. J. J. Holmes: To be paid by the Crown and by your colleagues are two different matters.

Hon. J. M. MACFARLANE: The Honorary Minister carries out the functions of a Minister without losing his position in Parliament. If that is possible in the case of a member of Parliament, it should be possible in the case of a member of the Commission. I am prepared to support the Bill to protect Mr. Clydesdale in the event of his being proved to be in the wrong, but I do not feel disposed to support it any further than that. It is reprehensible that any member of Parliament should run the risk of being questioned as to his bona fides by associating himself with anything in the shape of an office of profit. I support Mr. Holmes in his endeavour to keep up the status of Parliament and of our courts. These are the bulwarks of our social life, and should be kept on as high a pinnacle as possible so that there may not be a breath of suspicion against anyone associated with them in an executive capacity. We must always have faith in them so that our social life may run on lines of peace and harmony. If those lines are once broken down we shall have discontent and disturbances for all time. I am not prepared to subscribe to anything that will lead to such a state of affairs.

HON. W. J. MANN (South-West) [S.50]: I congratulate the Chief Secretary upon his very concise statement. Those of us who are comparatively new to parliamentary procedure must regard it as an illuminating statement, and one that places this unfortunate position in a light that makes it easy to grasp the situation. My first conclusion as to the proper way to deal with this matter is much the same as that which has been enunciated by Mr. Holmes. When the Mitchell Government made these appointments they knew there was some risk attached to them. A clause was inserted in the first Bill purporting to protect members of Parliament who accepted a position on the Lotteries Commission. Apparently some legal advice was then tendered, which the Government considered was sound, and the clause was taken out. It appears that Parliament has made a mistake, in which case it is its duty to rectify that and prevent anyone concerned from being penalised. Varied opinions have been expressed as to whether or not this is an office of profit. The further I examine the

position, the wider do the ramifications of it seem to be. Probably every member of Parliament has been guilty in some way, if the interpretations that have been placed upon the Constitution are correct. It has been said that the Constitution is sacred. I am as jealous of it as any member, but I believe even the Constitution is occasionally open to review. At a recent referendum many people in this State asked for a review of the Federal Constitution, which has been in operation for over 30 years. The people believe that in the course of time it has become necessary to effect certain alterations. The same thing applies to our Constitution. I understand it has not been altered for 43 years. Some four years after the Constitution received the Royal Assent, two eminent members of the Bar pointed out serious anomalies in it. The Constitution should be reviewed. One anomaly was referred to by Mr. Cornell, namely, the procedure necessary for a member coming fresh from the elections, and belonging to the party in power, which party had come with a mandate from the people to do certain things, and upon accepting a portfolio having to go before the electors usually a month after having finished his election campaign. I can see no sense in that.

Hon. E. H. Harris: Was it not justified in the case of the Morgans Ministry?

Hon. W. J. MANN: That may be so. If there has been a case where it has been justified, there have been many where it has been superfluous. The Government should bring down a Bill to amend the Constitution Act.

Hon. G. W. Miles: Not at all.

Hon. W. J. MANN: I am entitled to my opinion. Such procedure is superfluous. Our forefathers did not have a monopoly of the brains of the world.

Hon. J. M. Macfarlane: They were pretty sound.

Hon. W. J. MANN: They were pretty weak in many cases.

Hon. J. Nicholson: The Constitution Act is a monument to their ability.

Hon. W. J. MANN: That is not to say it is perfect and must last forever. The economic position in the world to-day cannot be compared with what it was 40 years ago. We are living in a period of rapid evolution. If there is a disability that requires to be remedied, it should be remedied.



Hon. J. Cornell: You can get a revised version of the Bible.

Hon. W. J. MANN: Yes. We often find revised versions of members' opinions in the same session, if not in the same sitting of the House. Parliament thinks it has made a mistake.

Hon. G. W. Miles: Not Parliament but the Government.

Hon. W. J. MANN: It is the duty of Parliament to rectify it. I am not concerned about persons or about the Lotteries Commission. We should pass the second reading of the Bill, extend the operations of the Act to December, 1934, and suggest that the Government should bring down legislation making it clear and definite as to what does constitute an office of profit. It is due to every member and to the country that this should be done, and I do not think any exception could be taken to it. With a little alteration Clause 2 could be made to fit the whole position. The door should not be thrown wide open for any member of Parliament to be appointed to an office of profit, but in this instance I am prepared to protect the member who finds himself in an embarrassing position. In Committee my vote will be given against Clause 3.

On motion by the Honorary Minister debate adjourned.

## **BILL—METROPOLITAN WHOLE MILK ACT AMENDMENT.**

### *Assembly's Message.*

Message from the Assembly received and read notifying that it had agreed to the amendments made by the Council.

*House adjourned at 8 p.m.*

## **Legislative Assembly,**

*Thursday, 16th November, 1933.*

	Page
Questions: Orchard Inspectors, transport ...	1972
Sustenance workers, compensation payments ...	1972
Annual Estimates: Report, Com. of Ways and Means	1973
State Trading Concerns, report ...	1973
Bills: Lotteries (Control) Act Amendment (No. 2), 1s.	1973
Fremantle City Council Lands Act Amendment, 2s. ...	1973
Permanent Reserve (A 1102), 2s., Com. report	1973
Reserves, 2s. ...	1975
Forests Act Amendment, returned ...	1976
Metropolitan Whole Milk Act Amendment, Council's amendments ...	1976
Motions: Fruit fly pest ...	1977
Dairying industry ...	1977
Lotteries Commission, position of members of Parliament ...	1978
Bees Act, to disallow regulation ...	1979

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

### **QUESTION—ORCHARD INSPECTORS, TRANSPORT.**

Mr. SAMPSON asked the Minister for Agriculture.—1, What is the method adopted by the department to provide for transport of district inspectors to orchard properties? 2, Are inspectors of orchard districts cramped or limited in their work in any way because of limitation of funds for transport purposes? 3, Where railway transport is non-existent, or where its use would involve loss of time, do the department's arrangements provide for the use of motor 'bus facilities?

The MINISTER FOR AGRICULTURE replied: 1, Inspectors use motor cars for which they receive a mileage allowance. 2, The expenditure of each inspector, having regard to efficiency is, of course, kept within reasonable limits. 3, Motor buses are used only in cases of emergency.

### **QUESTION—SUSTENANCE WORKERS.**

#### *Compensation Payments.*

Mr. RAPHAEL asked the Minister for Employment, 1, Is he aware that when sustenance workers are injured, compensation payments are withheld for as long as six weeks? 2, Will he make arrangements to see that their wives and children are provided with sustenance until insurance is paid?

The MINISTER FOR EMPLOYMENT replied: 1, I am aware that some delay has