

**Legislative Assembly,**

Wednesday, 10th November, 1909.

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

### QUESTION—METROPOLITAN SEWERAGE RETICULATION CONTRACTS.

Mr. SWAN asked the Minister for Works: 1, Has the time limit for any reticulation contract, in connection with the sewerage works been exceeded? 2, If so, has the clause providing for the infliction of penalties been enforced? 3, If not, why not?

The MINISTER FOR WORKS replied: 1, Yes. 2, The penalties are not enforceable until the completion of the contract. 3, Answered by No. 2.

### QUESTION—RAILWAYS, LICENSED PORTERS.

Mr. SWAN asked the Minister for Mines: 1, Is the Minister aware that the Commissioner of Railways has introduced a system of private luggage porters on the railways? 2, Has the introduction of this system received Ministerial approval? 3, Does the Minister consider that the introduction of such a system will operate in the best interests of the travelling public?

The MINISTER FOR RAILWAYS replied: 1, 2, and 3, Yes.

### BILLS (2)—REPORT STAGE.

Reports of Committee on Metropolitan Water Supply, Sewerage, and Drainage Bill, and Fisheries Act Amendment Bill adopted.

### BILLS (3)—FIRST READING.

- 1, Goomalling-Wongan Hills Railway.
- 2, Boyup-Kojonup Railway.
- 3, Dowerin-Merredin Railway.

Introduced by the Minister for Works.

### MOTION—COHNEY COMPENSATION CLAIM

*To inquire.*

Mr. SWAN (North Perth) moved—

*That a select committee be appointed to consider the claim of Mr. and Mrs. Cohney to compensation for injury to their premises occasioned by sewerage and drainage constructional work.*

This motion was moved and should be dealt with in no party spirit, but with a view to giving justice. There was a strong difference of opinion as to the merits of the case; but having gone pretty fully into it, he was satisfied that the people concerned were suffering from a grave injustice; and as their representative in Parliament he considered it only right to submit the motion so as to give Parliament the opportunity of saying whether these people were to be allowed to continue suffering the injustice without any attempt being made to remedy it. There was no need to speak at great length. He would endeavour to place the facts before members trusting that fair consideration would be given to the question of the appointment of a select committee to collect the facts with a view to meting out justice to the Cohneys. A portion of a contract let a considerable time ago for the construction of sewerage works in North Perth consisted of the construction of a drain along Beaufort-lane running from William-street to Beaufort-street. The first step taken by the Cohneys, according to letters he had seen, was that they wrote to the department protesting against the construction of the drain in the spot where it was proposed to be put down. Later they communicated with the contractor warning him they would hold him responsible for any damage done to their property. This was situated near the corner of Beaufort street and Newcastle-street, and consisted of three brick shops facing Beaufort-

street, with a baker's oven and a wooden residence at the back. One had only to look at the property to be satisfied that the building of the drain had totally destroyed it. It would be contended that Mr. and Mrs. Cohnney were, to a large extent, responsible for the position they were in, because they were offered something in the way of compensation before they took action at law; but there was no fair offer of compensation made prior to their approaching the courts. The compensation offered was about £150 in the first instance, which could not by any stretch of the imagination be considered a fair offer.

Mr. Gourley: What was the damage done?

Mr. SWAN: All those things could be found out beyond all doubt if a select committee were appointed. He was not prepared to give all the facts. The only way to get them, so as to enable justice to be meted out to these people, was by appointing a select committee to go into the whole question. The object of moving the motion was not an attack upon the Government in any shape or form. The Minister had been approached on a number of occasions concerning this matter. His (Mr. Swan's) connection with it was when Councillor Brady invited him to attend a meeting of citizens in the town hall to consider the best means of dealing with the question. There was a large number of representative citizens at the meeting, and it was unanimously decided to appoint a deputation to wait on the Minister for Works and ask if the Minister were prepared to do something to compensate these people. However, to revert to the history of this case, after the Cohnneys refused to accept the compensation offered they sued the contractor. Notwithstanding the previous offer of only £150, the contractors paid into court, roughly, something like £450. The case was tried by a jury, and a verdict was given for £226.

The Honorary Minister: Do you not know how many thousands the Cohnneys asked for?

Mr. SWAN: No. But that was not the important phase of the question. His desire was to see these people get justice.

He asked the House to do no more than give them justice. The verdict of the Court was for a lesser amount, and it resulted in these people having to pay the costs; while as far as compensation was concerned they had only received a shilling, and the position they were in to-day was one of direct starvation. There was a mortgage on the property, and they had to rely on their friends for keeping the interest on that mortgage paid up. Both Mr. and Mrs. Cohnney, owing to the worry of this damage to their property, and owing to the fact that they had been unable to receive the rent which was their means of livelihood up to the time of the destruction of the property, were in a bad state of health, more particularly Mr. Cohnney whose condition necessitated a serious operation, and as they were situated to-day they were unable to bear the expense of it. The outcome would be that unless something was done to relieve these people we would have Mr. Cohnney's death at our door as a result of the carrying out of a work in the interests of the people. Surely the House would not allow such a condition of things to come about. There was no desire to deal with a thing in a sentimental way. He (Mr. Swan) did not know what the legal position was, but what he did know was that owing to the construction of the sewerage work the property had been destroyed, and notwithstanding the fact that they may have made a claim for more than fair compensation at the outset the onus rested with the Government to make to these people some reparation for the damage they had sustained. According to the evidence of the mayor of Perth, and various other representative citizens, these people had been good citizens of Perth for quite a number of years. They had accumulated this little property, and it was not fair that they should be allowed in their old age to be face to face with starvation as they were at the present time. They had been thrifty people, and had attempted to give the only child they had left a good education, and this child was at the present time in Sydney or Melbourne studying medicine, and it was

because of the assistance of some friends that they had been able to keep him at his medical studies. There were other members of the House who had had the facts placed before them, and it was to be hoped that although some of them were on the opposite side of the House they would assist to secure justice for these people. It was not necessary to go further into the case. The House should find out what these people were entitled to by the appointment of a select committee to collect all the facts. The property had been destroyed, and it had been condemned by the municipal authorities who would not allow anyone to occupy it, so that the means of livelihood of Mr. and Mrs. Cohnsey had been removed, and they stood the risk now of losing the whole of the property, and as had been remarked left to face starvation. Moreover the condition of Mr. Cohnsey was such that unless he obtained relief by an operation he would not last very long and members might tremble to think what the result might be to Mrs. Cohnsey. It was not necessary to go further into the matter. The House it was hoped would agree to the appointment of a select committee to investigate all the facts, and prevent an injustice being done to old and reputable citizens.

The MINISTER FOR WORKS (Hon. F. Wilson): It was to be hoped that his words in reply to the hon. member who had moved the motion would be taken as they would be intended, not to endeavour to deprive any citizen of justice as the hon. member had put it, or to endeavour to persuade the House to present a strong front against the appeal which the member had been good enough to make on behalf of people who were undoubtedly suffering some distress. Although personally as an individual he would not have the slightest objection to an inquiry of the description suggested by the hon. member in his desire to get assistance for those whom he believed to be suffering, yet as a Minister of the Crown he had to put his case before the House as it actually was, and to warn the House that the appointment of a select committee of this de-

scription would be a rather dangerous procedure, and would establish a precedent which would be very irksome, and would cause much trouble in the future. Some members might say, "Never mind the trouble and never mind the precedent that would be established, do justice." He was quite prepared to face that aspect of the question and say that as far as the Government were concerned they had gone into the matter with every desire to do justice, and had come to the conclusion that justice had already been done. After the matter had been placed before the House, it would be competent for members to decide in their wisdom as to whether a select committee should re-hear the case or not. Members should deprecate any attempt to appoint a select committee to override a decision which had been come to by a Judge and jury after full inquiry and full evidence of every description had been taken in an extended trial. If we were going to constitute select committees of the House to re-hear and go through evidence of cases which were heard by our Supreme Court—

Mr. Underwood: You did it in connection with the Faiz Mahomet case.

The MINISTER FOR WORKS: If we were going to appoint select committees for that purpose, although we might admit, perhaps, exceptional distress caused in consequence of the action which had been taken, then there would be no end of applications on similar grounds to have re-hearings by the Chamber. It was admitted that these people had suffered considerably, that their property had been damaged to the extent that at the present time it was unlettable, and it was admitted that their case practically failed in the Court because they did not recover by way of damages, as the hon. member had pointed out, more money than was paid into Court by the defendants to satisfy the claim, and hence a very large proportion of the costs went against the plaintiffs. Nevertheless it should be pointed out for members' information that those costs were not altogether the cause of the distress of these people.

The costs were still a debit. They had been liquidated by the defendants, and were a debit against the plaintiffs, and also a cause for complaint against the Government, so that the position was that the property from which they were obtaining some rental over and above the interest on the mortgage was now empty and untenanted with the exception it was believed of one shop.

Mr. Swan: Has not the City council condemned them all?

The MINISTER FOR WORKS: Not that members were aware of. At any rate the shops were empty, and what little revenue these people had received from them in the shape of rents was now lost to them. The Government might have any number of claims lodged as a result of unwise legal procedure. He knew of many himself, and hon. members too had only to cast their minds back over the past years and they would remember instances of persons who had been ruined by unwise advice, and probably unwise procedure in the courts of law, and it could be stated in connection with public works the Government were always having claims lodged and must in the natural course of things have more claims in the future than had been lodged in the past. The position would become intolerable if these claims, after being pursued to their utmost limit in the law courts, were then to be submitted to select committees of Parliament in order to re-assess the damages that had been incurred. The danger was very apparent and more so in view of the wording of the hon. member's motion. The hon. member did not ask that compassion should be shown to these people, that a compassionate allowance might be granted just as the deputation had asked; the hon. member wanted the Government to consider the claim of Mr. and Mrs. Cohnsey, and wanted compensation paid to them for the injury to their premises.

Mr. Hudson: A select committee could make a recommendation for a compassionate allowance.

The MINISTER FOR WORKS: Exactly.

Mr. Swan: I am not wedded to the wording of the motion.

The MINISTER FOR WORKS: The wording of the motion affected the principle of the thing very largely. The hon. member moved that the claim of Mr. and Mrs. Cohnsey should be taken into consideration by a select committee. That claim had been already taken into consideration by a much higher tribunal than even a select committee, and it had assessed damages. That tribunal had assessed the damages and the damages had been paid out of the money in Court. Seeing that a jury of townspeople, having weighed all the evidence, had come to the conclusion that these people were only entitled to a certain sum of money, it would be unwise on the part of the House to appoint a committee to retry the case. Mr. Cohnsey was apparently in a bad state of health, and had been in a bad state of health for many years past; nevertheless it was palpably wrong for the hon. member to suggest that if the committee were not appointed, and, further, that if the committee did not award compensation over and above what had been granted by the Supreme Court, the death of Mr. Cohnsey would be at the door of the House or of the Government. After all, even if the committee were to be appointed it might decide that nothing further should be done. If charity were to be dispensed it should be dispensed as charity, and not under the veil of a claim for compensation; and it should be dispensed through the ordinary channels. Hon. members ought to be influenced by a just appreciation of all the facts of the case and should not allow themselves to be carried away by mere sentiment. Certainly it was for him (the Minister) to take an impartial view of the case and decide it on its merits in accordance with the available evidence. It was necessary that hon. members should be seized of all the facts in the case, and with that end in view he would endeavour to make an impartial statement to the House on the basis of the contents of the official file. Except hon. members were seized of all the facts they might hastily decide that these people, having

been injured by the works carried out by the Works Department, were entitled to have this further inquiry and further compensation paid to them, no matter what had been done in the past. He was sorry to say that after a careful perusal of all the documents, and after having listened very carefully to a deputation which had waited upon him, and having considered all the evidence he had come to the conclusion that these people—or, at least the lady; for apparently the husband was not in a fit condition to take an active part in the administration of his affairs—that the lady had set out with the full intention of getting a good thing out of the Government, or out of the contractors in connection with this damage to her property. That was the only conclusion one could come to. In the first instance Mrs. Cohney had set out with the intention of making a claim; because she had refused to allow the engineers to inspect her property before the damage was done. Indeed many months had elapsed before her sanction could be obtained to an examination of her property. Then, very early in the proceedings she had got into touch with the lawyers and had consulted a firm of solicitors even before the damage had occurred. In consequence of her representations this firm of solicitors had written letters warning the contractor and the department that Mrs. Cohney would make a claim for any damage that might be caused to her property. There was, of course, nothing wrong in that. The hon. member had urged that in this Mrs. Cohney was only anticipating something which she believed would happen, and was trying to put herself in a right position. But, on the other hand, it went to show also that she had been very much alert to the fact that she was going to make a claim, and was getting herself ready for it.

Mr. Scaddan: No, it does not.

The MINISTER FOR WORKS: At all events that was one view of the case. There were on the file letters from Sir Walter James, K.C., as representing Mrs. Cohney, who had gone so far as to demand that the work should cease. Later on, Mrs. Cohney had got into touch with

Mr. R. S. Haynes, K.C., apparently through the hon. member for Kanowna. Finally Mrs. Cohney had put herself in the hands of Messrs. Downing & Downing. Right through the case she appeared to have had the eminent advice and counsel of one J. W. Wright, who was an architect or contractor in Perth. It seemed in this case that the old adage concerning the wisdom to be found in a multitude of counsellors had gone astray. Mrs. Cohney had apparently received some unfortunate advice; she had prosecuted her claim to the utmost length allowed by the law, and now that she had come off second best and was suffering she had come to the Government.

Mr. Underwood: Who came off first, the lawyers?

The MINISTER FOR WORKS: The defendants had had to find something like £300 in costs; at least they had a debit against the plaintiff for £300 in costs.

Mr. Walker: Paid to the Crown, some of it?

The MINISTER FOR WORKS: That might, or might not have been so. He had no doubt the lawyers had stuck to all they could get; he was quite sure Mrs. Cohney had not got any of it. The file showed that the engineer on the work, following the usual custom, had recommended that all the properties along the route of the drain should be subjected to a preliminary inspection. That, of course, was a very necessary precaution against subsequent claims for damages that might already be in existence. Authorised to make this inspection the engineer had proceeded to do so, from house to house; but when he had come to Mrs. Cohney's property she would not allow him to enter upon it, neither would she allow the contractor's engineer to inspect the property. That attitude in itself went to support the contention that before the damage occurred she was putting herself in a secure position to prosecute a claim. There appeared on the file the report of the inspector, who, although he had not been allowed to enter upon the property had written a report upon observations made from outside in con-

junction with another expert. Briefly stated the effect of that report was that of the three shops belonging to Mrs. Cohnsey one was badly damaged, another was cracked, while the third—that on the south side—was in perfect order. He went on to say it would be necessary to take down all the north, and a portion of the west back wall to the doorway of the centre shop, take down one-half of the parapet, and portion of the pediment in front, and the division wall to the floor line. He said that the claim for a new building was unreasonable, as the rebuilding in the manner suggested would leave the building in a condition equal to that it was in before being damaged. He put down the cost of the work at a sum not exceeding £100. The next thing was that the Government received a letter from Sir Walter James in answer to a letter written by the Under Secretary advising that a contract had been let for carrying out the sewerage work in the locality, and stated that the Government could not see their way clear to discontinue the work as had been suggested by the solicitors. The letter from Sir Walter James said that as the Government did not see their way to discontinue the work it would not be too much to ask the department to prevent or diminish the possibility of any damage to his client's premises, or that if damage should be done that reasonable compensation should be granted. That was the attitude the department took up, and in replying to the letter they said the contractor for the work concerned would be instructed to make every effort to diminish the possibility of damage to the property. The department worked in the direction indicated by the solicitor, and the contractor was notified to take every precaution to cause as little damage as possible. The damage occurred, and an effort was made to make the property exactly as it was prior to the damage, but that was declined, and eventually law proceedings were instituted. First of all, the plaintiff attempted to take action against the department in conjunction with the contractor, but eventually the proceeded

against the contractor alone, and the verdict was as he had mentioned. Then there was a letter to which attention should be drawn, in order to show that the contractors also were endeavouring to deal with the matter in a fair and impartial spirit. In a letter to the Engineer in charge, dated 22nd January, 1908, Messrs. Henrikson & Knutson, the contractors, stated that they took all precautions possible to make the excavation past Mrs. Cohnsey's property quite safe, but in spite of that, damage had been done and portions of the building would have to be rebuilt. They mentioned that they had written to Mrs. Cohnsey asking permission to enter the premises for the purpose of removing portion of the front parapet wall as it might do more damage if it remained, and also to make good the damage done. That permission had not been received, but they intended again to write informing Mrs. Cohnsey that if the permission were not granted they would not accept liability for further damage that might occur. The contractors asked the department whether they could give them authority to enter the building and effect repairs. That appeared to be a very reasonable letter, as the contractors asked permission to remove a certain portion of the parapet, for it was so damaged that it might at any time cause further damage, and to go into the premises and put them in proper order. That permission was refused. The department were in the unfortunate position that they had no power to give permission for the contractors to enter the property. After consulting the Crown Law authorities they were advised there was no power to enter if permission were refused. Later on the Crown Solicitor received notice from Mrs. Cohnsey that she was going to proceed at law against the Government for improperly and negligently carrying out the works, and that damages would be claimed. In May of last year another engineer was sent to inspect and report upon the building, and the damage done. The officer who was sent, Mr. Carrington, had no connection with the sewerage works. His report pretty well endorsed

that already read. He pointed out in his report that the building was comprised solely of one room to each shop, and that the shops joined one another. Number 199 was the closest to the drain, and was the worst damaged. The cracks had opened out very considerably, and it looked as though the building, or a large portion of it, must be taken down and re-erected. In number 197, the middle building, there was one crack in the wall, but a bad one over the window. In number 195 the outer walls were sound, but the building was slightly strained; otherwise, there was no damage apparent. The engineer endorsed inspector Allen's report. He also said that the buildings had been unoccupied for some months, and were at that time still unoccupied. He had been informed that the rental had been 15s. a week for each shop. There seemed to be no living accommodation in any of the shops; and the total cost, he had been informed, of the three buildings amounted to about £450. During the excavations the contractor had taken every precaution to prevent settlement, or the porous soil from trickling away from under the building. However, the porous soil heavily charged with water subsided in many places bringing with it the light walls immediately the unwatering of the locality took place. The locality seemed to be solely of sand so that immediately the pent up waters were drained away earth settlement occurred at various places in the locality. He estimated that at the outside £180 would be sufficient to effect the improvements. In connection with the case before the department, it was necessary to draw attention to a clause in the contract, one under which eventually the plaintiff had taken action against the contractors. It was as follows:—

"All buildings, walls, fences, and works of any description that it is found necessary to remove, or that may be disturbed through the operations of the contractor, shall be replaced at his sole cost and left, on the completion of the works, in their original order and condition."

The contractor offered to do this work,

but the offer was absolutely refused. The next phase of the proceedings was that Mr. and Mrs. Cohny took out a summons against the Government and the contractors in conjunction. Subsequently, however, presumably acting on proper advice, she dropped the action against the Crown, and turned her attention absolutely to the contractors. She elected to proceed against them rather than the Government for the damage she alleged she had sustained. She could have proceeded against the Government, but presumably, she felt she had a better case against the contractors, especially as the complaint was grounded on the alleged negligence on the part of the contractors. One could not sue the Government for the negligence of the contractor. If it had been a case of damages sustained through the ordinary operations in connection with the carrying out of works she could have sued either the Government or the contractor, but eventually she decided to go on the question of negligence, although afterwards the issue was extended to recover all damage. However, Mrs. Cohny decided to proceed against the contractors, and she made up an extraordinary claim. Notwithstanding the fact that in her evidence before the Court she said the property only cost her £513 to build, and notwithstanding the evidence of the inspectors which went to show that the property could be rebuilt for £450, she was not satisfied with suing for a fair thing, but tried to recover the enormous sum of £2,500 to recoup her for the property damaged, and for the loss she attempted to substantiate.

Mr. Collier: Some of the sharks who advised her should be made to pay the compensation.

The MINISTER FOR WORKS: Members should bear in mind that this huge claim was based on damage to a property which only cost about £500 to erect, and which had been partially damaged. The first item of the claim was for the cost of pulling down and removing the old building, re-erecting and repairing it, and placing it in its former solid state. For this the sum of £800 was claimed. Then there was a claim made

for the loss of a tenant, E. R. Heller, and it was alleged that owing to the state of the building this tenant, who would have taken the premises for four years at £6 10s. a week was lost, and in compensation the sum of £600 was claimed. Alternatively, there was a claim for £400 for the loss of tenants, R. Birch & Co., at £2 5s. a week for four years; therefore, not only was their claim for the reconstruction of the property, but also for loss of rental from tenants she said she would have obtained had not the damage resulted. If the property were put in order, and it would not have taken more than two or three months, what hindrance was there to those tenants still taking the premises? It was hard to imagine how such a claim as that submitted could have been made out. The next reference in the statement of claim, which was signed by H. P. Downing, was for loss of rent for two other properties, at £1 10s. a week each from January, 1908, £156. Then there was the claim—he suppose it existed in the fertile imagination of the expert—for the additional story which plaintiff was prevented from erecting over the shops, £250.

Mr. George: Would the walls have carried an additional story?

The MINISTER FOR WORKS: Perhaps not. Then there was the expense of removing plaintiffs furniture and chattels, £10, which seemed to be the only genuine item amongst the whole claim. There was an item of renting suitable premises that it was necessary plaintiffs should occupy during the pulling down and rebuilding operations, £100. The total cost of building the property was £500. That came out in Court in Mrs. Cohney's evidence. The contractors and the Government would have been lacking in their duty if they had not resisted a claim of this sort in the interests of the State. The Government would have been open to the charge of maladministration if they had not resisted a claim of this description which was made with the intention of recovering a sum of money five times the value of the property from the Government or contractors through the Supreme Court. The whole claim was made out on the grounds

that the contractors were neglectful in carrying out their work, that they did not take proper precautions to support the plaintiff's property, and in the wrongful and careless use of a machine called a "monkey" for driving piles. There was the subsidence of the property through taking away the water and the sand, and the walls cracked and gave way. In consequence of which the plaintiff set out that she was compelled to pull down and re-erect the buildings, and she was prevented from adding the additional story referred to and had lost rents and profits, and had been put to the expense of renting other premises and removing her furniture and effects thereto, and she claimed £2,500 damages for the wrongs complained of. That was the case that was heard by a jury of Mrs. Cohney's townspeople, and before a Judge of the Supreme Court. He would call the attention of members to the Judge's remarks in the summing up of this case.

Mr. George: What Judge?

The MINISTER FOR WORKS: Judge Rooth.

Mr. W. Price: That is one of his decisions that has stood?

The MINISTER FOR WORKS: The Judge in summing up seemed to be very careful. He (the Minister) had gone through the evidence and it appeared that the summing up was a clear exposition of the facts of the case, and the Judge did not seem to endeavour to bias the jury in any way in favour of the plaintiff or the defendants. He endeavoured to put the case very clearly, and he summed up in the plaintiff's favour in regard to damages, and on that he (the Minister) presumed the jury gave their award. The Judge pointed out to the jury that Mrs. Cohney alleged that the injuries had been sustained in connection with having taken away the main support, that was the lateral support of the sand, hence the damage was caused; and that was done, it was alleged, through the neglect of the defendants. Then the Judge drew attention to the fact that the first portion of the work was the driving of certain piles, and the excavations were commenced in January after the piles had been driven



some time; and he also pointed out to the jury that it was perfectly clear that previous to the first of January no possible damage had been done to the property.

Mr. George: The piles did not do the damage.

The MINISTER FOR WORKS: Then the Judge recounted the action the plaintiff took previous to the excavations. Everything was all right, Mrs. Cohny said. The Judge went on to say—

"It is said by the plaintiff that the cracks and subsidences were caused by the negligence of the defendants owing to the way in which they did the work, or, by the taking away of the supports. Now, gentlemen, negligence is a common expression, an expression which even lawyers use without fully appreciating its meaning. Negligence varies in its character according to the facts of each particular case, and I think I shall not be wrong in defining negligence in this case—having regard to the facts—as being the lack of the use of ordinary care or skill in the work the defendants did in regard to conducting their work past the plaintiff's premises, whereby she has suffered injury to her property. If you apply that to the case before you, having regard to all the circumstances of the case, and taking into consideration the nature of the soil and the sub-soil, you have to consider whether the defendants were wanting in the exercise of ordinary care, and by reason of that lack of care the plaintiff has been injured."

That seemed to be a clear statement of the case as far as the negligence was concerned. After describing the soil and the subsoil the Judge dealt with that portion of the evidence referring to the silt, as to whether it ran out with the water or was held back by the timbering, and he said—

"I do not think it has been seriously contended that there was a silt or wet sand of such a nature at that point which, if running off would have caused an injury, because all the evidence called for the defence has shown that the water would run off and the sand be kept back. . . I only draw your at-

tention to the evidence, reminding you that on behalf of the plaintiff it was alleged that sand and water would run out together. That being the nature of the subsoil the plaintiff says that the defendants were negligent."

He called attention to the fact that the timbering was properly carried out, but he did not direct them on this point because it was a matter for their own consideration. He went on to say—

"I think the method adopted to keep up the excavation the only practicable one—I do not think the vibration of the monkey working on the piles would affect the stability of the house. If the sand was loose it would shake it together."

He was quoting the evidence of the Government engineer in reference to underpinning. That was some of the evidence he commented on, showing that the action of the contractors in driving the piles had not injured the property. Then he says—

"You will remember that before the excavation was made seven piles were laid down upon either side, and Mrs. Cohny thought it made the walls crack, but all the evidence tends to show that she must be wrong, because that evidence showed that there were no cracks until late in February."

There was a lot of comment on the different engineers who had been called in connection with the case, and not only had the jury the benefit of the opinions of outside engineers but the opinion of the departmental engineers. They had before them Mr. Oldham, Mr. Hickson, and outside engineers such as Mr. Leslie, Mr. Wright, the contractor, and Mr. Law. They had the evidence of all these experts to say whether the negligence had been caused through the works, and how the property had been damaged. The next point the Judge came to was as to the operations of the defendants in taking away the support to the plaintiff's land, and he said—

"I think I may say that these operations did take away the support of the plaintiff's land from the side."

After reading the evidence very carefully

from beginning to end, he came to the point as to the original cost of the property, and he reminded the jury that to rebuild the property according to Mrs. Cohney's evidence it would cost £516 10s., because that was the original cost of the property. Therefore to rebuild it, he (the Minister) presumed it could be re-erected for the amount which it originally cost. Notwithstanding that there was the claim of £2,500 put in. There was a lot of evidence referred to regarding the consolidation of the ground, as to whether it ought to be solidified, and so on. The Judge also referred to the wooden building at the back, which was damaged to the extent that the windows and doors jammed, but there were no cracks in that building. One would not expect people to turn out of a wooden building on that account. So that part of the claim was excessive. Then the Judge put the case very clearly to the jury and said—

“If you think they require to be rebuilt then you will have to consider the amount required for building. Another heading of damages is the question of rent. You will here have to exercise your discretion in no small degree. A person who is injured cannot stay by and wait until the jury have heard the case and given damages, but must do his best to minimise the damage. It is said here that the third shop is in perfect order to-day. If you think that is so you ought not to give the plaintiff any damage at all for the loss of rent upon that shop, unless you are satisfied that she took all the steps she could to get a tenant, and that she was prevented from getting a tenant owing to the danger threatened the other shops. You have no evidence that she had made that attempt. You have some evidence that she had got a tenant for that shop before the damage to the other shops was done. The tenant, a man called Heller, was apparently not very financial. He was carrying on a small business at Applecross at the time he entered into the contract to take the shop. It is difficult to credit that a

person like Mrs. Cohney, if she had known the position of that man, would have let him that shop unless she got an exorbitant rent out of him. There were no prospects, unless this man was very successful, that he could have paid the rent. However, we hear that he agreed to pay a rent of £6 10s. per week for the three shops, and Mrs. Cohney says in regard to this particular shop (the third shop) it had been let to another man at £2 12s. 6d. a week. Now that man has not been called, and no books have been produced to corroborate the statement that any man had been paying this rent. The fact remains that at the time these excavations were made Mrs. Cohney had no tenant. However, she told you that she was carrying on a business there herself for Heller who had agreed to rent the property. No date was fixed for the agreement as to time or when the lease should commence. I leave it to you. It is entirely a matter for you, but I ask you to consider whether there was a bona fide tenant, and if not, or if so, what damage Mrs. Cohney had suffered. Now we must consider the value of this property. Mr. Dent, a well-known house and land agent, scoffs at the idea that £2 12s. 6d. could possibly have been paid for that shop. He says that 17s. 6d. would be the outside value for the rent. That is the only test you have as to the value of the shop, except the evidence of Mrs. Cohney. The two other shops we can deal with in a more tangible way. There is no doubt that these shops are so injured as to drive tenants out. Therefore you must give her some damage from the 20th January when we know the bootmaker left. It is said that the repairing works could have been commenced at the end of February, when the contractors practically left the place; therefore you must estimate the rent from the 20th January. If you believe the evidence you must consider that two or three months had to elapse before the rebuilding operations could take place—and if you believe that you must con-

sider that at least three months would be the time Mrs. Cohnsey lost her rent, apart from the time taken for rebuilding."

Notwithstanding this there was a claim lodged for several years' rental. The summing up proceeded—

"It is also said that Mrs. Cohnsey should be allowed a period of from one to two months to enable her to look about and get other tenants—so you have three months before the consolidation, say three months for the repairing or rebuilding and some two months to enable her to look for a tenant. It is said by Mrs. Cohnsey—and again she produced no books or other corroborative evidence—that she was getting 25s. for that shop. Her evidence is all you have to go upon. On the other hand Mr. Dent says that 12s. 6d. would be ample. You can work out the figures upon any basis you think fit, having evidence of value at 12s. 6d. on the one side and 25s. on the other side. With reference to the third shop you have to make a slight alteration. There again she says the rent was 25s. a week, Mr. Dent saying it could only be worth 12s. The greengrocer who kept that shop did not leave until March 25th, and so you must direct your attention in regard to this rent in the same manner as I have suggested in regard to the other shops. There are two other small items of damage, one with regard to the wooden building which the plaintiff says requires rebuilding, and that it will take four weeks to rebuild, and Mrs. Cohnsey says that to rent a house of that description will cost her £1 a week, secondly the removal of the furniture will cost about £2."

Yet Mrs. Cohnsey claimed £10 and £100 rental—

"In regard to the question of law I have not worried you. The only thing that I would again repeat is what a jury must know in regard to negligence. I say again that negligence in such a case as this means the want of use of ordinary care or skill, having regard to the operations which were being performed, and having in this

case regard to the nature of the soil and the surrounding circumstances generally. If you think the defendants were negligent in that sense, either in the use of this monkey, or in their neglect to underpin, or in the method they adopted to keep out the sand and water, then you will answer the question in the affirmative. I leave the case to you gentlemen."

In finally concluding the Judge submitted certain questions to the jury. These questions and their answers had a great bearing on the case. The first question was—

"Was the damage to the plaintiff's building caused by the defendants' removal of lateral support or adjacent support, or both?—By reason of lateral support."

The second question was—

"Was such support water or sand or both? The jury answered, "sand," notwithstanding the summing up of the Judge."

Other questions and their answers were—

"3. Were the defendants' operations conducted in a negligent manner?—No.

4. Would the plaintiff's land have subsided if there had not been buildings upon it?—Yes.

5. Can the premises be placed in as good a state by repair as they were in before the said work was begun?—Yes."

Members would see that the offer of the contractor to place the building in a proper state of repair was a bona fide offer and one that should have been accepted. The sixth question was—

"Could the drain and sewer have been taken down the centre of the streets in the locality and have efficiently served the same purpose as the drain and sewer constructed by the defendants along Beaufort-lane, and if so would damage to plaintiff's property have been thereby avoided?"

And the jury did not answer that; probably they did not consider themselves expert enough to commit themselves on a technical matter like that. The amount of damages awarded was £224 5s.; the sum the contractor paid into court was £375, he (the Minister) believed.

Mr. Jacoby: Who made the original offer of £150?

The MINISTER FOR WORKS: There was no offer made. There was an offer to repair the damage done, and as to the cost of doing the repairing there was an estimate of £150 made by one engineer, and of £180 by another, and there were different estimates given in evidence. After the squaring up there was a balance due of £311 19s. in the defendants' favour, that was in favour of the contractor, and of course the contractor immediately tried to recover from the Government. The contractor petitioned to be reimbursed the amount of the verdict, the whole of his own costs, and the balance due to him by the plaintiff, amounting to £830 in all. This claim the Government refused, and the contractor commenced an action against the Government for recovery. The Government had to take steps to defend themselves in connection with this case and with others it had been necessary to compromise and settle by arbitration; and there was a cross-action now in the Supreme Court to decide as to whether the contractors were responsible under a verdict similar to this, for damages similar to these, in carrying out Government contracts. The contractors' solicitors, Messrs. Stone & Burt, had taken action against the Government, and it depended upon the interpretation the Court put on the clause in the contract, as to whether it covered all damages to property, or only negligence damages. If it covered all damages, as the Government thought, it would go hard with some of the contractors.

Mr. George: If the Government had done the work by day labour they would have been in the same position.

The MINISTER FOR WORKS: Yes, but if the contractor was paid a price to cover all contingencies from damages, the Government did not expect to pay again. There was a clause in the agreement saying that the contractors were responsible for all damages to property.

Mr. George: The contractors are not going to make any money out of it.

The MINISTER FOR WORKS was afraid not. We were going to get strong appeals to the Government from some of these contractors.

Mr. Collier: That is their look out.

The MINISTER FOR WORKS: And in this case it should be Mrs. Cohney's look out.

Mr. Collier: There is no doubt who should be liable; it should be the contractor every time.

The MINISTER FOR WORKS: Did the hon. member contend that the damage caused through carrying out the work in accordance with the plans and specifications of a Government department and faithfully carried out under the supervision of the engineer, that the contractor in such a case should be liable? The matter, however, was a very intricate one, and the Supreme Court was now deciding it, and as the matter was *sub-judice* it might perhaps be wise not to discuss it. The next point to arrive at was that on which a very energetic gentleman, Councillor Brady, took charge of the case, and if hon. members ever had a case which they wanted forcibly and persistently brought under the notice of a Cabinet Minister, they could be commended to Councillor Brady. This gentleman was to be commended, to some extent, for the untiring energy he showed in connection with this case, for when he got a refusal from one quarter, he was not content, but he set to work and invoked aid from another quarter. The latter was the City council, who passed resolutions; thus the mayor, town clerk, and the whole of the council were brought into the question, and the result was that it culminated in a deputation which the member for North Perth introduced to him as Minister for Works a few weeks ago. Councillor Brady first came on the scene when he wrote a letter on the 28th of June to Mr. Price, the then Minister for Works, drawing attention to the case, and saying that it should be attended to, and that an inquiry should be held. Mr. Brady put the facts before Mr. Price, and said that roughly 18 months ago these people had three shops let, and bringing them in an income. The drainage work was the

cause of ruin to the structures, and at the present time the owners had been deprived of revenue from these places. Then he went on to point out that these people were now in an acute state of privation; that the man was sick, and that both he and his wife were depending upon charity; that they had disposed of nearly everything they had, and were in extremes. Mr. Brady added, "There can be only one opinion arrived at by the public if these particulars come to be known, and that, I think, will be pretty definite. No technicality must be considered to deprive these people of a living, and the means to live, and I ask you to look into the matter." The then Minister for Works after giving that letter due consideration replied—

"You are perhaps not aware that at the time the damage occurred the contractors offered to repair the premises. This being refused they offered subsequently to pay into Court a sum which would be sufficient to enable the property to be put into complete repair. Instead of accepting either of these reasonable offers the owner, presumably acting upon professional advice, resorted to litigation, and was awarded by a special jury a sum sufficient to cover the damage, but not sufficient to pay the enormous legal costs these people had elected to incur."

Councillor Brady was not content with that reply, but he returned to the charge next day and said—

"Mr. Bold told me yesterday that he had no reply with regard to the request of the P.C.C. respecting this case. I need not go into the legal question or the ill-advised actions. People will never consent to these persons dying from want through damage caused to their property, and by a public work, especially knowing the generous payments made in other cases on the same drain. If it is not possible for you to set aside the Minister and take a humanitarian view of the matter, the public shall be asked to intervene. Help must come quickly, and a scandal pre-

vented, and a life saved. May I suggest that you get the mayor and another gentleman to go into the matter, and make such allowance as shall be considered necessary? Let me have your reply early as these people are entirely dependent on charity, and one is very sick indeed."

That letter was merely acknowledged. Then he (the Minister for Works) came on the scene on the 1st of July, and before he had been Minister for Works for more than a day or two, Councillor Brady went baldheaded for him as the Minister controlling the Works Department. On the 7th July Councillor Brady wrote—

"I am taking the liberty of writing to you on the Colney case, addressing you as a fellow citizen and as one having the power to do—or use your influence to cause to be done—an act of justice. I cannot discuss the case from its legal aspect and may I ask you not to reply through that bowel-less man the Under Secretary? When we hear of the liberal way the Government met the demands of the Colonial Finance, and other parties, there is no excuse upon the score of cost, and when we hear that the jury was made up of Government employees and other insinuations which the poor woman rightly or wrongly makes, it seems beyond me altogether."

It might safely be said that there was no truth in the statement that the jury was made up of Government employees. Even if it were so they would not be warped in their minds to the extent of going against a citizen merely for the sake of the Government. That was a cruel insinuation to make. The letter went on to say—

"But, my dear sir, be the case as it may, we are not in Russia but in a Christian country and are governed by so-called Christian rule."

Then Councillor Brady went on to repeat the extent of the damage done to the property and asked that the Sewerage Commission should be asked to investigate the matter and advise as to the as-

assessment of the damages. The letter concluded—

"I do not want to appeal to the public, for if this is to be done I think it will unfold a Government scandal."

On the 13th of the same month Councillor Brady wrote again and asked that consideration should be given to the Cohny case, adding that there was a strong feeling that something should be done for these people in the way of reinstating their property and making an allowance for loss of rent. Councillor Brady added—

"I do not think any fancy amount will be looked for. You see this property is upon the same line as the properties whose owners got such liberal treatment from the Government, and as they are now in a state of privation public feeling is not inclined to look at the legal aspect but requires that a humanitarian view shall be taken and compassionate compensation made. Would you be inclined to receive a deputation on the matter or should we go to the Premier? Kindly advise me not as Minister for Works but as a fellow citizen."

The reply, which was sent as from the Minister for Works, was as follows:—

"I beg to acknowledge the receipt of your letters of the 7th and 13th ult. I have consulted all previous papers and correspondence on the subject and any delay that may have occurred is due to the fact that I have given the matter very careful consideration. I am as anxious as yourself to take a humanitarian view of the question, but it is not possible to let that view take the form of a compassionate allowance or recommend that such a course be taken, as the present distressed condition of the applicants is entirely due to their own action. The only possible attitude on the part of the department was expressed in the letter addressed to you on the 29th June and signed by my predecessor. The whole case was decided on its merits as between Mrs. J. Cohny and Messrs. Henrikson and Knutson in which a claim was made for £2,316 damages and an award

made for £224 5s., and I regret there are no resources open to me from which I could make or recommend any payment of the kind you refer to. The examples which you quote as cases where more favourable treatment has been meted out than has been accorded to Mrs. Cohny are not parallel cases. Moreover, it must be remembered that the equivalent of all that the Government did in all these cases has already been offered by the contractors in this one, namely, to make good the damage as stated in the letter of 29th June."

Councillor Brady then set to work and secured the assistance of the City council, who recommended that the Royal Commission should be asked to take the matter into consideration. In a subsequent letter Councillor Brady reiterated what he had previously stated and asked that a deputation should be received. He (the Minister) replied that he could not add anything to what he had previously written and that there could not be seen any good reason for a deputation to wait on either the Premier or himself. Then there was another communication from the City council asking that a deputation should be received.

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

**THE MINISTER FOR WORKS:** The City council had passed a resolution in connection with the case, and had instructed that a letter should be written to him, asking that the matter should be submitted for the consideration of the Royal Commission then sitting in Perth to inquire into the construction of the sewerage works. When that letter had come before him he ordered that it should be sent on to the Royal Commissioners who, however, held that it was too late for them to consider the matter, and that indeed, it was outside the scope of their Commission. Subsequently a public meeting was held, at which Councillor Brady, referring to the case, announced that in his opinion the people of Perth would not suffer what he termed to be an absolute injustice to continue. Advice of this meeting was forwarded to him (the Min-

ister) by the town clerk, who at the same time asked that a deputation of the City councillors and others, which had arisen out of the meeting, should be received. Just at that time he (the Minister) was leaving for the Eastern States in connection with the Premiers' Conference, and the town clerk was advised of that fact. Subsequently September 10th was fixed for receiving the deputation. It proved to be a very influential deputation, consisting of the mayor of Perth with his councillors, the Bishop of Perth, the Rev. Joseph Snell, Rabbi Freedman, and others, who were taking a lively interest in the question. The case was first put before him (the Minister) by the member for North Perth, who introduced the deputation. Most of those present advocated the claim of these people, but admitted that it was a case for compassionate consideration. One and all admitted during the course of the interview that it was not a question for compensation for damages sustained—that aspect of the case had been tried and settled, but that in view of the fact that these people were in want the Government should come to their assistance. Further than that, the mayor had urged that the citizens of Perth would not be adverse to paying a little extra in order that the Cohneys might have some relief. Dr. Smith had urged that Mr. and Mrs. Cohney had made a mistake in suing the contractors in an anxiety to spare the Government. He (the Minister) had pointed out that that could hardly be so, and that Mrs. Cohney's anxiety, so far as could be judged, was to get her claim settled and to get as much as she could. In reply to questions put during the interview he (the Minister) had found that the property was mortgaged for £900, and that the interest had been 9 per cent. but that the mortgagee had reduced it to 7 per cent.; and further that the interest was all paid up to date. So the mortgagee, at any rate, who was one of the deputation, was all right. He (the Minister) had pointed out that if, as the deputation required, the property were to be reinstated to its former condition, it would be practically spending the funds of the

State in reinstating the security of the mortgagee, who would then have his damaged shops rebuilt. He (the Minister) had felt strongly that it would be of little use for the Government to extend compassion if the extension of the compassion were to be used for the benefit of reinstating property mortgaged up to the hilt. He had felt very sure that the rents stated as having been procurable for the property were very largely fictitious; and the Judge of the Supreme Court, in summing up, had dwelt upon that point, and had expressed the opinion that the men who had offered to lease the property for a term of years were men of straw. It really looked to him (the Minister) as though those men had been put up for the express purpose—that they had been induced to make certain offers for the purposes of the case being tried before the Court. He would ask the member for North Perth, did he think that the value of these three shops was anything like £6 15s. or £2 5s. per week each? Was it not more reasonable that the value was something like £1 or 25s.? If the property were to be reinstated it would mean that the funds of the State would be expended on the property—which had cost the contractor a large sum of money, and which the contractor was endeavouring to recover from the State—for the sole object of paying the interest on the mortgage; and the distressed people would get very little, if anything at all, out of it. He had pointed out to the deputation that it would be of no use extending compassionate allowance to these people if it was to go directly to those who had a mortgage on the property. Then there had been some cross questioning as to the estimated cost of reinstating the property. Mr. Wright, who was present, had said that it would cost £400.

Mr. Collier: That was different from his earlier advice.

**THE MINISTER FOR WORKS:** Mr. Wright had denied giving Mrs. Cohney any advice at all. He (the Minister) had learned that the mortgagee had returned the difference in interest, and that, so far, Mr. and Mrs. Cohney had been able to keep up their payments. In order that

hon. members might clearly understand the attitude he (the Minister) had taken up he would read his reply to the deputation, as follows:—

"I have listened very carefully to what you have to say about this unfortunate case. I want at once to disabuse the minds of some of my friends here if any questions of mine appeared to be prompted towards the mortgagee or anyone in connection with this property, unfairly. It is my duty as a Minister of the Crown and custodian of the moneys of the public, to watch very carefully the expenditure—and I do not care what impression gets abroad—I am going to carry out that duty to the best of my ability whether it creates a bad impression or not. I am bound to do so, and that is the attitude I must take up in connection with all these claims. Now, this unfortunate damage to the property of Mrs. Cohnney occurred during the time of my predecessor, and he had the handling of the case from the first—it was to him that the first approaches were made on behalf of these people. I took it up when Mr. Brady wrote to me and asked me to look into the matter. It is quite true that when I replied I said I was desirous—naturally, and I hope I always shall be—to take a humanitarian view of the case. But I pointed out that I could not let that view take the shape of a special grant from the Government compensating them for damage sustained. If it was to be a compassionate allowance, it must be compassionate only and once for all, given because the people were in great distress and because it was thought by the Government that some of the public funds might be drawn on to some extent to assist them. That is the view I take. I cannot run the two aspects together. It is as Minister for Works that I must now consider the claims of these people. Put briefly it is that Mrs. Cohnney's property was damaged, that the contractors offered to reinstate that property and put it in proper repair—whether they limited

the amount or not, I do not know, but they offered to put it in repair; but that on the advice of some people—whether legal advisers or not I do not know—that offer was absolutely refused with scorn by Mrs. Cohnney. She next took action against the contractor—ill-advised again, and I am sorry to think, with some idea of getting more than the true value of the property out of the contractor. The claim was for £2,500 for a building that according to the evidence cost £500. When people get on the wrong track that way, whether it be of their own free will or through some ill-advised person prompting them, they are bound to suffer. The contractors paid a sum of three hundred pounds odd as fair value for reinstating, bearing out Mr. Wright's estimate of £400; they paid three hundred odd into Court, showing that you are just about on the right mark. [Mr. Wright: She claimed for consolidating the ground as well as loss of rent.] But surely people do not want more than the amount of damage out of a Government, even though it be a Government. Anyhow this £300 was paid into court—the extreme sum that should be awarded. They go on with their action, and eventually a special jury and the Judge bring in a verdict for £224 5s., which is given her. In the meantime she has not got even the amount that was paid into court—and it carried costs after the amount was paid, against Mrs. Cohnney. I understand now that this is really the cause of the trouble. She has not only not seen the £224, but is liable for or has paid a large sum of money in addition by way of costs and other expenses. I did hear, and wanted to find out whether it was true, that in consequence of the pressure brought to bear upon her by people for services rendered, she would have to mortgage her property still further. I do not know if that is true. The mortgage existed, I think, before the damage, and I really do not see how she could raise much more than £900 on the property. That is the position. Mrs.



Cohney takes every advantage of her legal position. She is advised, and she takes the course open to her to prove her case. She refuses an amicable settlement, gets a verdict, and that verdict has been met by the contractor. I do not think that any of you gentlemen would say that I was carrying out the duties of my office, if I set that award aside and began to assess damages myself after a full trial in the courts of the State before a jury. So that we come back to the position as stated by the bishop and other speakers—that the people they represent ask nothing by virtue of law, but only plead for assistance in a case of dire distress. We have to set on one side the legal aspect of the question, which has been fully settled; and we have not to blame the Government nor the officers of the department. I want to say here that I believe our officers are absolutely capable officers—every man that we have on the work—and that every ordinary care was taken, notwithstanding what Mr. Wright says. It is easy to be wise after the event. As to whether this is a case in which the Government should be asked to exercise its compassion, as Minister for Works I say in my letter that I can do nothing but take the view that my predecessor took, and am not open to reconsider that aspect of the question. I recognise the force of the arguments of those gentlemen who plead for assistance from the Government. I have considered well what they have said, and I will bring the case under the consideration of my colleagues in Cabinet in order that they may go into the matter, and see whether anything should be done by way of special assistance."

Resolved: That motions be continued.

Mr. Bath: Cannot the hon. member summarise this information? We are absolutely obliterated under an avalanche of words.

The MINISTER FOR WORKS: This was putting it in a more concise form than if an attempt were made to summarise it.

Mr. Bath: The member for North Perth put his case more concisely.

The MINISTER FOR WORKS: The hon. member put up no case at all. The endeavour now was to put the case before members so that they would know the exact position. He had gone on to say—

"I might suggest, as we are all agreed that it is only a compassionate appeal, that perhaps the mayor and councillors, representing the rate-payers of the City, might take this view themselves, and as they believe that this is a case in which all should help, be prepared to give pound for pound on any amount the Government may decide to give. I only throw this out as a suggestion. If the mayor notifies me, I will also bring that under the notice of my colleagues."

In that reply to the deputation the case was put in a nutshell.

Mr. Foulkes: Did you hear anything from the mayor?

The MINISTER FOR WORKS: No; but in conversation the mayor had said the City council had no funds to vote for the relief of these people, but that he was prepared to start a subscription to help them. In accordance with the promise given, the matter was brought before the Cabinet and Ministers viewed the question from every aspect. They went through the papers, heard what the previous Minister had to say about it, and heard what he (the Minister) had to say about it, and after taking everything into consideration Cabinet could not see its way, in justice, to grant any special compassionate allowance. Though these people might be in the distressed circumstances depicted by the member for North Perth, though the son studying to be a doctor in the Eastern States might possibly have to throw up his studies in consequence of not being able to remain at college, and though the husband was in ill health and had been for many years past, still in view of the circumstances of the case the Government could have taken no other action in deciding against granting further compensation. To ap-

point a select committee to go into a case of this kind and possibly override by some recommendation the finding of the jury and the Judge, would be most inadvisable, and would be establishing a precedent for all time to give people the right to try every means in their power to get as much as they possibly could from the Government or contractors by recourse to the law courts and then to come to the House and ask for special compensation. This case would not bear the inquiry the hon. member sought. It would not bear looking into. There was now a liability the contractor was trying to pass on to the Government of nearly £900. These people could not pay their costs, and the contractor had to pay them, and was now endeavouring to make the department pay them, but the matter was now before the Supreme Court. It would be most inadvisable if we agreed to appoint a select committee to re-open and re-try this case, and to take into consideration the granting of some special compensation—not composition allowance—for damage done to the property which had already been paid for satisfactorily according to the verdict of the Court. There was no wish to advance more than one's personal opinion, there was no endeavour to persuade hon. members, but one could hope the case was put so clearly before members that they could come to a right decision in connection with the motion to appoint a select committee.

Mr. BATH (Brown Hill): Up to a certain point where the Minister had epitomised the action taken by the Government and referred briefly to the correspondence that passed between the representatives of Mrs. Cohny and the Government, there was no difficulty on the part of members in following the case put forward from the point of view of the Minister; but certainly the reading of the correspondence in detail, and the laboured attempt to decipher bad handwriting, had altogether killed the Minister's case, and made it impossible for members to get a clear and connected idea of what the Minister was driving at, at least during the last hour. It was

a new doctrine from the present occupants of the Ministerial bench to learn that after a Judge or a Judge and jury had pronounced in any case the decision was final so far as the Government were concerned. A Government composed of members who now sat on the Government bench took up an entirely different view when the House and a Judge and jury had declared emphatically that Faiz Mahomet was not entitled to compensation, because in spite of that the Government granted compensation. By no stretch of imagination, or logic, could the Government say they were entitled to go behind the decision of judicial authorities on that occasion to the extent of £2,000 and claim that now it was altogether a wrong thing to do in this case.

Mr. Johnson: Or even to investigate.

Mr. BATH: The member for North Perth was not asking members to commit themselves to compensation, but that the circumstances of the case should be investigated by a select committee. Whatever arguments the hon. member might adduce to show that Mrs. Cohny had been ill-advised, or had taken the wrong steps, there was no doubt that comparing her position prior to this work being undertaken with her position at the present time, the difference was most disastrous to her. When we were asked by the Minister for Works to say that members of this Assembly should have no regard to the claims of Mrs. Cohny since a judge and jury had pronounced upon them, he was asking us to take up an attitude different from that assumed in regard to other claims for compensation from the Government, when, without the intervention of Judge or jury, the Government paid over large sums in the nature of compensation.

The Honorary Minister: Both sides have generally agreed to compensation.

Mr. BATH: In some instances not even as the result of arbitration, but because the Government recognised the claim put in, and granted large sums of money. One claimant received something like £6,000.

The Honorary Minister: That was after arbitration.

Mr. BATH: In another instance there was £1,000 granted; that was to Mr. George. The argument he was emphasising was that in cases where a Judge and jury had not intervened compensation had been granted, so that the argument of the Minister could only be accepted as a piece of special pleading.

Mr. Walker: George's case went to a Court, and the Judge decided against the Crown on a law point.

The Honorary Minister: And the other case was the result of arbitration.

Mr. BATH: The position of this woman was deplorable as compared with what it was prior to the trouble arising. This case was at least deserving of investigation. He was not going to commit himself to say that the demands made by the lady should be conceded, but there was sufficient justification for investigation. Although he would vote for that investigation, in doing so he would not commit himself to accept in their entirety, or even partially, the findings of the select committee that might be appointed.

Mr. WALKER (Kanowna): This case was altogether outside the usual category of cases where damage having been done to a person's property amends should be sought through the avenues of law. Mrs. Cohnsey was not one of the ordinary run of women, and her influence upon the jury would be such as to bring about the disastrous award she received. She was an extraordinary character, and he questioned whether one would call her altogether normal, especially since this event and the loss of her daughter in the hospital. The disasters which had overtaken her had made her, if he might say so without cruelty towards her, irresponsible for her actions. She was, therefore, deserving more of our pity and consideration on that account. He would not deny that possibly the legal steps taken were some of them ill-advised, that possibly the claim for damages was greater than it need have been, that she had offers of settlement which it would have been to her advantage to have accepted, but which she declined to accept; but when one knew the nervous character of this woman, that she was almost beside herself from the

wrongs she had suffered, one could make vast allowances in this respect. The one thing that struck us, or should strike us, was this, that here was a property absolutely destroyed. When he said that he meant for the purpose for which it was previously used. Mrs. Cohnsey endeavoured to get redress, but with the anxiety of a woman suffering from overwrought nerves she went the wrong way about it, or going the right way about it, did damage to her own case in the courts, and now was worse off than she was before she sought redress. Not only had she now this damaged property but there was an accumulated weight of debt against her, and, moreover, there was an injury to her own health, and there was undoubtedly injury to the health of her husband. The whole prospects of her future were darkened and gloomy in consequence. That was her position after trying the law. It was the Crown that was responsible in the first instance for the damage that was done, and for the Crown to stand by and say, "Well, she had her legal remedies; she tried those and failed; we have done with her," was undignified. The Government stood in the place of the King, who could always say, "Let right be done." And it was the one thing in royalty we had always loved that the King could say, "Let right be done." The process of law was not always right, it was not the ultimate right, at all events, yet the Crown would stand by like a common citizen, an ordinary individual, and say, "You have had your run in the law courts, that settles it." The question we had to consider was whether this woman had her rights, no matter what accident had prevented them from being obtained, her nervous character, her peculiar disposition, the ill advice of lawyers or the perversity of juries, or anything else; no matter about any of these things, was right done in her case? Was it not a case where instead of having right done wrong had been done? If wrong had been done was this Parliament paralysed, could it do no more, could the Crown do no more, must it stop at the limit of its own formalities, or was it able to do right? If the Crown and Parliament could not do right wherein

was this power to do right vested in this State. As the Attorney General would tell us, there always had been, collateral with the process of strict legal formality, a power in the State that the King for centuries had exercised in England a power above the law, the power to do right where the law had failed. Surely we had something analogous in this State to that; surely that power was vested in the Crown and Parliament. He was surprised that a Minister of the Crown should take objection to the wording of this resolution, and to take it in such a form as to make it impossible for this Parliament to take action simply because the word "claim" was used instead of some words implying an appeal for a compassionate allowance. Everyone knew that if Parliament made a grant of this kind it was by grace, by virtue of that quality that was above technicality, which did justice ultimately. That was the power to be appealed to, and if poor verbiage destroyed that appeal the magnanimity of a Minister should be able to supply the deficiency and see through the formal words, and realise what the intent was. The intent was to appeal to the charity of this State, to make good the damages caused by the Crown.

The Honorary Minister: Would you urge that course to be taken in the case of every litigant who happened to be unsuccessful?

Mr. WALKER: Every individual who had been wronged and who had been caused to suffer by any act of the Crown and failed to have right done in the law courts, should have right done in this the highest court, Parliament.

The Honorary Minister: After having refused full reparation from the Crown?

Mr. WALKER: Was that dignified? Did not the hon. member know the character of this woman, did he not know that she was just the one to refuse everything? She did not know exactly what she wanted. Was it not the proper course for manhood to do good in spite of the refusal of it by those who did not know what their own good meant. Was that not manly? Was it dignified and manly to take advantage of a woman's infirmities,

of a woman's desire to get more than she ought, or her obsession, for that was what it meant, caused by the wrongs done to her; was it manly to take advantage of that? Surely that would be wrong. It was boy's work, not the dignity of a Minister of the Crown. Let right be done in spite of the perversity of those who required right done to them. We should not be thrown off the right course because of a woman's nerves. That was the position taken to-night by the ex-Minister for Works, who was in office at the time the occurrence happened, and his successor. The fact had to be remembered that the woman had had a wrong done to her, she had suffered, she was suffering, and she would continue to suffer, and all allowance should be made for the fact that she had been perverse and that she had not been dealt with rightly in the law courts, and that her mannerisms which had offended ministers had offended the jury. It was common talk at the time of the trial that the woman brought her misfortune upon herself by her manner with the jury, and the jury not knowing the sufferings that the woman had previously experienced, not knowing how she had been driven to the verge of madness by the death of her daughter under peculiar circumstances, when the authorities brought a policeman into the hospital to her child who was suffering from typhoid fever, with the object of threatening her into quietness; the jury not knowing all the things that had driven this woman into these eccentricities, took the view that was being taken now by the Honorary Minister and treated her as a designing blackmailing woman, and that was the view that the Minister for Works had taken. The Minister did not have a tinge of pity for the woman who had been driven mad by the conduct referred to in the management of the hospital. It was not for members who knew the facts to treat this matter in the spirit that the Government were treating it. It was for members to consider the case from the view that more than this woman depended upon it. Her husband needed care; he was a man who had property enough to secure him that

care before the Crown started upon these works. This man was in danger of his life and the son who was getting along in his education might have to sacrifice that education in consequence of the Crown action, and now what was asked was no more than that there should be a calm and deliberate inquiry on the part of a select committee to say whether this woman could establish any claim to charitable compassion. The wording of the motion was nothing, and no more was asked than that there should be a select committee to investigate the circumstances.

Mr. George: There should not be any necessity for a select committee if it is a charitable matter.

Mr. WALKER: Even if it were a charitable matter, and for the guidance of the House, it was well that we should know both sides of the case and that the whole of the facts should be presented. The member for Murray would know that in a law court all the facts could not be presented which would throw a light upon the subject. Every fact had to be relevant to the issue set forth in the pleadings and then when the people went before the jury very often the manner of those in the witness box prejudiced justice, and in this case the jury were prejudiced by the mannerisms of Mrs. Cohny. What members had heard was the Crown case from the Minister for Works.

Mr. Foulkes: Did the woman receive anything?

Mr. WALKER: No, it had been hypotheated by the Court and was awaiting the issue of another action which was pending.

The Honorary Minister: The action was not against the Crown.

Mr. WALKER: The contractors were suing the Crown and was not that matter now awaiting issue? Under all the circumstances no harm could come from an inquiry, and if the wording of the motion did not please the Government it could easily be altered. The object of the inquiry would be to elicit the facts of both sides and submit them for the guidance of the House when consideration would be given to the matter. Then

if it were found that these people were entitled to compassionate consideration, well and good; if it were found otherwise then these people had exhausted every channel and had no further claim. He (Mr. Walker) would never be a party to stopping petitions of the people to the Parliament, and he would not be a party to say that all consideration of justice was to be excluded from Parliament after another body, however high and exalted, had dealt with it. Hon. members should therefore vote for the appointment of the select committee.

The HONORARY MINISTER (Hon. J. Price) would be one of the last to oppose the appointment of a select committee in connection with a matter of such a nature, but the very circumstances connected with the case must convince the House that it would be a most dangerous step to take. The debate that evening had been welcome because for a considerable time when he was occupying the office of Minister for Works he was subjected to a considerable amount of misrepresentation in connection with this case, and it could be said that anyone who liked to examine the file could come to no other conclusion, if he occupied the position of Minister for Works, that his duty would have demanded the taking of the action that had been taken. There was no intention to recapitulate all the circumstances of the case; they had been given with force and clearness by the Minister for Works. His sympathy, however, did not go out to Mrs. Cohny in this case; it went out to the contractor whom she tried to victimise. The contractor was the man who should receive the sympathy of members because he had been put to undue expense by the reason of the extraordinary, and what might be called the improper steps Mrs. Cohny took, and not a word of sympathy from the mover, or from the member for Kanowna, had been heard for the contractor who had been engaged in carrying out the work, and who, there was every reason to believe, would make very little profit out of it. A claim was made for £2,500 for a building which cost £500 to erect. On the face of it, did it not show at once that there was an

attempt at imposition, and it was surprising that under the circumstances of the case a man could be found to urge the Government to give favourable consideration to the question of granting a compassionate allowance.

Mr. Holman: It was done in Faiz Mahomet's case.

The HONORARY MINISTER was not dealing with Faiz Mahomet's case and he knew nothing about it. Since he had been associated with the Government no such grant had ever been made as that which it was suggested now should be made to these people. The case should be judged on its merits, and there was no wish to reflect upon the conduct of the hon. members, although reflections had been cast on his (the Honorary Minister's) conduct in connection with this matter. He had attempted to do what was right and in view of the facts which had been stated it had been found difficult to understand the attitude of members who urged that special consideration should be given to this woman, viewing all the circumstances of the case. The member for Kanowna asked the House whether Mrs. Cobney had got her rights, and that question was answered by the member himself only three minutes previously, when he told the House that he did not deny she had offers of settlement which she should have accepted. Was that not as far as the Government could be asked to go? The hon. member admitted that the terms were equitable and therefore had not the Government gone to the length that they should be asked to go? The contractor had paid into Court a sum which would have more than covered the cost of the repairs to these buildings.

Mr. Walker: That is a matter of dispute.

The HONORARY MINISTER: The amount awarded was such as would cover, in the opinion of the Court, the cost of reinstating those buildings. The jury assessed the damages on the expert evidence placed before them. With a fair knowledge of the case, the Minister was satisfied that Mrs. Cobney had a fair and reasonable sum awarded to her.

Mr. Allen, inspector of construction, who was well-known to many members in the House, when the damage was first reported, examined it, and he said the cost of putting it in proper repair would be £100. Some months later Mr. Carrington, another competent engineer, estimated that the cost would be £180. Even admitting Mr. Carrington's amount to be the more accurate one, it was found that the jury awarded more than that sum. Why should the Government now be asked to consider the temperament of this woman? The Government could not allow that any unsuccessful litigant who might be ruined by reason of litigation against the Crown, after reasonable offers for settlement had been made, could come forward subsequently and claim a compassionate allowance.

Mr. Walker: The question is not so much for a compassionate allowance as it is that there should be an inquiry.

The HONORARY MINISTER: With a view ultimately of granting a compassionate allowance.

Mr. Walker: If it is found justifiable.

The HONORARY MINISTER: Of course that was the end in view. Had it not been made patent that there was an attempt at extortion?

Mr. Walker: No.

The HONORARY MINISTER: It was quite evident to all. Many hon. members knew the properties in question; did they think that these properties were worth £6 or £7 a week? Of course not. Gross exaggeration had been made with the express purpose of putting up a case. In dealing with a case of this sort no Minister should be asked to consider the temperament of an individual. He hoped the House would refuse the select committee. For his part his sympathies were wholly with the contractors.

Mr. W. PRICE (Albany): If there was so little in this case why did the Minister for Works and the Honorary Minister so strongly oppose the appointment of a select committee to inquire into the whole of the circumstances? The Honorary Minister had said that there had been gross exaggeration, and an attempt to extort money. It was not easy to see

where there had been either extortion or attempt at extortion.

The Honorary Minister: Is not asking £2,500 for a property that cost £500 an attempt at extortion?

Mr. W. PRICE: It was not an attempt to extort; that had been the claim of the individual, and it had been for the Court to decide whether that claim was an excessive one. It may have been that to Mrs. Cohnney the damage done to her property amounted to the sum named in the claim. But the member for North Perth was not anticipating that the committee would recommend that any such sum should be paid. All that the hon. member asked was that a committee should be appointed to inquire into the circumstances. He (Mr. Price) knew the woman, and had some knowledge of the circumstances in which she was placed; and all that he asked was that justice should be done. The woman felt that she had suffered an injury, for before the sewerage scheme was extended into the locality she had lived in fairly comfortable circumstances, whereas, as the result of the work carried out under the department, the woman was now practically penniless. He was by no means prejudiced one way or the other, yet he honestly desired that the case should be inquired into on its merits, for he did not think that the woman had been altogether responsible for some of the actions taken. If the committee were appointed they would probably find that the woman was not altogether responsible for her actions, and the result of the inquiry would serve to show that there had been no attempt on her part to extort money from the contractor, or from the Government. She felt that she had been injured. And she had been injured. There was no imagination about this.

The Honorary Minister: Nor is there any imagination about the £2,500.

Mr. W. PRICE: Nor was there any imagination when the Colonial Finance Corporation got £6,000 from the Honorary Minister. To a rich corporation with thousands of pounds behind it the Minister was quite ready to hand over anything that was demanded.

Mr. Walker: Without any talk of extortion.

Mr. Hudson: And when the Minister's own officer recommended a payment of £600.

Mr. W. PRICE: Had there been any gross exaggeration when Mr. George had got £1,000 for damages of less than £100?

The Honorary Minister: Who granted it?

Mr. W. PRICE: Presumably the department had granted it, just as it had done in the case of the Colonial Finance Corporation.

The Honorary Minister: No; the Court ordered the payment.

Mr. W. PRICE: At all events Mr. George had got £1,000 wherever it was ordered from, and the Minister knew that the damage done did not amount to anything like £1,000.

Mr. Walker: I question that. I think he only got what he deserved.

Mr. W. PRICE: Well, the Cohnneys deserved some consideration also, and in the case of the Colonial Finance Corporation there certainly had not been anything like £6,000 worth of damage done. The Minister for Works had indulged in something altogether uncalled for when he accused Mrs. Cohnney of having set out to make a good thing out of the Government. On this the Minister had based his appeal that hon. members ought not to allow themselves to be influenced into doing what was right by this unfortunate woman. Hon. members had been told that she was a Jewess, and everything possible had been brought against her. To-day she was living on charity, and he sincerely hoped that in the interests of justice the House would agree to the appointment of the select committee.

Mr. GEORGE (Murray): Like other hon. members he found himself in a somewhat difficult position. It was impossible not to feel sorry for anybody who had been reduced as apparently these people had been. The difficulty was that he felt convinced that whatever might have been the subsequent proceedings of the lady, and her advisers, yet before ever the damage was done preparations had been

made and the foundations laid for bringing a case against the contractors should the occasion arise.

Mr. Walker: That is not correct.

Mr. GEORGE: If it could be shown that what he had said was wrong he would be pleased to be put right in the matter. He happened to know the contractors in connection with this case, and to know they had lost a lot of money, apart altogether from the action taken by Mrs. Cohny. From what the Minister for Works had told the House it appeared that before any damage had occurred, before even the street was broken up, an attempt had been made to inspect all the properties in the street with the object of seeing what their condition was at the time. This was the usual custom in connection with any drainage schemes which would disturb the roadways, and be likely to have an effect upon adjoining properties. It was a matter of common sense that such inspection should be made before the work was commenced, for the purpose of determining the condition of the properties. Mrs. Cohny, it seemed, had refused point blank to allow any inspection of the property to be made.

Mr. Walker: Is not that consistent with the character of the woman?

Mr. GEORGE: Women like men were very foolish at times, but hon. members could not allow that to weigh with them in considering this case. Whatever her motive, the lady had refused to allow any inspection to be made, notwithstanding that no possible harm could have arisen from that inspection, even though she had been certain that damage would follow from the carrying out of the scheme. When such damage did arise she would have been in no worse position for making her claim because she had allowed the buildings to be inspected. The inspection was from the Public Works Department and that department, according to the Minister, was not responsible, owing to the clause in the contract, and it therefore followed that not being responsible for the damage the department would be most likely to take a fair view, reasonable to both parties. One could fairly assume Mrs. Cohny must have been acting

on some advice, lawyers' or friends', when she refused the inspection.

Mr. Walker: You are assuming all the time.

Mr. GEORGE: One could only assume from one's knowledge of human nature.

The Attorney General: When they asked for an inspection she referred them to her lawyers.

Mr. GEORGE: Then the assumption that she took legal advice was correct. She took it before there was any damage done, on the speculative assumption that damage might ensue; and that absolutely showed that, whatever the state of her mind, Mrs. Cohny was pretty astute, or had astute advisers, and that she entered into a speculation as to whether, if damage was done, she could not make a bigger sum out of the contractors. It was only surprising the claim was so reasonable at £2,500. For damage done to property valued at £500 it was most reasonable. From one's experience of claims for damage one would not have been surprised had it been £12,500, going on the principle of asking for twice or thrice what one expected. At any rate this lady took on a speculation; and, under advice, refused to accept the reinstatement of her property, refused all sorts of offers, and went to law. The member for Kanowna spoke of the perversity of juries, but we had no right to consider the twelve men on a jury more perverse than a committee of the House would be in examining the circumstances of the case. One failed to see why the ordinary course should be departed from in these circumstances, but if the Government could see their way to assist these people by a compassionate allowance, not with the idea of throwing charity at them, seeing they were in dire distress, it would be well. The question of meting out justice had been raised by the mover of the motion but justice had been done. Acting on advice this lady went into a speculation, which she lost. Others entering into speculations lost.

Mr. Walker: It is not right to call it a speculation.



Mr. GEORGE: There was no desire to reflect on Mrs. Cohney in using the word "speculation," but it was the word that appealed to one in dealing with this case. The property could have been reinstated, but the offers were refused, and a claim was put forward and attempted to be bolstered up by evidence which, according to the Judge and jury, was unreliable. That was Mrs Cohney's misfortune, or perhaps she was unfortunate in her advisers; but if every litigant who went to law and lost was to ask for a select committee to deal with his case, so as to get financial assistance, as was now sought, we would need to leave on one side the other business of the country and do nothing else but inquire into these cases. However, if the Government could manage to assist this lady out of pure sympathy—

Mr. HOLMAN: The Government have shown their sympathy to-night.

Mr. GEORGE: The Minister had to make his case, and did it not at all badly; but there was no desire to discuss the Minister; we should discuss whether we could do something for these people. He would not vote for the select committee, but would be pleased if the Government could see their way to assist this lady.

Mr. HOLMAN (Murchison): The House should grant the committee desired by the member for North Perth. We heard a lot about speculation from the member for Murray. It seemed a funny thing that when poor persons, practically unable to assist themselves, had cases they were speculations; but there were other cases of compensation in connection with the sewerage works. There was a property in St. George's terrace damaged; that property was owned by influential people, and a great deal of compensation was paid; and there were other cases cited by the member for Albany and other members. It was a pity the same cry of protecting the State's money was not raised in the past. The Faiz Mahomet case was one of speculation. Faiz Mahomet left the State, alleging that he had permission to land 500 camels in the State, and had he landed

them would have cleared £17,000; but, fortunately, before the camels left Kurra-chi the whole case was brought out and exposed. A select committee afterwards recommended that Faiz Mahomet was entitled to consideration, but there were two members of the committee dissented from the recommendation, and the House subsequently decided by 18 votes to 8 that Mahomet was not entitled to compensation. Mahomet proceeded with a case in the Supreme Court, but the Court decided he had no legal claim. The House had previously decided he had no moral claim. A year or two later, when things were quiet, Ministers now occupying the front Government benches, as soon as Parliament was in recess quietly handed over £2,000 to Faiz Mahomet, disguising the vote in the Estimates, and the matter only came out two or three years afterwards.

Mr. George: Who were the Ministers responsible?

Mr. HOLMAN: Some of the Ministers at present on the Ministerial Bench. There was the Minister for Works who now waxed indignant because Mrs Cohney asked for consideration. Mrs. Cohney's case was as white as snow as compared with the Faiz Mahomet case. Hers was a case he had not had time to inquire into, but when a case was brought forward and there appeared to be an injustice to be considered we should give it every consideration. Poor unfortunate people with cases to be considered, even if they had made mistakes in the past, would get stronger support from him than influential men who could get behind the scenes and get, as in the Faiz Mahomet case, £2,000 from Ministers and have the matter covered up. That Faiz Mahomet case was one of the most disgraceful actions that had characterised any Government. In fact Ministers were so ashamed of it that they attempted to disguise the transaction. Yet here, when members tried to defend the interests of a woman who could not protect herself, the Minister for Works waxed indignant and said members were trying to extort money from the Government. The manner in which the Works Department was carried on was a disgrace. There were men injured, one to-

tally blinded and lying in a hospital for six months, who could not get compensation. For three months he (Mr. Holman) had been trying to get compensation for one man, but could not. The claim was admitted, and the man would probably get compensation in time, but might die in the meantime. The Minister knew this man was entitled to compensation, but the man could not get it. The worker was practically blown to pieces, crippled and maimed, and would be of no use in the world again, and could not get compensation. In the last communication that passed to the department he had asked if the man would have to take legal proceedings. Probably the Attorney General had seen the papers of the case. In other cases, men working for the Government at sinking wells were injured but could not get compensation. The time had arrived when the poorer people should receive some consideration. Just now, any gentleman who came along who could wield influence could get more consideration and more justice, as the Government termed it, than any poor beggar outside unable to use influence. This was a hard thing to say about Ministers, but several cases had come under notice, leading one to believe that the poorer and more deserving a man was the less consideration that man received from the Ministers. In the past persons with influence had received more consideration than the private individual. The claim to-night was a reasonable one. It was not for us to say that because we appointed a select committee that committee would do anything with the object of extorting money from the State. A committee of this House would be well capable of inquiring into the facts of the case, and bringing forward a report recommending either compensation, if it were deserved, or a compassionate allowance, so as to enable the unfortunate woman to tide over her present difficulties. If she had been misled throughout the case and as a result had lost her money and her home, then she should receive some allowance. The claim for £2,500 was certainly unreasonable, and he would never agree to grant a sum

of anything like that, but if that woman were placed in the position of not knowing what she was doing, and was badly advised, we would be taking a disgraceful action if we refused to allow her case to be considered by members of this Assembly. Merely because members on this side of the House were moving the motion they were charged by the Honorary Minister with doing something which was absolutely wrong. The hon. member always supported anything done by members on his side whether it was right or wrong, but simply because this motion came from the Opposition it was absolutely wrong and should be defeated. That gentleman would be quite willing for thousands of pounds of the country's money to be paid away secretly, as had been done in the past, but he would not agree even to an inquiry in the case of this poor unfortunate woman. As to the facts of the case, a great deal was heard from the Minister for Works, who was a past master in the art of covering up things which he desired to be concealed. He would not take the Minister's account of what had actually occurred in the case, but a committee should be appointed to make full inquiries and inspect the property to see what damage the woman had suffered from, hear her grounds for a claim for compensation, and let justice be done.

Mr. FOULKES (Claremont): No doubt it was a difficult thing to know what was the right procedure to adopt in connection with this case. Everyone must feel a great deal of sympathy for this unhappy woman. He could not help thinking, however, that the appointment of a committee would not help the position, because full information had already appeared about the case in the public Press. There could be no doubt that the Minister for Works, looking at the case from the strict legal point of view, had been absolutely correct in the attitude he had taken up. One had to remember that the woman had been placed in a difficult position right through. In cases of this kind there was always a certain element of doubt as to the proper person to sue, whether the Government or the contractor. All knew law was most uncertain

and all knew also that in 99 cases out of 100 those people who went to law regretted it afterwards. The case was one in which the Government should consider whether they should not make a compassionate allowance. It had been said that £250 would be sufficient to put the buildings back in their original state. He would remind the Minister for Works that in all large works of this kind, involving the expenditure of many thousands of pounds, there was a certain sum set down for contingencies, and in some cases this sum was as high as 10 per cent. In this case the Minister might very justifiably debit the sum of £250 to the contingency account and pay it to Mrs. Cohnney. That would be an act of mercy on the part of the Government, and he hoped they would see their way clear to grant the sum.

Mr. Draper: Without an inquiry?

Mr. FOULKES: There was no necessity for more inquiries. A good deal of capital had been made of the fact that Mrs. Cohnney claimed the large sum of £2,500. There could be no doubt that there was no justification for making such a claim, but he did not consider Mrs. Cohnney was responsible for making it, for the details of the claim as read out by the Minister clearly showed that that matter was left in the hands of those who advised her. Without doubt she was badly advised throughout the case. All rate-payers and lease-owners of Perth would, he was sure, be only too glad if the Government made Mrs. Cohnney a compassionate allowance of £250. His chief reason in arguing in her favour was that in all large public works of this kind there must be many cases where perhaps it was not strictly legal to pay various amounts, but which should morally be paid and debited to the contingency account. It was to be hoped the Minister for Works would look at the matter in that spirit and see if the Government could not grant this sum.

Mr. Taylor: What about the mortgagee; where does he come in?

Mr. FOULKES: If the amount he suggested were paid, it would not affect the mortgagee for we had it in evidence

that £250 would be sufficient to put the property in its original state. If that sum were granted Mrs. Cohnney would have no cause for complaint, but it certainly was unnecessary for a select committee to be appointed. The great majority of people knew that this woman had been very unwisely advised, and that a great mistake had been made.

The ATTORNEY GENERAL (Hon. J. L. Nanson): The motion was a request for the appointment of a special committee. When a special committee was asked for, surely it was obvious, and members opposite would agree with him, that a case should be made out in support of the demand. A good many speeches had been made by members in support of this lady, but none had been able to advance any case that would seriously suggest that an injustice had been done to her either in the law courts or by the Government. The members for Murchison and Albany had dealt with other cases and, arguing from analogy, a very dangerous and deceptive way of arguing, had tried to persuade the House that because in their opinion a wrong course was taken in the case of Faiz Mahomet—

Mr. Holman: A good job you admit it.

The ATTORNEY GENERAL did not admit it, for he had said that it was in the opinion of the hon. member that the wrong course was taken. Those members had tried to persuade the House that because in their opinion a wrong course was taken in that case therefore we should take a similar course in the present case.

Mr. Holman: It was to appoint a committee.

The ATTORNEY GENERAL: The member for Albany had dealt with the case of the Colonial Finance Corporation. As it was not to be supposed that member wished to throw dust in the eyes of members the only conclusion was that he had shown a lamentable recklessness in making charges against the Government of having paid away to a wealthy corporation, as he put it, some £6,000 without any proper authority to do so. In the case of that corporation the matter was submitted to arbitration, and an

award for that amount was made; therefore it was paid. The whole trouble in regard to Mrs. Cobney's case was that she was not willing to submit her case to settlement by the department. From the very outset she resisted every attempt to deal with the matter reasonably. The very first document on the file was a report by the contractors written before the work had been undertaken in Beaufort-lane where these cottages were. In that communication the contractors pointed out that as they would shortly be opening up in Beaufort-lane and as it was almost certain that the houses adjoining would be more or less damaged, it would be well to have an inspection made of the properties. That was a very reasonable suggestion, and one that none who wished merely to obtain their just rights would attempt to oppose. The reasonableness of the suggestion was recognised by the department, and an attempt was made to enter the property of Mrs. Cobney, but that lady, showing a great deal of ill feeling, so it is said, refused to allow any inspection.

Mr. Walker: Just what you would expect from a woman of her temperament.

The ATTORNEY GENERAL: That might be, for he had not the advantage the hon. member had of knowing the temperament of that lady. The member would recognise, he was sure, that if the Government were to compensate everyone who was cursed with an unfortunate temperament then the revenue would be altogether inadequate to compensate all such cases and the Government would have to devise a new method of taxation in order to meet the cases of persons who suffered through their temperament, for it would be astonishing, if compensation could be obtained for that reason, how many people would come forward and point out that by reason of their unfortunate temperament they had loss of some kind. It had been urged that the reason why we should compensate or give a compassionate allowance to this lady was that at the present time she was in dire want. That was not disputed. It was an unfortunate circumstance, and, of course,

any member of the community was in that condition, the State recognised an obligation under certain circumstances to provide for their necessities, but when the State was asked to go beyond that the first question to be asked was by whose fault was the person concerned in want. It had been suggested that this lady was in want at the present time because of certain sewerage works which had been started in Perth. It was altogether a fallacy to adopt that argument. It was not through the starting of these works that this lady was in want; it was, as the member for Kanowna had pointed out, through her own unfortunate temperament, her own folly, or her own liability to accept bad advice. At the very beginning this lady had an opportunity of putting herself in a perfectly safe position with regard to any possible damage to her property, but she refused that opportunity, and, then, when finally she brought her action against the contractors, the contractors, following a wise course under the circumstances when they thought there was a possibility of the plaintiff substantiating negligence, paid a certain amount into Court, a sum that they thought sufficient to cover the damage. Of course, there would have been no object in paying a smaller amount than would cover the damage in their opinion, because had the amount awarded by the jury been less than that paid into Court, the defendants would have had to pay costs. Therefore, the conclusion could not be escaped that so far as this lady had suffered it was entirely her own fault.

Mr. Walker: Or through her own misfortune.

The ATTORNEY GENERAL: Or possibly through her misfortune, if one cared to put it that way. But that was not sufficient ground on which the Government could utilise the money of the taxpayers in order to make good a loss she had suffered through her folly or misfortune. This case had been long before the public, and suggestions had been made for subscriptions in aid of this lady, and an

influential deputation had waited on the Minister, but it had yet to be learned that public opinion had been so aroused on her behalf that there had been an effort to contribute individually. The Government and the House were, in a sense, trustees of public funds, and members were not justified in being more liberal with the public funds than they would be with their own money. It was quite certain that if a precedent were established in this case there would be many cases, much more deserving cases, which it would be almost impossible to resist. He would instance a sad case which had been before the public for many months, the case of Mrs. Lanffer, whose husband was murdered some years ago, and this lady, being deprived of her natural support, lost her property and misfortune so preyed on her mind that she became an inmate of the hospital for the insane, and her children were either recipients of public charity or were dependent upon friends. That was a case which was infinitely more sad than that of Mrs. Cohny, and if the State were to give compensation in a case like that of Mrs. Cohny, how would it be possible to refuse compensation in numberless other cases which hon. members were aware would creep up every day. It was unfortunate that in this world where hardship was constantly occurring, it was impossible for members as individuals in many cases, to alleviate distress, and it would be equally impossible for the State to do so. It was not suggested that in the law courts ample justice was not done. Had the verdict been against the weight of evidence, or had the Judge misdirected the jury, the matter might have been different and there would then have been a further legal remedy. No case had been made out to send the question on to a select committee to be determined. If there was anything which had not been investigated, or if there was any elements of doubt, then such a procedure might be followed; but the Minister for Works had thoroughly explained the whole of the circumstances, and one could not but feel confident that members would come to the conclusion that a sufficient

case had not been shown for remitting the matter to a select committee for investigation.

Mr. SWAN (in reply): The Attorney General had stated that many speeches had been heard, but only few speeches had been made by members on the Opposition side of the House, and these had been extremely brief. There was not a great deal of fault to be found with the Minister for Works for dealing with the question at some length, because, perhaps, it was necessary to go into the case fully, and place it clearly before the House from his standpoint. Personally he had not thought it necessary to speak at any great length in introducing the question. He might easily have arranged to speak for a couple of hours, but he considered it necessary to only place the facts in connection with the matter before the House, and leave it to the judgment of members to determine whether a committee should or should not be appointed. Exception had been taken to the manner in which the motion was worded, but he was not wedded to it in its present form. It had been made clear to members what his desire was in connection with the matter; it was simply to get justice done in a case where it was felt that the people, from one cause or another, were suffering a manifest injustice. No attack had been made upon the Minister or the Government, but it could well be said that the people concerned were suffering severely from some cause, and he was not prepared to admit that it was wholly their own fault. In dealing with this question it would be necessary now to follow up some of the remarks made by the member for Kanowna. When introducing the motion he (Mr. Swan) did not think there was any necessity to allude to the fact that this was the woman who had lost her daughter in the Perth hospital some two years ago under most unfortunate circumstances. There was no desire to introduce any extraneous matter, but since it had been referred to the responsibility must now rest upon the Minister if it were referred to at some length.

The Minister for Works: I never mentioned anything about the hospital matter.

Mr. SWAN: Certain phases of the question, however, had been dealt with which made it necessary for him to deal with that phase of the question now. It was said by the opponents of the motion that the woman was herself to blame; possibly that was so, but was the woman in such a position as to be able to judge what was best for herself. Owing to unfortunate circumstances, for which, perhaps, the Administration of the State was as much to blame as anyone else, this woman lost her daughter in the public hospital some two years ago whilst she herself was absent from the State. The daughter was about 14 years of age, and was suffering from typhoid fever. In her delirium the nurses found it impossible to control her, and from bad judgment, though possibly with the best intentions, these nurses brought a policeman into the ward to quieten the child, and the result was—and it was a most disastrous one from the parents' standpoint—that the child died within a couple of days. One could understand, especially when this woman was herself absent from the State, what effect such a thing would have on her mind, and the state of mind she would be in as the result of this trouble coming on top of the destruction of her property. The woman at the present time was not in a fit state of mind to judge what was best for herself, but it was with the view of endeavouring to get the State to do something to assist her that the motion was moved. No attempt whatever had been made to cover up the facts of the case. The Minister dealt with them at such length that it was necessary to touch on some of the points in reply. The Minister had stated that these people had refused the engineers the right to inspect their property at the outset. It was doubtful whether the Minister or his engineers had a legal right to go upon that property even for the purpose of inspection at the time.

The Minister for Works: They asked permission to enter the property.

Mr. SWAN: It was said also that the woman had disqualified herself from consideration, and at the same time that she was to blame for opposing what was an

illegal action. The woman made her position clear prior to the opening up of the drain from which the damage resulted. She notified to the contractor that should any damage result from the construction of the drain she would hold him responsible. The Minister for Works dealt with that as if it had been a weak point; in his (Mr. Swan's) opinion it strengthened the position. The woman in effect said to the contractor, "You propose to construct a drain here; if you do so and cause damage to my property I shall take every means of securing compensation for that damage." It could be understood that when the engineers of the department proposed to adopt an illegal action in entering upon her premises that she would object. It was a reasonable thing to assume that she would object, and that disposed of the weight of the contention of the Minister in that regard. One thing he had neglected to touch upon in introducing the motion was that of the compensation granted to other property owners in the locality. He had seen sufficient of the several properties to know that no other property in that locality had suffered anything like the same amount of damage that had been inflicted upon the Cohney property, notwithstanding which it was found that Councillor George had received £1,000 for damage to his property.

Mr. Walker: It consisted of four or five houses.

Mr. SWAN: Possibly Councillor George's property had been of greater value, but in no case that had come under his (Mr. Swan's) notice had the damage been as great as that sustained by the Cohneys.

The Minister for Works: Have you examined the properties?

Mr. SWAN: Although his examination of the properties had not been minute yet he had casually looked round in an endeavour to see if he could find anything like the same amount of damage as that sustained by the Cohney property. The Colonial Finance Corporation had got £6,000 in damages. It had been alleged that ample compensation was offered to the Cohneys at the outset, but

he would contend that at no stage had reasonable compensation been offered to these people. It was said that the damage had been estimated at £100 by a practical man; but had that practical man gone along in the next succeeding week, he might have had occasion to set down the damage at £500, for the ground had continued to subside, and, in consequence, the cracks had grown wider day by day. The whole structure was damaged, and it was only reasonable to suppose that the only way properly to reinstate the property would be to pull it down and rebuild it.

The Minister for Works: Was not the amount paid into Court reasonable?

Mr. SWAN: Just now he was dealing with the offers made before the case went into Court. It had been said that an offer made to reinstate the building had been refused. But it was only to be expected that Mrs. Cohney would not be a very good judge of what was best to do in the circumstances; and it was easy to believe, that, acting on the advice of some of her counsellors, she had concluded that it would be useless to have the property reinstated at a time when the subsidence was declared by experts to be still going on. He had no desire to criticise the finding of the jury. Possibly, the case had been correctly placed before them; but his common sense told him that they did not give substantial damages in accordance with the actual damage sustained by the property. It would not be possible to reinstate the building for the amount awarded by the jury. Nor were any mistakes made in Court to be laid upon Mrs. Cohney who, represented by counsel, had no doubt relied upon the advice of that counsel as to the rejection of the amount paid into Court. The Minister for Works had dealt lightly with the damage done to the wooden portion of the property at the rear, but he (Mr. Swan) did not think that the Minister would feel inclined to continue occupation of premises, the doors and windows of which were becoming jammed. The Minister had underestimated the damage done to this portion of the building and, to some extent,

the damage in respect to the more important structure. Apparently the Minister for Works had not the same personal knowledge of the damage as had he (Mr. Swan), or he would not have represented the case as he did. There was no desire to infer that the Minister was unfair in his statement of the case. He had put the case very fairly from his own standpoint as Minister. Mrs. Cohney was not to be blamed for the drafting of the statement of claim, which, no doubt, had been the work of her solicitors. But whatever the faults of Mrs. Cohney, surely there was something to be done in the way of reinstating these people in or near the condition they had enjoyed before the damage was inflicted. He honestly thought that these people had been sadly injured, and that the Government might exercise some compassion towards them. They had been a thrifty couple, worthy citizens in possession of a property which was capable of bringing them in an ample living prior to the construction of the drainage works. Owing to the construction of these works the property had been rendered useless. That was the position the Cohneys were in, and although the motion was not, perhaps, worded as it should be, he would again appeal to hon. members to do some justice by these people.

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

Ayes	..	..	..	22
Noes	..	..	..	22
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A tie	..	..	..	0
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#### AYES.

Mr. Angwin	Mr. Johnson
Mr. Bath	Mr. McDowall
Mr. Bolton	Mr. Scaddan
Mr. Collier	Mr. Swan
Mr. Draper	Mr. Troy
Mr. Gill	Mr. Underwood
Mr. Gourley	Mr. Walker
Mr. Heilmann	Mr. Ware
Mr. Holman	Mr. A. A. Wilson
Mr. Horan	Mr. W. Price
Mr. Hudson	(Teller).
Mr. Jacoby	

## NOES.

Mr. Brown	Mr. Male
Mr. Butcher	Mr. Mitchell
Mr. Carson	Mr. Monger
Mr. Cowcher	Mr. N. J. Moore
Mr. Daglish	Mr. Nanson
Mr. Davies	Mr. Osborn
Mr. Foulkes	Mr. Piesse
Mr. George	Mr. J. Price
Mr. Gordon	Mr. F. Wilson
Mr. Gregory	Mr. Layman
Mr. Hayward	(Teller).
Mr. Keenan	

Mr. SPEAKER: Following the usual practice, I must vote for further consideration, that is with the ayes.

Question put and passed.

Ballot taken and the following appointed a select committee, namely:—Mr. Angwin, Mr. Brown, Mr. George, Mr. Underwood, and the mover (Mr. Swan) with the usual powers, and to report on the 24th November.

*House adjourned at 9.58 p.m.*

## Legislative Council,

*Thursday, 11th November, 1909.*

Leave of Absence	Page
Bills: Administration Act Amendment, 2a.	1344
Amendment six months	1344
Land Act Special Lease, Report stage	1348
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Supply, £384,000, 2a., Com. etc.	1348
Metropolitan Water Supply, Sewerage and Drainage, 1a.	1348
Legal Practitioners Act Amendment, Report stage	1351
Agricultural Machinery Sale and Purchase, 2a.	1352
Landlord and Tenant, 2a.	1353
Return: Lands Alienated, Purchase Money Unpaid.	1348

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

### LEAVE OF ABSENCE.

On motion by Hon. J. W. Hackett, leave of absence for twelve consecutive sittings was granted to Hon. R. F. Sholl on the ground of ill-health.

## BILL—ADMINISTRATION ACT AMENDMENT.

### *Third Reading.*

The COLONIAL SECRETARY (Hon. J. D. Connolly) moved—

*That the Bill be now read a third time.*

Hon. C. A. PIESSE (South-East) moved an amendment—

*That the word "now" be struck out and "this day six months" be added.*

He said: It is the usual custom to allow the third reading of Bills to go through without discussion, but owing to the fact that I had no opportunity of debating the fresh taxation caused by the Bill I am moving in the matter at this late stage. Unfortunately I was not present in the House on the previous day when the second reading was passed. The old Act is quite good enough for all the requirements of the State at present; and, in fact, most people look upon it as legalised robbery of the dead. We have already gone far enough with this "burglar Bill" sort of legislation under the old Act, and it is unnecessary to carry it further. Under the present Act an estate of £4,000 has to pay 3 per cent., or £120, while, if the money is left to relatives, the total is only one half that sum.

The Colonial Secretary: That provision exists in the new Bill also.

Hon. C. A. PIESSE: Under the Bill the estate would have to pay £160, except where money is left to relatives, and then it would be £80. The income from £4,000 would not be more than £200 a year, and from this sum the Government are now seeking to take £160 in the first year. When all the expenses attaching to the adjustment of the affairs in an estate of £4,000 have been met, and £160 has been paid to the Government, there will be nothing left of the first year's interest for the people to whom the money has been bequeathed. It is all very well to have this tax in old countries where estates are passed down from generation to generation, but it is very different in a new country. In Western Australia I could put my hand on, say, 50 estates which are being made by the sons and