ly introducing amendments which, if considered as set out in the notes, are most interesting and appear to be necessary. I have my own notes which I understand much better than those supplied to me, but as I feel sure that the House will vote for the second reading, I doubt whether it would be of any advantage to explain the provisions to Mr. Heenan. Therefore I shall lay aside my notes, which are much clearer than those handed to me. I support the second reading.

THE CHIEF SECRETARY (Hon. W. H. Kitson—West) [9.17]: I rise merely to say that I have no objection to the Bill.

Question put and passed.

Bill read a second time.

In Committee.

Bill passed through Committee without debate, reported without amendment and the report adopted.

House adjourned at 9.20 p.m.

Legislative Assembly,

Wednesday, 26th November, 1941.

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

QUESTION—PUBLIC SERVICE.

Rights of Enlisted Women.

Mr. SAMPSON asked the Premier: Do women of the Civil Service, including teachers who have volunteered and been accepted for service oversea, retain their position on their return from active service abroad, also do they retain all rights as in the case of men in connection with seniority, long service leave and superannuation?

The PREMIER replied: This question has been raised quite recently and is now under consideration.

QUESTION—POST-WAR PROBLEMS.

As to Employment of Service Men.

Mr. McLARTY asked the Premier: 1, Has the Government set up any organisation to frame plans for the restoration to civil vocations of soldiers, sailors and airmen, after the war? 2, If so, what is the nature and composition of the organisation? 3, If not, what steps does the Government propose for this purpose?

The PREMIER replied: 1, Yes. 2 and 3, A committee has been formed to deal with post-war reconstruction in connection with public works, consisting of the following:—Mr. R. J. Dumas (Director of Works), Chairman, Mr. A. J. Reid (Under Treasurer), Mr. G. K. Baron Hay (Under Secretary for Agriculture), Mr. W. V. Fyfe (Surveyor General), Mr. N. Fernie (Director of Industrial Development). In addition consideration has been given to the diversification of primary industries, such as flax, tobacco, etc., in the post-war reconstruction, and plans are under consideration for secondary industrial development and for housing. Co-operation is taking place between the Commonwealth and State Governments regarding this matter.

BILLS (6)—FIRST READING.

1. Loan £916,000.
2. Administration Act Amendment (No. 2).
3. Death Duties (Taxing) Act Amendment.
4. Stamp Act Amendment.
5. Workers' Homes Act Amendment.

Introduced by the Premier.

6, Charcoal Industry.
Introduced by the Minister for Industrial Development.

ASSENT TO BILLS.

Message from the Lieut.-Governor received and read notifying assent to the following Bills:—

1, Wills (Soldiers, Sailors and Airmen).

2, Public Service Appeal Board Act Amendment.

3, Road Districts Act Amendment (No. 2).

MOTION—FRANCHISE FOR SERVICE MEN.

Ruled out.

Order of the Day read for the consideration of the following motion by Hon. C. G. Latham (York):—

That, in the opinion of this House, legislation should be introduced this session to give to Western Australian members of the Naval, Military and Air Forces on service outside this State the same full rights of voting for the elections for this Parliament as are enjoyed by the electors resident within the State.

Mr. SPEAKER: I would draw the attention of members to the fact that there is a well known rule that a question already decided, whether in the affirmative or the negative, shall not be considered a second time. The motion standing in the name of the Leader of the Opposition comes under this rule. The motion states that the same full rights of voting for the elections for this Parliament as are enjoyed by the electors resident within the State shall be granted to Western Australian members of the Naval, Military and Air Forces on service outside the State.

On the 30th October, when the Franchise Bill was being dealt with in Committee, a motion was moved to delete Subclauses 1, 2 and 3 of Clause 2 which provided for a proxy system of voting with a view to making provision for the direct personal vote of the sailors, soldiers and airmen serving oversea. That amendment was negatived. On that ground, I rule the motion out of order. Had that amendment been agreed to, the object of the motion would have been attained.

Dissent from Speaker's Ruling.

Hon. C. G. Latham: Mr. Speaker——

Mr. Speaker: There can be no discussion.

Hon. C. G. Latham: Though I dislike doing so, I must move to disagree with your ruling. It is true, as you have stated, that a Bill was before the House which was designed to give to certain individuals the right to represent soldiers serving oversea. It is also true that amendments were moved with the definite object of giving a direct vote to the soldiers themselves. May I submit that that does not represent the only method by which we can approach the question of giving the soldiers the right to exercise the franchise. You, Mr. Speaker, have presupposed that I intended to repeat what has already taken place in the House. I think that is rather unfair and because of that I move—

The the House dissents from the Speaker's ruling.

Mr. Speaker: I desire to point out to the House that had the amendments referred to been agreed to, the effect would have been substantially the same as the Leader of the Opposition now desires to achieve. On the 30th October, when discussing the Franchise Bill in Committee, the member for West Perth (Mr. McDonald), when dealing with Clause 11, under which members of the forces when absent from the State could appoint nominees to vote on their behalf, said—

This clause contains the crux of the Bill. It provides for the nominee system . . . . I propose to delete the proxy system and substitute provision for the direct personal vote of the soldier who enlists for service oversea.

For that reason I hold that, had the amendments been agreed to, the Bill would have been substantially what the Leader of the Opposition aims at in his motion.

Question put and negatived.

BILL—ROAD DISTRICTS ACT AMENDMENT (No. 3).

Second Reading.

MR. SHEARN (Maylands) [4.42] in moving the second reading said: The object of the Bill is to amend Section 204 of the parent Act by adding a new paragraph to stand as paragraph (61), to deal with the parking of caravans. I hope the measure will receive

the same favourable reception as that accorded to it in another place, where it was introduced and passed. The object should appeal to all members who have been associated with local governing bodies, and particularly those operating in the districts where there are holiday resorts. The proposed new paragraph (61) will empower road boards to frame regulations for prohibiting or regulating the parking or allowing to remain stationary on any land of any caravan or vehicle designed or fitted as a habitation for any person or capable of being used for dwelling or sleeping purposes without the written consent of the local authority concerned.

If the Bill is agreed to, it will enable local authorities concerned to authorise the granting of licenses to caravan owners for such periods and upon such terms as they may deem fit, thus regulating the term during which a caravan may remain on a property irrespective of the ownership of the land concerned. Members with experience in local governmental activities will readily realise, I feel sure, the desirability of the amendment outlined. From practical experience, I am aware that considerable trouble has been experienced with respect to caravan owners, over whom local authorities have practically no control whatever. Indeed, caravans have been known to park on public properties for such lengthy periods as to constitute definite nuisances. Caravans have also parked on private property where water supplies, sanitary or other conveniences have not been provided. This has often resulted in an unsatisfactory state of affairs. As members are aware, caravanning is particularly popular in the Eastern States and is becoming increasingly so in Western Australia.

While seeking to secure power to exercise control over caravans, the local authorities recognise the popularity of that adjunct to holidaying, and have no desire to be restrictive in the ordinary sense of the term. Experience has indicated the necessity for some control in the interests not only of the community generally but of the caravan owners themselves. The power sought by the Bill will be exercised by local authorities to safeguard the interests of all concerned. As members will realise, unless some such form of control is provided, the unsatisfactory conditions already manifesting themselves will continue to prevail.

Mr. Marshall: Is the Bill similar to the one before Parliament last session?

Mr. SHEARN: No. It was introduced during the current session in another place and was agreed to. The Bill will enable local authorities to set aside areas for the parking of caravans. I know of one local governing body—I believe there are others similarly situated—that has already set about providing specific areas for caravans where the owners of those vehicles will not be placed at any disadvantage but will have their parking requirements adequately provided for. At the same time, by this means the inconveniences and nuisance that would otherwise continue will be effectively obviated.

The passing of this legislation will encourage local authorities, some of whom I know are already concerning themselves with this phase, to provide sanitary conveniences and water supplies on specified areas. Without the necessary control, I doubt if those bodies would be justified in spending public money unless there was some guarantee that the areas would be availed of by caravans; otherwise, the expenditure would hardly be justified. Other existing disabilities will be removed should the Bill become law. For instance, there is the definite infringement of health by-laws. The Minister for Works may already have had some experience in connection with difficulties arising from caravanning. From my personal knowledge, I am aware that it is the considered opinion of technical advisers, including those associated with the control of buildings, surveyors, and health authorities, that under the existing conditions definite infringements of the health by-laws are being committed. Without the control outlined in the Bill, any attempt to deal with the position would be hopeless.

At present it is possible for a caravan to remain for an unlimited period on a property, perhaps with the permission of the owner. Requests may be received by the local authority to afford protection to nearby residents but the board has been unable effectively to deal with such complaints. Another point is that ratepayers adversely affected by the presence of caravanners may include hotel keepers, boarding-house proprietors or owners of flats. Under exist-

ing conditions it is possible—such cases have happened—that caravans have parked on private property for such periods as to make them become almost permanent residences. The owners do not pay rates and taxes, whereas the owners of adjoining properties have to accept that obligation. Although they have to conform to health by-laws and regulations that are framed from time to time, people occupying the caravans could disregard these conditions. In one district that has already been the experience of the local authority.

For the reasons I have set forth I hope members will pass this measure. It will affect only a restricted number of persons. Had it not been for the war, we know that caravanning would have grown in popularity in this State as it has in other States. It is necessary to have some practical control over this form of industry, if so it may be termed. I believe it can be said with confidence and truth that the road boards, through their advisers, will exercise the powers and control it is proposed to give them with discretion and in the interests of all concerned. In the event of a particular road board attempting to exceed the powers given to it by this measure, I point out that the by-laws and regulations would have to be tabled in this House, and would therefore be subject to review. Furthermore, such by-laws or regulations would be subject to appeal to the Minister concerned.

I know that local authorities are anxious to facilitate this particular pastime. They also realise that caravanning does contribute to the business activities of various districts. It cannot reasonably be suggested, therefore, that local authorities would do anything unjustifiable or in any way interfere with the trading that may be achieved as the result of opening their districts to caravanners. Members may be sure that local authorities are only seeking this control because they have experienced considerable difficulty in the past. They have also fully considered all the aspects involved, as well as the fact that but for the war caravanning activity would have grown to considerable dimensions. In all the circumstances it is necessary that local authorities should be able to exercise some control in this matter. I move—

That the Bill be now read a second time.

MR. SAMPSON (Swan) [4.52]: I support the Bill, and believe that local authorities will welcome it because of the fact that the promulgation of by-laws will enable them to control these caravans. It would be a great pity if this form of recreation could not be continued and developed. For some time past it has been realised that caravanning might readily become a nuisance, but the nuisance aspect has not yet made itself manifest to any extent. The by-law which it will be competent for road boards to make under Section 204 of the Act should be a reasonable one. If such were not the case I am sure objection would be raised by this House to such by-law being carried into effect. There is no justification for discouraging people from enjoying their travels in a caravan. We must not forget that a traffic fee is payable on these vehicles. They pass from town to town and place to place, and by doing so encourage trade. This form of travel also enables those who engage in it to see something of the country which otherwise they would be unable to do.

Mr. Warner: Sometimes they carry diseased fruit with them.

Mr. SAMPSON: That has nothing to do with the Bill. I support the measure and trust it will prove a useful piece of legislation.

THE MINISTER FOR WORKS (Hon. H. Millington—Mt. Hawthorn) [4.55]: The Government has no objection to giving local authorities the general power contained in this Bill. Regulations would, I point out, have to be issued, and these in turn would have to be approved by Executive Council. At present road boards state that they have not the power either to prohibit—and that is important—or to regulate these vehicles as to where they shall park. Some difficulty has been experienced in the past. Caravans have parked on roadways and in places that are not considered suitable for the purpose. When complaints are made to the local authorities it is found there is no power to move such vehicles. Road boards should have power to issue licenses to people to enable them to park their caravans in suitable places, and to prohibit them parking in places that would constitute a nuisance.

The question of the fee to be charged would also rest with the local authority. Power should be given to these bodies to say

where such vehicles should go. The road board is also the health authority, and it is necessary that it should see that proper health conditions are instituted. I understand that certain enterprising people propose to set aside areas in which they will have water supplies and sanitary conveniences installed. It rests with the local authorities to say whether such facilities are adequate. The whole thing can be regulated by the powers contained in the Bill. Everything will be subject to the by-law which will have to be issued, and which in turn will have to be watched. The Government has no objection to giving road boards the necessary power to issue regulations governing this matter.

Question put and passed.

Bill read a second time.

In Committee.

Mr. Marshall in the Chair; Mr. Shearn in charge of the Bill.

Clause 1—agreed to.

Clause 2—Amendment of Section 204:

Hon. N. KEENAN: This clause provides for power to be given to road boards to control the parking of caravans on any land, which would include Crown lands. Suppose the Crown made available an area for caravans to occupy! Road boards would have to approve of that if the clause were passed.

The Minister for Works: Roads are Crown lands. Caravans could be prevented from parking there.

Hon. C. G. Latham: Roads are vested in the road boards.

Hon. N. KEENAN: The clause would cover all land of every character in the State, including unalienated Crown land. The position might arise where portion of some unalienated Crown land might be set apart for the use of caravans, and that might not be approved by the road board.

The Premier: The by-laws have to go through Executive Council.

Hon. N. KEENAN: The road board may say, "You cannot camp on those Crown lands, but you can camp on land to be marked out."

The Minister for Works: The Government will still have power to approve or disapprove of the regulations.

Hon. N. KEENAN: But if this power is given, then the approval or disapproval will be ineffective. The board would have power to regulate what particular sites should be made use of.

The Premier: The regulations must be laid on the Table of the House for approval by Parliament.

Hon. N. KEENAN: The use to which the land may be put might be objectionable. Certain Crown land at Point Resolution has been set apart by the Minister for Lands for use by caravan owners. Arrangement was made for the provision of sanitary conveniences. Some boards might desire to encourage the use of land for parking caravans, so long as these are under proper control.

Mr. SHEARN: The Bill, by implication, is really designed to control people who park caravans for considerable periods. A road board would not be likely to interfere with a caravan parked for only a short period while it was on its way to some other part of the State. There is the safeguard that the regulations to be made under the measure must first go through Executive Council and then be laid on the Table for approval by Parliament. Members would thus have ample opportunity to draw attention to any anomalies.

Mr. NORTH: Will the power proposed to be given be exercised by other local authorities?

The Minister for Works: They have not asked for it.

Mr. NORTH: I urge the Minister to give that point consideration, because Cottesloe and other places may be affected.

Hon. C. G. LATHAM: The insertion of the word "specified" before the word "land" in line 2 of proposed paragraph 61 of Section 204 might overcome the difficulty. The point is that these parking places must be under control from a sanitary point of view.

The Premier: And from the point of view of preventing bush fires.

Hon. C. G. LATHAM: Does the member for Nedlands think my suggestion would meet the case?

Hon. N. Keenan: The local authorities would still get the power under the measure and could apply the by-law just as they thought fit.

Hon. C. G. LATHAM: There is the additional protection, which has already been mentioned, that the by-law must be approved by Parliament.

The MINISTER FOR WORKS: The Bill would certainly give local authorities the power mentioned by the member for Nedlands. But, as has been pointed out, the local authorities would have to issue regulations which, in the first place, must be approved by the Minister, then by Executive Council and finally by Parliament. Last year an argument arose over the parking of caravans on the main road near Scarborough, and the road board complained that it did not have power to order their removal. Under this measure, if passed, the road board would be able to regulate and control the parking of caravans within its district. The Committee should bear in mind that the Government will carefully supervise the regulations to be framed under the measure. I can see no danger in the Bill.

Mr. SAMPSON: To make it obligatory on a local authority to define the roads and other places to be set apart for parking purposes would be too cumbersome. The difficulty could be overcome by adding after the word "land" in line 2 of proposed new paragraph 61 the words "vested in such local authority."

Hon. C. G. Latham: But the road boards may wish to prohibit the parking of caravans on private property adjoining a road.

Mr. SAMPSON: It would be unfair, and probably illegal, to give power to a local authority to prevent caravans from parking on private property.

Mr. Warner: A caravan may be parked on private property and let as a house.

The Minister for Works: Good reasons may be advanced for prohibiting the parking of caravans on private property. Permission may be given, however, for such parking on certain conditions.

Mr. SAMPSON: Such matters could be dealt with under the Health Act.

The Premier: The local board of health would want to ensure that nothing objectionable took place on private property.

Mr. SAMPSON: That point could be dealt with by an amendment to the Health Act.

Mr. Patrick: As has been said, a caravan could be parked on a block of land and let as a house.

Mr. SAMPSON: I have seen caravans so occupied, but not in a township. I move an amendment--

That in line 2 of proposed new paragraph 61 after the word "land" the words "vested in such local authority" be inserted.

Mr. SHEARN: The member for Swan gave unqualified support to this Bill on the second reading. He has been for many years connected with local governing bodies and has some knowledge, not only of the powers vested in them, but the manner in which they conduct their affairs. I would be sorry to think that the board with which he is associated should be an exception to the general rule. He reflects on the fact that a considerable amount of authority has been vested in local authorities. The hon. member has tried to explain an inexplicable amendment.

Amendment put and negatived.

Clause put and passed.

Clause 3, Title—agreed to.

Bill reported without amendment and the report adopted.

Third Reading.

Bill read a third time and *passed.*

MOTION—STATE AND FEDERAL RELATIONS.

As to Creation of Preservation Committee.

Order of the Day read for the resumption from the 5th November of the debate on the following motion by Hon. W. D. Johnson (Guildford-Midland):—

That in the opinion of this House a Preservation Committee, representative of Parliament, should be created by legislation, with responsibility to safeguard the State's interests in its relationship with the Federal Parliament as reflected in—

(1) The Loan Council, its aims, its methods and decisions. To check and analyse decision. Compare the probable effect of decisions upon the different States of the Commonwealth. To prepare data explanatory of the State's actual and potential primary and secondary production. Its development and undeveloped resources. The State's needs and limitation of its contributory resources. The economic effect of the State's enormous area. Isolation—Distances from Seat of Government.

Such other relevant activities to ensure preservation of State's assets and to influence continued development and expansion.

(2) Disabilities Committee—

(a) to prepare and submit direct evidence;

(b) to check and analyse all decisions, reports and explanations;
(c) to compare the effect of decisions as between States;
(d) to take all relevant action to ensure the just consideration of the State's actual disability.

(3) Prepare and circulate quarterly reports.

Question put and negatived.

PAPERS—RAILWAYS.

Cheney Spark Nullifier.

Debate resumed from the 5th November on the following motion by Mr. Doney (Williams-Narrogin):—

That there be laid on the Table of the House all papers relating to the tests made in respect of the Cheney spark nullifier on the Midland Railway of W.A., between Midland Junction and Mooliabeenee on the night of June the 28th, 1924, and by a Midland Railway Company's engine driven by a W.A.G.R. engine-driver, Mr. Joseph O'Malley, from Midland Junction to Northam and return in October, 1921; these papers to include the reports submitted by the engine-drivers on these two occasions besides letters that passed between the W.A.G.R. and Mr. Chalmers, Chief Mechanical Engineer of the Queensland Government Railways in 1927, in respect of this same question, viz., the suitability of the Cheney device for the purpose of nullifying sparks from railway engines.

MR. McLARTY (Murray-Wellington) [5.20]: I am sure the Minister will agree to lay these papers on the Table of the House. I will, therefore, not detain members long. Some years ago, when the member for Williams-Narrogin (Mr. Doney) moved for a Royal Commission to inquire into spark arresters, I supported the motion. Unfortunately it was not carried. All country members are interested in having these papers made available. We want to see what has happened in connection with spark arresters over the years. Fires, already this season, are being lit by engines on properties adjacent to railway lines, and the loss so caused is considerable. As time goes on, the loss is likely to increase. More super is being used and more cultivation carried out, and it appears to me that the trains are hauling heavier loads. The member for Williams-Narrogin told us that there had not been any improvement to spark arresters for 25 years. Most machinery and mechanical devices have been greatly improved during that period. I cannot help thinking that some improvement should have been made to spark arresters too.

Mr. Withers: A lot of improvement has taken place in less than 20 years.

Mr. McLARTY: I am glad to hear that. A thousand pounds has already been paid out to certain people for the invention of what is known as the H.D.D. spark arrester, but the Government would be well advised to make further money available for an improvement on the present device, or for something which will be better than the H.D.D. spark arrester. I hope the Minister will agree to place these papers on the Table of the House. I have pleasure in supporting the motion.

HON. C. G. LATHAM (York) [5.24]: I shall be glad to see the papers if the Minister agrees to lay them on the Table of the House, but it is not always the spark arresters that cause the trouble. I was travelling along the road adjacent to the main eastern railway the other day, and a train travelling just ahead had started fires in no less than 12 places. They were not due to the spark arrester; hot coals from the ash-pan had dropped out. The grass was right alongside the line and caught fire. We often blame the spark arresters when it is really the ashes which cause the trouble.

Mr. McLarty: It is mostly the sparks.

Hon. C. G. LATHAM: On this occasion it was not due to sparks at all. Once when going from York to Bruce Rock, just after leaving Green Hills station, I noticed that fires were caused, not because of spark arresters, but by coal dropping from the ash-pan. We should turn our attention to that point during the summer period.

The Premier: There are strict regulations covering that matter, but sometimes they are disobeyed. It is a question of having sufficient perforation in the ash-pan door to allow of a proper draught.

Hon. C. G. LATHAM: I bow to the superior knowledge of the Premier in that respect. I do, however, know that fires are caused in that way. This matter is nothing new. It has been going on, to my knowledge, for about 20 years. Papers were presented to the House 19 or 20 years ago. I have an idea I moved for them. I was a much younger member in those days and more easily led astray. On that occasion

a trial was carried out by the Midland Railway Company with a great deal of success. My idea was that we should use all Collie coal. We always receive the support of the member for Collie (Mr. Wilson) in that respect. For quite a long period Newcastle coal was imported and used, until we adopted the H.D.D. spark arrester. I will be pleased to see from the papers whether any progress has been made, but it is no use always blaming the spark arresters. On one of the occasions I have mentioned I had a State officer with me.

The Minister for Works: No witnesses are required.

MR. STYANTS (Kalgoorlie) [5.27]: I hope the Minister will lay these papers on the Table of the House. It was suggested at the time the Cheney spark arrester was invented, and has been suggested many times since by railwaymen—particularly locomotive men—that it was more successful in its initial test than was the H.D.D. spark arrester which is, I think, in general use in the Western Australian Government Railways. The suggestion has been made—I do not support it—that the reason the H.D.D. spark arrester was given preference over the Cheney was because it was the invention of three departmental officers, Messrs. Hadlow, Davenport, and Downing. I do not know whether that is correct or not. There is, however, a suspicion in the minds of railwaymen and some members of the public who took an interest in the matter, that such was the case. I hope that, if for no other reason, the papers will be made available, and so clear up that position.

My experience of the H.D.D. spark arrester is that whilst it is maintained in good order it is quite efficient. It is not, like most of these inventions, a train-arrester.

Mr. Doney: To which are you referring, the Cheney or the H.D.D.?

Mr. STYANTS: I do not know anything about the Cheney, but I have had experience with other types and the difficulty with them is that the engine will not steam.

Hon. C. G. Latham: You do not get the draught.

Mr. Wilson: They have tried dozens of them.

Mr. STYANTS: Yes, and they retard the steaming qualities of the engine. The engine-driver suffers under a great temptation to interfere with the spark arrester device when he has a timetable to adhere to, and his locomotive will not generate the required amount of steam to enable him to maintain his schedule.

While the H.D.D. spark arrester is in good order it is efficient as a spark arrester and permits the engine to steam reasonably well. It is not, however, always in good order. It seems that the device becomes stuffed with coal. Some types of coal coming from Collie are not suitable for locomotives, with the result that the smokebox gets full as well as the spark arrester device, which consequently becomes heated and then buckles. The engine, on arrival at the locomotive depot, has the cinders taken out of the smokebox. If no boilermaker were at the depot, the engine would have to commence the return journey with buckled plates. The same thing applies to the ash pan. At one time there were no slides in the bottom of the ash pan, but the practice now is to have slides to facilitate the raking out of the ashes. These can be closed by a steam device operated from the cab of the engine, and can be kept open when the engine is steaming along or when it is standing over a pit.

Unsuitable coal causes the ash pan to fill, become heated and buckle. I have seen ash pans absolutely red hot on account of the excess coal dropping into them, and very often, despite efforts on the part of the engine men to close the doors, they cannot do so. A boilermaker or fitter is needed to take the slides out and straighten them. In these circumstances it is necessary for an engine to go into a loco depot, but the engine is required immediately to make the return journey, probably starting in the middle of the night when no tradesman is available. Consequently, the engine goes out with buckled plates in the ash pan and the fire falls on to the permanent way. Sometimes a piece of coal as large as one's finger will fall from the ash pan and roll down the bank amongst the dry grass.

Hon. C. G. Latham: And it would be carried along by the draught.

Mr. STYANTS: Yes. Fires occurring in that way, however, do not cause much damage. The Railway Department ploughs a a firebreak inside its fence and farmers generally plough a break on their side. The sparks thrown by the terrific exhaust through the funnel are the ones that are carried over the firebreaks and they are the ones that do the damage. As soon as the summer season

sets in, the Railway Department burns off the grass inside the railway fences and, in addition, clears a firebreak, and so it would rarely happen that a fire caused by coals from the ash pan would do any damage outside the railway fences.

Mr. Doney: Would live coals ever roll far enough from the track to cause a fire?

Mr. STYANTS: No; I have not seen them roll outside the firebreak. The damage is caused by the sparks thrown from the exhaust. When Collie coal is being used, if there is a defect in the spark-arresting appliance, and if it is buckled and allows sparks to pass through, large pieces may go through which are still alight when they hit the ground. Newcastle coal, however, soon after passing into the air, goes out.

Mr. Doney: The H.D.D. spark arrester does not stop it.

Mr. Wilson: Absolute nonsense!

Mr. STYANTS: I have fired on tests on many occasions and I know that is so. That is why Newcastle coal is used in the farming districts in summer time; it does not stay alight as Collie coal does. Collie coal may be hurled 50 feet into the air and will be alight when it hits the ground. Newcastle coal will not behave in that way, unless the engine is not fitted with a spark arrester and large pieces of coal are able to get through. The H.D.D. arrester, when in good condition, is satisfactory, but there is a great temptation for an engine man, when the spark arresting appliance affects the steaming quality of his engine, to tinker with the appliance and thereby depreciate its effectiveness.

Mr. Patrick: And open it up on a steep grade.

Mr. STYANTS: In addition, there is always the risk of the spark arrester becoming buckled through overheating and through there being no tradesman available to attend to it. The engine is sent out again and is probably running for a week before it gets back to the home depot for repairs.

Hon. C. G. Latham: I think the engine men open it up.

Mr. STYANTS: There is a great temptation for them to do so, especially in view of the way they are harassed by the department if they lose time. If a man loses an hour between Southern Cross and Kalgoorlie, he is kept busy for a month writing explanations as to what he was doing during that hour, and it is probably a long time before he can satisfy the department that the engine was not capable of doing the job assigned to it. If we can improve the type of arrester, nothing should be allowed to stand in the way of its adoption. I believe it is possible to improve the type.

Mr. Doney: It is.

Mr. STYANTS: For that reason I hope the Minister will see his way to table the papers so that we may learn what actually was the result of the Cheney spark arrester tests.

THE MINISTER FOR RAILWAYS (Hon. E. Nulsen—Kanowna) [5.36]: There is no objection to laying the papers on the Table. The Government is just as much concerned as is anyone else to get the best type of spark arrester. If we could get a better one than the H.D.D., it would be used.

Mr. Doney: Do you think the department has been trying?

The MINISTER FOR RAILWAYS: The department has made many investigations and has encouraged inventors to try to produce a more efficient arrester than the H.D.D., but so far without success. Many tests have been made, but none of the later inventions has proved so successful as the H.D.D. Up to a certain point the H.D.D. is the most successful of all.

Mr. Doney: Which ones has the department tried?

The MINISTER FOR RAILWAYS: The Cheney has been tried throughout Australia and in New Zealand, but it is used mostly for wood fuel and has not been successful for coal fuel. When the member for Williams-Narrogin peruses the papers, I think he will find that he spoke without being in possession of all the facts.

MR. DONEY (Williams-Narrogin—in reply) [5.38]: I was very glad to hear the Minister's reply, but I contest the statement that the department has afforded every opportunity to other inventors to have their devices tested.

The Minister for Railways: It has.

Mr. DONEY: Judging by what I have heard and read and been told by railway men in their more candid moments—and we have had some candid admissions this afternoon from the member for Kalgoorlie, which were very helpful—no assistance has been

afforded to other inventors to have their devices examined. I do not wish to delay the House at this stage but when I have read the file I may feel inclined to take other action.

Question put and passed.

PAPERS—MERREDIN FLOUR MILLS, LTD.

Debate resumed from the 5th November on the following motion by Mr. Boyle (Avon):—

That all papers in connection with Merredin Flour Mills, Ltd., be laid on the Table of the House.

THE MINISTER FOR LABOUR (Hon. A. R. G. Hawke—Northam) [5.40]: On behalf of the Minister for Agriculture, I shall be pleased to lay the papers on the Table tomorrow. If the member for Avon, when moving the motion, had used reasonable terms and discussed the matter in a temperate way, it would not have been necessary for any member of the Government to comment on his remarks. In view of the manner in which he dealt with the subject, however, it is desirable that something be said in reply. The mill was closed down some three years ago. The hon. member severely attacked the Commissioners of the Agricultural Bank for their action in putting Section 51 of the Agricultural Bank Act into operation against the management of the mill. That action was taken only because of the complete disregard of the rights and interests of the Bank by the management of the mill.

Late in 1936 or early in 1937 the mill management purchased from farmers wheat valued at £700, which wheat was under lien to the Agricultural Bank. The Bank was thereby deprived of that amount of money. When the Commissioners of the Bank ascertained, after considerable inquiry, that the wheat had been purchased by the management of the mill, they naturally sought to obtain from the management the £700 thus wrongly taken by it. It is not reasonable to think that the management had no knowledge that the wheat purchased was under lien to the Bank. The Bank publishes each year a list of its clients and of its claims against farmers. The management of the mill would be aware of the practice of the Bank and would, it is natural to think, know that the particular farmers whose wheat was purchased had claims against them by the Bank and that the wheat was under lien to the Bank.

The Commissioners, as a result of the discovery made, carried on protracted negotiations for the purpose of trying to persuade the management to admit the Bank's claim in the matter. For a long time the management refused to admit the claim, but subsequently the mills' solicitors admitted it and made offers to the Bank with the object of getting the claim settled. Eventually, the Bank agreed to accept in full settlement of its claim, including costs, an amount of £550, provided that judgment was entered for the full amount of £702 plus costs. The Bank further agreed to spread payment of the claim over a period of five months in order that the mill management should not be embarrassed. The management paid £250 of the £550 in two amounts, one of which was paid in December of 1938 and the other in January of 1939, £300 then remaining unpaid. In March of 1939 the company advised the Commissioners of the Agricultural Bank that the E.S. & A. Bank, which was the financial institution with which the company traded and which held the mill premises, plant and equipment as security for money advanced to the company, would appoint a receiver under its security.

The company further advised the commissioners that in the event of such a happening it would have to go into liquidation. As a result, the commissioners did not take action to enforce the payment of the amount of £300 still owing by the company to the Agricultural Bank. They did, however, ask the company to submit proposals for payment of the amount outstanding. On the 16th March, 1939, the E.S. & A. Bank advised the company that unless its debt was liquidated that bank would appoint a receiver. Five days later the company advised the Commissioners of the Agricultural Bank that it was endeavouring to obtain financial accommodation in other directions for the purpose of carrying on. From the subsequent history it seems apparent that the company was not able to obtain financial assistance from any other quarter.

At this stage it is interesting to point out that export sales from the mill fell from a value of £13,000 in 1937 to a value

of less than £2,000 in 1938. I think it will be clear, from what I have said, that the Agricultural Bank Commissioners did not act unreasonably in their dealings with the company, which owned and operated the mill at the time when all these proceedings were being carried through. Whatever difficulties may have arisen, arose because of the fact that the mill management accepted wheat from clients of the Agricultural Bank, wheat that was under lien to the Agricultural Bank, and paid those bank clients for the wheat so delivered. On the 27th March, 1939, the member for Avon (Mr. Boyle) interviewed me for the purpose of ascertaining whether the Government could see its way clear to make financial assistance available to the company for the purpose of enabling the activities of the mill to be carried on at Merredin.

We had considerable inquiries made at the time for the purpose of ascertaining whether there was any reasonable chance at all to warrant the Government in coming to the aid of the company for the purpose of trying to re-establish the mill and have its operations again carried on at Merredin. As a result of information gathered from various directions, the Government finally decided that it would not be justified in making money available for the purpose required. I would point out, too, that there is a flour mill at Kellerberrin, which is less than 40 miles distant from Merredin, that that is a large mill which has been operating for a great number of years, and that its existence only 36 miles from Merredin, and the further fact that the Merredin mill was a small mill with a high cost of production, had the effect of influencing the Government in the unfavourable decision at which it arrived.

There were, however, a number of other factors which entered into the matter; and the combination of several sets of circumstances and of factors was such as to make it impossible for the Government to give the favourable decision desired by the mover of the motion, and of course also desired by the members of the company responsible for the mill at Merredin. As I said at the commencement, the Government offers no objection to the placing of these papers on the Table, and I shall have action taken tomorrow to see that this is done.

MR. BOYLE (Avon—in reply) [5.53]: As pointed out previously, I ask for an opportunity to peruse these papers merely in order that I may arrive at some conclusion regarding the reasons put forward for the refusal of the advance under the Industries Assistance Act. I offer no apologies whatever for what the Minister termed my "intemperate" remarks in moving for the papers. Incidentally, those "intemperate" remarks were plain statements of fact, and the Minister has not attempted to controvert them. The broad appellation of "intemperate remarks" could be applied to any remarks of a critical nature. I certainly did criticise the Commissioners of the Agricultural Bank for their precipitate action in sending a detective, accompanied by his Alsatian and a display of armed panoply, to overawe a small country town, causing a mild reign of terror in that peaceful locality.

The Minister referred to the fact that a book is issued every year regarding the liability of persons taking wheat from farmers. That book has been issued ever since the passing of the Agricultural Bank Act of 1934, and I can inform the House that a great deal of the income of the Wheatgrowers' Union, which I had the honour to lead for some time, came from farmers' wheat—transactions which were probably within the knowledge of the Agricultural Bank Commissioners, and which no attempt was made to stop. It was Merredin farmers who brought wheat into the mill.

I notice the Minister was very careful not to quote the quantities of wheat brought in. In fact, in very few cases did they exceed a value of £30. The Minister has stated that £550 was the agreed-upon sum in settlement, and £700 worth was the total quantity that the Sherlock Holmes and his Dr. Watson discovered after searching within a radius of 20 miles of Merredin. The £700 worth of wheat was spread over perhaps 200 growers who dealt with the Agricultural Bank in that district. Thus it would be a very small proportionate number of farmers who bootlegged the wheat. I notice that, according to the Minister's speech, the mill has paid £250 out of the £550, but the farmers who put that wheat in have also been charged for the wheat that went into the mill, and no doubt they have paid for it too.

The Minister for Labour: They have not been charged by the bank.

Mr. SPEAKER: Order! I think the member for Avon is now raising a new mat-

ter, to which the Minister will have no chance to reply.

Mr. BOYLE: The Minister is replying by way of interjection. However, I will not pursue the matter. I take the Minister's word that that is correct. Like the Minister, I sometimes have to rely on information that is not 100 per cent. correct. Export sales of the mill amounted to £13,000 for the year of 1938. The reason for the falling-off was that the mill had a bad miller for some period; but if the export sales of the mill amounted to £13,000 for one year at an intake of 100,000 bushels, the mill management was doing well. The Minister stated that a flour mill was established at Kellerberrin, thus removing the necessity for a mill at Merredin. He excluded the mill that is owned by Thomas & Co., which is well run. I suppose it is one of the best run mills in Australia today.

The fact remains, however, that the farmers in the Merredin district still have to send 35 miles away from their home town to have their gristing requirements attended to, because of the Government's neglect to guarantee the mill's overdraft which would not have involved it in one pound's worth of risk. The Government may find an opportunity to reconsider the question of an advance to the mill. I wish to thank the Minister for his promise to table the papers, and I acknowledge that the hon. gentleman's remarks were not intemperate.

Question put and passed.

PAPERS—LINSEED CROP.

As to Treatment.

Debate resumed from the 5th November on the following motion by Hon. W. D. Johnson (Guildford-Midland):—

That all papers covering the negotiations and arrangements with Richard Gray & Co., regarding the treatment of the linseed crop to be harvested as a result of the distribution of linseed seed by the Government, and the subsequent inclusion of Hemphill & Sons in the said arrangement, be laid upon the Table of the House.

MR. SEWARD (Pingelly) [6.0]: It was not my intention to take part in the debate on this motion until I had heard the speech of the Minister for Labour. In consequence of that speech, I propose to move an amendment. Unfortunately the mover couched his motion in somewhat restricted terms and was thereby possibly prevented from obtaining all the information that it might be necessary to obtain. I move an amendment—

That in line 3 after the word "Co." the words "and/or any other company or individual" be inserted.

The object of the amendment is to enable any communication with other companies in connection with this matter to be considered. The mover of the motion attempted to do that but, as I have pointed out, owing to the restricted nature of the motion you, Mr. Speaker, quite rightly ruled the tabling of that particular correspondence out of order. I maintain that it is impossible to give proper consideration to this matter unless we have all the facts of the case, particularly in regard to any other offers that may have been made by any other party that may have wanted an interest in the matter.

The particular reason that induced me to intervene was the linking of the name of Hemphill & Sons with the motion. In 1939 I was a member of a select committee that inquired into the stored wheat position in this State, and one of the witnesses that appeared before the committee was a representative of J. A. Hemphill & Sons. I desire to read what the committee had to say in regard to the evidence submitted. The report states—

The evidence given to your committee by Mr. L. G. Storey, acting manager for J. A. Hemphill & Sons was of little value as the manager for Western Australia, Mr. Edwards, had departed for Melbourne to take up a position on the Australian Wheat Board. Mr. Storey mentioned to your committee that his control of the office was too recent to enable him to become acquainted with detailed transactions.

Mr. SPEAKER: Has this anything to do with linseed?

Mr. SEWARD: Yes. I will link it up in a moment.

Mr. SPEAKER: In what way?

Mr. SEWARD: I wish to draw attention to the general attitude of Hemphill & Sons in connection with the affairs of producers.

Mr. SPEAKER: We are not discussing negotiations with regard to wheat, but the tabling of papers covering the negotiations and arrangements with Richard Gray & Co. regarding the treatment of the linseed crop to be harvested as a result of the distribution of linseed seed by the Government, and the subsequent inclusion of Hemphill & Sons in the said arrangements. What Hemphill & Sons did in regard to wheat has nothing to do with this motion.

Mr. SEWARD: As I said a little while ago, when I heard their name mentioned, I became interested. On account of the evidence submitted to the select committee by the representative of Hemphill & Sons, I could not help classing the witness as intensely hostile. He was the representative in Western Australia of this particular firm.

Mr. SPEAKER: I do not think I can allow the hon. member to pursue that course. What the representative of Hemphill & Sons did or did not do on that occasion does not concern us now. The hon. member must confine himself to the matter of linseed mentioned in the motion.

Mr. SEWARD: Do I take it that I cannot refer in any way to any of the individuals mentioned in the motion?

Mr. SPEAKER: Not to their connection with any other inquiry; only in regard to their association with the linseed crop.

Mr. SEWARD: Surely I am at liberty to question the bona fides of one of the firms concerned. Can I not refer to their attitude towards producers whether of linseed or anything else?

Mr. SPEAKER: Hemphill & Sons are not accused of anything in this motion, which only asks for the tabling of papers relating to the distribution of linseed. Hemphill & Sons are not on trial now.

Mr. SEWARD: Of course I accept your ruling, Mr. Speaker, but I consider they are very much on trial. Mention of them in connection with this matter, which very intimately concerns the producers or growers of linseed, immediately aroused my suspicions as to their bona fides.

Mr. SPEAKER: So long as the hon. member confines himself to that aspect he will be in order.

Mr. SEWARD: That is what I was leading up to. It was on account of my association with the select committee and hearing the evidence of the representative of this firm that I was led to take part in this debate. I viewed very unfavourably the statements of that witness.

Mr. SPEAKER: Order! I cannot allow the hon. member to discuss what the man said at the inquiry into the wheat position.

Mr. SEWARD: Very well; I will not do so. Subsequent to that date a motion was moved in the New South Wales Legislative Assembly in regard to this same firm of Hemphill & Sons which had cornered the supply of——

Mr. SPEAKER: I must prevent the hon. member from discussing that also.

Mr. SEWARD: Then all I can say is that it is impossible for me to discuss the matter at all, and I shall have to discontinue my remarks.

Amendment put and passed.

MR. McDONALD (West Perth) [6.6]: I do not profess to have any special knowledge of this particular new industry, but the motion has a special reference to Mr. David Gray, whose factory for the manufacture of stock foods is in my constituency. Mr. Gray saw me after the motion had been moved by the member for Guildford-Midland (Hon. W. D. Johnson), and considered that the hon. member's speech tended to reflect upon his loyalty to Western Australia. I took the liberty of telling him that I did not think that the member for Guildford-Midland intended to reflect on Mr. Gray's loyalty to the State, but if he liked I felt sure the House would listen for a moment or two to a recital of the facts from his point of view. Mr. Gray is a Western Australian by birth, and therefore I think would be likely to support industries in the State of his birth and in the place where he has always earned his living. About six years ago he established the first factory in Western Australia for the manufacture of stock foods.

Mr. SPEAKER: I do not know that that has anything to do with the motion, either. All we are concerned about is whether or not these papers should be tabled.

Mr. McDONALD: Naturally I do not want to go outside the motion, but as I understood his speech the member for Guildford-Midland suggested that it would have been proper for Mr. Gray to approach Westralian Farmers Ltd. with a view to having that firm participate with him in the conduct of this new enteprise.

Mr. SPEAKER: The hon. member is quite in order in speaking along those lines.

Mr. McDONALD: The suggestion was that Mr. Gray had neglected to do something which he might have been expected to do, and Mr. Gray desired that the House should know the facts. After he had arranged for the manufacture of stock foods—having been the pioneer of the industry in this State—he appointed Wes-

tralian Farmers as his distributing agents in this State, and for some time Westralian Farmers acted in that capacity. Subsequently they decided—and Mr. Gray acknowledges they were quite entitled to do so—to enter into the stock food business in competition with him. When that occurred they had to cease acting as his agents. Thereafter they were his competitors in the business he had pioneered and in which they had been his agents.

Mr. Gray says they were perfectly entitled to do that. He had no objection to their ceasing to be his agents and becoming his competitors in the manufacture of the same class of goods. He says that before Westralian Farmers came on the scene he had been for many months engaged on active research and negotiations with regard to the manufacture of oil from linseed and, as I think the Minister said in his speech, when Westralian Farmers came on the scene Mr. Gray had virtually reached the stage where he was in a position to overcome all difficulties and commence establishing the necessary factory. When he reached that stage he required capital and went to the Eastern States to secure it because he wished to associate with the new venture some firm that had oversea connections—the more extensive the better, because Mr. Gray foresaw the time when, with any good luck, his factory for linseed oil would be selling not merely in this State and in Australia, but would be manufacturing extensively oil for distribution in other countries of the world. He also foresaw the time when, again with any luck, this factory which is now being established, would enter on the manufacture of various allied products for which there might reasonably be a sale not only in Australia but also in countries oversea.

He eventually found that Hemphill and Sons were prepared to support him. They are now erecting a factory at a cost of £6,000, and putting in plant at a cost varying from £8,000 to £10,000. That is the preliminary stage. Mr. Gray desires to say that the suggestion which he understands was made that Hemphill and Sons, having obtained an interest or association with this particular manufacture, might quash the whole thing in the interests of Eastern States firms, could not be borne out for one moment because they are putting in bricks and mortar and machinery at a tremendous cost and obviously the factory is here to stay. By no possibility as a mercantile transaction could it be terminated in order to follow up some sinister interest. The result of the arrangement made by Mr. Gray is that he is receiving, he tells me—and the Minister will correct me if I am wrong—no assistance whatsoever from the Government. He does not now want any guarantees, advances or financial assistance from the Government.

Sitting suspended from 6.15 to 7.30 p.m.

Mr. McDONALD: As a result of the activities of Mr. Gray, a new manufacture is starting in this State without any financial assistance or guarantee from the Government. As those who are establishing the new industry are finding the money themselves, I presume they are entitled to arrive at their own decision as to any affiliations in business with which they may desire to associate themselves. From what I can learn, there is every prospect that the manufacture that David Gray & Co., are commencing will operate for the benefit of the State, and that the industry is capable of considerable expansion. That, I think, will represent something to be added to our record respecting the establishment of new industries.

The question raised by the member for Guildford-Midland (Hon. W. D. Johnson) contains one element that is worthy of consideration and to which the Government and the Minister will no doubt give attention. If we are to have, as we hope, expanding manufactures in this State, for which they receive State aid, financial or otherwise, then there should be some principle laid down upon which that particular phase should be based. I appreciate that if there is a prospect of a new industry commencing in Western Australia, and the Government is prepared, if required, to assist financially, it may not be possible in many instances to call for tenders in order to attract those who may desire to participate. It may be proper if there is a manufactory already established, the principals of which may be prepared to undertake the new manufacture, to direct their attention to the matter with a request that they shall investigate the project with a view to determining whether they could embark upon the new enterprise.

This much should be said, that when it is a matter of new manufactures, with possible

Government aid, then, if there are a number in this State who may be interested and may deserve an opportunity to show they could promote the new industry, some procedure should be adopted by which those who may be interested may participate in putting forward their proposals, and that might be part of the consideration extended to this matter by the Department of Industrial Development. I do not think we can lay down hard and fast rules, but the fact remains that we should ensure that any people deserving of an opportunity to participate in a new industry should be given such notice as will enable them to put forward their views indicating that they are able to take part and entitled to consideration when Government assistance is forthcoming and a new industry is to be launched in this State.

HON. N. KEENAN (Nedlands) [7.35]: In the absence of the member for Guildford-Midland (Hon. W. D. Johnson) I desire to say a few words before the debate closes. He is an old goldfields man, and the reason for his absence from the House at this juncture is known to all members. He is absent not from choice but because urgent business necessitates his leaving the State.

The Premier: Will he be back before the session closes?

Hon. N. KEENAN: The Premier knows as much about that as I do.

The Premier: I do not know; I think perhaps he will not be back in time.

Mr. SPEAKER: Order! That has nothing to do with the motion.

Hon. N. KEENAN: It may have something to do with it.

Mr. SPEAKER: It has nothing whatever to do with the motion.

Hon. N. KEENAN: I want to remind the House that the burden of the complaint launched by the member for Guildford-Midland was that practically a monopoly—in fact, an actual monopoly—was being given to this particular firm. They are to have control of all linseed grown in Western Australia.

The Minister for Labour: For this season.

Hon. N. KEENAN: All right, for this season. It is no defence of a monopoly to say it is limited in time. The fact is that the firm has been given a monopoly. If it is granted that consideration this season, it can easily be given similar consideration next season. The complaint of the member for Guildford-Midland was that the Government, knowing the source from which David Gray & Co. was to be financed, ignored that fact. They are people well known in Australia. They are not well known only today or yesterday; their name has been mentioned for a long period. The argument of the member for Guildford-Midland was that in granting a monopoly to a firm that is essentially monopolistic, the Government was doing something exceedingly dangerous. I have not heard any reply dealing with that point.

We have heard something regarding Westralian Farmers Ltd., for which it was said the member for Guildford-Midland holds a brief. Why should he not? He is a director of that concern. He makes no secret of the fact. The firm is a Western Australian company that has done magnificent work in this State in connection with the agricultural industry. He stressed the claim of that firm for consideration as against a company that I may term an Australian monopolist, which has established itself in every State and exercised all the powers of a large organisation to acquire control in each State. Although you, Mr. Speaker, were undoubtedly jealous in securing respect for your ruling, you prevented the member for Pingelly (Mr. Seward) from telling us something of what he knew regarding his experience with this particular firm. That represented a very pertinent factor in the consideration of this matter.

Here is a firm financing the linseed products of this State and yet it is a firm that, just as if one has supper with the Devil one requires a spoon with a handle as long as can possibly be obtained, the Government embraces and takes to its bosom. That was the complaint voiced by the member for Guildford-Midland. It was not that he wanted Westralian Farmers, Ltd. to be granted the monopoly. It was that the operations of David Gray & Co. were to be financed by this other monopolistic concern, and that the Government in granting a monopoly should have the right to specify the terms on which the financing was to be done. He stressed that in those circumstances it would be wise and proper for the Government, if it could get the operations financed within this State, to grant any such monopoly to the local firm.

The Premier: We said we would provide a market for the people if they grew something for us. We imported the seed.

Hon. N. KEENAN: And the Government has control of it now.

The Premier: Oh no!

Hon. N. KEENAN: Yes, the Government has control over this year's crop.

The Premier: It is our seed.

Hon. N. KEENAN: It is completely within the Government's control, and if the Government tomorrow decided it would not provide any more seed for Gray, he could not get any in Western Australia.

The Premier: He might contract with some growers to buy their output.

Hon. N. KEENAN: Yes?

The Premier: Is that a monopoly because someone buys from someone else?

Hon. N. KEENAN: But the monopolistic firm has an over-riding interest. The Government has control over the growers. The growers do not care whether they sell to David Gray & Co. financed by this cormorant monopolistic concern or to Gray financed by Westralian Farmers Ltd.—if the price is the same.

The Minister for Mines: You are playing a new role tonight.

Mr. SPEAKER: Order!

Hon. N. KEENAN: I am used to interjections by the Minister for Mines. They always amuse me and sometimes teach me something.

Mr. SPEAKER: The hon. member will take no notice of interjections. I must ask him to confine his attention to the motion.

Hon. N. KEENAN: I hope I am, with some limited degree of success, putting forward the point of view of the member for Guildford-Midland who is not able to be present to explain the position to members. I have indicated the burden of his complaint. It was not that the Westralian Farmers Ltd. did not secure the monopoly. His complaint was that here was a new firm, well known in Australia—I do not say favourably known, because that would be a lie—and the Government was handing over a monopoly to it. In doing so, it must have known what was within the knowledge of the committee of which the member for Pingelly (Mr. Seward) is a member.

The Premier: Do you think any complaint would have been voiced if Westralian Farmers had secured the monopoly?

Hon. N. KEENAN: By whom?

The Premier: Johnson.

The Minister for Labour: The member for Guildford-Midland.

Hon. N. KEENAN: I do not think the Premier is quite in order! It is wise and proper that the complaint made by the member for Guildford-Midland should be clearly placed before the House and that members should be reminded of the facts. Here we are opening the door to a dangerous firm, and allowing it to embark upon a new industry in Western Australia; giving it power that may allow it afterwards to throttle the new industry if it suits its purpose to do so. That is the burden of the complaint of the member for Guildford-Midland.

The Minister for Labour: I would like, Mr. Speaker——

Mr. SPEAKER: The Minister has already spoken. He cannot speak again.

The Minister for Labour: That suits me.

Question, as amended, put and negatived.

BILL—COMPANIES.

In Committee.

Resumed from the previous day. Mr. Marshall in the Chair; the Minister for Justice in charge of the Bill.

Clause 59—Return as to allotments:

The CHAIRMAN: Progress was reported on the clause, to which the member for East Perth had moved an amendment to strike out Subclause 3.

Hon. N. KEENAN: I should like to give my views as to the unsuitability of the subclause referred to by the member for East Perth. As will be seen from the marginal note, the Minister no longer has any excuse for saying, "This is done everywhere else." Apparently it is done only in Tasmania and New Zealand.

The Minister for Justice: This relates to the present Act.

Hon. N. KEENAN: The Minister no longer can fall back on the excuse that because this is done in the other States it could be done here and would do no harm. New South Wales, Victoria, Queensland, and South Australia do not think much of it, so where is the uniformity? I would refer members to Section 26 of the Companies Act, 1893, which states—

> Every share in a company excepting a no-liability company shall be deemed to have been issued and to be held subject to the payment

of the whole amount thereof in cash, unless it shall have been otherwise determined by the memorandum or articles or by a contract, duly made in writing, and filed with the Registrar, at or before the issue of such shares.

The present law has worked admirably, with the exception of certain cases where the court has allowed relief. I point out that if anyone under Subclause 3 sold goods to a company for a consideration expressed in shares, and the shares were issued, and if, through causes that could not be known to the party who received the shares, the contract of sale was not registered, there would be no protection for him. Not only is it proposed to make the subclause retrospective, but it provides the following:—

Where shares in any company are issued prior to the commencement of this Act as fully or partly paid up for a consideration other than cash, but no provision relating thereto was contained in the memorandum or articles and no contract was filed as provided by Section 26 of the Companies Act, 1893, hereby repealed, then if the shares (a) were allotted and taken in good faith prior to the commencement of this Act; or (b) were allotted and taken in good faith and for a substantial consideration; or (c) after the allotment thereof were acquired by any person bona fide without notice of the omission aforesaid—the allottee or holder of such shares shall not be liable to pay to the company in respect of such shares any sum other than the difference between the nominal amount of the shares and the amounts paid up in cash or treated or deemed to have been so paid up thereon.

I am not surprised that the other States I have mentioned should have refrained from adopting such a provision, and I would be surprised that it should be applied to this State.

The Minister for Justice: Have you read the evidence of Mr. Blanckensee and of Mr. Forbes?

Hon. N. KEENAN: Mr. Blanckensee is an excellent conveyancer but has never been a common law man in his life. The Minister is under a delusion if he thinks Mr. Blanckensee carries any weight.

The Minister for Justice: I do think so.

Hon. N. KEENAN: Does not the Minister know that he is nothing but a conveyancer and that he has nothing to do with common law? He is not in the same position to express an opinion as is a man practising in common law. The Minister does not care that New South Wales, South Australia, Victoria and Queensland do not like this provision, because Mr. Blanckensee likes it and so it must be embodied in the Bill. That is an extraordinary attitude to adopt. The Minister brings down a Bill containing a clause which he says was put in because Mr. Blanckensee asked for it.

The Minister for Justice: I did not say that.

Hon. N. KEENAN: It is not put in because the Minister thought it was good, bad or indifferent. I say nothing derogatory about Mr. Blanckensee, but I think we must resolve this matter ourselves.

The Minister for Justice: Do you consider Mr. Forbes knows anything about the matter?

Hon. N. KEENAN: He would have a better opportunity to judge, but is not above error. The other man is talking about something quite foreign to his life, but the Committee is asked to swallow it.

The Minister for Justice: Do you say we should follow the member for Nedlands; is he infallible?

Hon. N. KEENAN: If the member for Nedlands had control of the measure, it would have a different shape; it would not be the ridiculous thing we have in front of us. It would be suitable to our industries and to the future. What does the Minister know about industries or anything else?

The CHAIRMAN: It would be better if the hon. member came back to the subject matter before the Chair. The debate is developing into something of a personal character rather than being connected with the clause.

Hon. N. KEENAN: A proposal is made for which we can find no authority except Tasmania and New Zealand. If a new Companies Act had been framed in Victoria and South Australia within the last few years, I might say the Minister was more or less experimenting, that he wanted to be talked of in Australia as a man who had made a great experiment.

The Minister for Justice: You are more captious than constructive.

The CHAIRMAN: I ask the hon. member to confine his remarks to the subject matter before the Chair.

Hon. N. KEENAN: I am told I am more captious than constructive.

The CHAIRMAN: The hon. member is not mentioned in this clause.

Hon. N. KEENAN: Other people are out of order and might be told so. I con-

clude my remarks on this impossible clause by saying that the Committee should not embark upon an experiment that is not justified, that is one upon which most of the States of Australia have declined to embark. I trust the subclause will be struck out.

Mr. HUGHES: If the Minister is relying on Mr. R. D. Forbes, he is relying upon a weak reed. I do not know what axe he has to grind, but he told the Royal Commission something that is not law. Let me take his evidence that appears on page 11, as follows:—

Question 206. By MR. ABBOTT: I have formed such a company. I consider it has certain advantages; but one member must be fully responsible for the debts and liabilities of the company, and other members may be responsible for £100 each?—It is really like a limited partnership. I have never been asked to constitute a company in that form. The point is not important but the schedule appears to have the wrong heading. Dealing with Clauses 40 and 64, Clause 40 is a reproduction of Section 26 of the existing Act, which reads—

> Every share in a company limited by shares, except a no-liability company, shall be deemed to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless it shall have been otherwise determined by the memorandum or articles or by a contract duly made in writing and filed with the registrar at or before the issue of such shares.

This section is not reconcilable with Clause 64 of the Bill. Under Section 40, the contract has to be filed with the registrar at or before the issue of the shares. Clause 64 does not contemplate any such procedure and has a different object. It requires, inter alia, that whenever a company makes any allotment of its shares, it shall within one month thereafter file with the registrar, in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee . . . .

Hon. N. Keenan: Are you quoting Mr. Abbott in reply to Mr. Forbes?

Mr. HUGHES: No. This is Mr. Forbes in answer to Mr. Abbott.

Mr. McDonald: He is referring to the old Bill.

The CHAIRMAN: The hon. member should confine his remarks to the subject-matter before the Chair. I do not want to limit discussion, but I would like the hon. member to keep as close to the subject-matter as he possibly can.

Mr. HUGHES: This answer occupies about half a page. At about the middle of the answer we come to the subject with which we are dealing, but I do not want to read only half the answer.

The CHAIRMAN: The hon. member must get down to the subject-matter.

Mr. HUGHES: I wish you would allow me a little latitude, Sir.

The CHAIRMAN: I have not stopped the hon. member, but I ask him to expedite the discussion.

Mr. HUGHES: The answer proceeds—

. . . (omitting certain words) or where the allotment is made under a provision in the memorandum or articles, a statement to that effect identifying the particular provision and giving particulars of the consideration, etc. Failure to comply with this clause renders the responsible officer of the company liable to a fine, subject to a proviso which entitles the court to grant relief where it is satisfied that the omission to comply with the clause was due to inadvertence, etc. There is nothing which renders the holder of the shares liable in the event of liquidation of the company. If Section 64 stood alone, failure to comply with its provisions would not render the shares subject to a calling liability on the liquidation of the company, but this intended result is not achieved whilst Clause 40 is retained in the Bill. Clause 40 of the Bill and Section 26 of the existing Act reproduce in effect the provisions of Section 25 of the English Act of 1867, which had a very harsh operation on allottees of shares fully paid otherwise than for cash who inadvertently failed to comply with the section. Remedial legislation was therefore passed in various jurisdictions—but not in this State—to empower the court to grant relief in proper cases. Clause 64 of the Bill is intended to provide such relief and accordingly enacts that where shares in any company were issued prior to the commencement of the Act as fully or partly paid up for a consideration other than cash, but no provision relating thereto was contained in the memorandum or articles and no contract was filed under Section 26 of the existing Act . . . .

This is the very amendment with which we are dealing. The evidence continues—

. . . then if the shares (a) were allotted in good faith at least six years prior to the commencement of the Act, or (b) were allotted and taken in good faith and for a substantial consideration, or (c) after the allotment thereof were acquired by any person bona fide without notice of the omission aforesaid, the allottee or holder shall not be liable, etc. This provision is retrospective only and will not affect the over-riding operation of Clause 40 as to future transactions. As to the six-year period mentioned in Clause 64, I can see no good reason for excluding from the beneficial operation of the clause holders of fully paid shares allotted within six years of the commencement of the new Act. I think that Clause 40 and the provision relating to the six-year period should be deleted. Quite a lot of business men are familiar with the old Section 26. Unwary vendors,

inadvertently themselves but possibly relying upon their solicitors, some of whom have always missed the effect of this section, have often found themselves on the liquidation of a company suddenly liable to pay the full £1 per share to the liquidator when for years they fondly imagined that the shares were fully paid up.

Mr. Rodoreda: Would that be a fact?

Mr. HUGHES: I do not agree with Mr. Forbes, when he said that "Unwary vendors, inadvertently themselves but possibly relying upon their solicitors, some of whom have always missed the effect of this section . . . ." What an impertinence it is for Mr. Forbes to say that!

Mr. Rodoreda: I do not want an opinion on that point. We have our own opinion on it.

Mr. HUGHES: I express my opinion. It is that it was impertinence on the part of Mr. Forbes to tell the Committee that some solicitors always miss the effect of Section 26.

The Minister for Justice: Is not it a fact?

Hon. N. Keenan: The very opposite is the fact.

Mr. HUGHES: Every solicitor knows full well that Section 26 of the Companies Act has been very much litigated. I suppose Mr. Forbes felt that, when he was making derogatory remarks about other solicitors, he was putting himself on a pedestal. That definitely destroys his opinion.

Mr. Rodoreda: But would it be a fact?

Mr. HUGHES: It is not a fact, nor is it sound law.

Hon. N. Keenan: It might have happened once or twice.

The CHAIRMAN: The member for East Perth, so far as I can gather from what he has read, has only made reference in one instance to the subject-matter before the Chair. I understand this clause does not amend Section 26 of the parent Act.

Mr. HUGHES: It does.

The CHAIRMAN: I want the hon. member to understand that the subject-matter before the Chair is the deletion of Subclause 3. His remarks seem to be appropriate to the clause as it might be amended. The amendment must be disposed of before we can deal with the clause as a whole.

Mr. HUGHES: Would you bear with me, Sir? The part of Mr. Forbes's evidence that I have read goes to the very root of the subclause that I hope will be struck out. When the original of Section 26 was inserted in the Companies Act of England, it provided specifically that shares had to be paid for in cash. That is plain language. Until I studied law, I thought I knew what cash meant. I thought it was gold or notes of legal tender; but it is nothing of the kind. When the English Act came into force, the judges, in order to get round a harsh provision, held that if shares were paid for in the equivalent of cash, that equivalent was to be regarded as cash. As a matter of fact, only last month the member for North Perth and I fought this matter out in our Supreme Court. The case involved £1,000 and was tried on this very issue. A person accepted shares in a company which owed him money, and took them on the understanding that the company would credit his account with the full amount of the shares. On the liquidation, it was said that no cash had changed hands. That is true, but is was held that the transaction was equivalent to cash. One of our leading cases was tried in the High Court. A furniture manufacturer accepted shares in consideration of a pup company taking over a branch of his business. On the liquidation of the pup company, he was sued for the amount of the shares, but the High Court held unanimously that he had paid for the shares in cash, because he had given the company the business as a going concern including furniture, book debts, etc. That, the court held, was equivalent to cash.

Mr. Rodoreda: Suppose the shares had been sold to somebody else, what would be the position of that buyer?

Mr. HUGHES: That buyer would have had to pay for the shares.

Mr. Rodoreda: Even if he bought them in good faith?

Mr. HUGHES: Yes. What Mr. Forbes mentioned has been done in connection with mining companies.

The Minister for Justice: This clause does not relate to mining companies.

Mr. HUGHES: It does.

The Minister for Justice: Not to no liability companies.

Mr. HUGHES: Yes, I can give the Minister specific instances. Of the 26 companies floated by De Bernales half or more were limited liability companies. In the case of a company floated in Adelaide the promoter got a certain number of shares. He did not do anything contrary to the law,

because he registered his contract. Had he not done so, he could have been called upon to pay for them on the liquidation. That is entirely wrong. The statement of Mr. Forbes is bad law. The hardship arises in the case of a person who acquires a number of shares in a company for which he pays no cash, and where no contract is filed in the Companies Office, and the company seeks to get credit from a trader who discovers, from the Companies Office, that a shareholder, Smith, has 2,000 shares not paid for. He says to himself, "This is an asset I can call on if my account is not paid." When the time arrives, Smith says, "I got these shares for nothing; I should have filed a contract." Who should be the loser, the man who got the shares for nothing and neglected to file the warning contract prescribed by law, or the creditor who gave credit acting in good faith on what he found in the Companies Office?

Surely the Minister does not say that where a man has given credit under a misapprehension he should be the loser and the man who had a duty to perform, which he failed to do, should be exonerated. Mr. Forbes goes on to say that it is very dangerous to issue fully paid shares for a consideration other than cash unless cash is actually passed so that the shares are paid for in cash and the property sold paid for, unless there is a contract in writing, and unless it is registered before the shares are issued. That is childish. To say that by merely passing cheques the matter is safeguarded is wrong. That point has been determined on many occasions. The courts have decided that the mere passing of cheques does not constitute a substantial transaction. If a man gives something to a company and is to get shares in exchange, and he receives a cheque from the company for the value of the shares and pays it straight back, the company is no better off. The courts have decided that is not a transaction at all; that there is no substance in it. If the Minister will not accept, on this point, the 50 years' experience of the member for Nedlands, and if he will not accept me, will he accept Dr. Evatt, the present Federal Attorney General and ex-High Court judge? The Minister cannot place Dr. Evatt in the nitwit class with us.

The Minister for Justice: I am glad you recognise that.

Mr. HUGHES: Before he foists this clause on the Committee to the detriment of the creditor who gives credit in good faith——

The Minister for Justice: The creditor must be a very inefficient man.

Hon. C. G. Latham: You have protected the promoters.

Mr. HUGHES: This is one case where the Minister has no complaint to make about the creditor. Under Section 26 of the existing Act the creditor had this protection. He could go to the Supreme Court and on the payment of a small fee could ascertain what shares were issued for other than cash.

The Minister for Justice: He will be able to do that under this Bill.

Mr. HUGHES: The Minister does not suggest that is relevant to this Bill. We are now dealing with Subclause 3. What more does the Minister think the creditor could do than I have said?

The Minister for Justice: I do not expect he could do anything.

Mr. HUGHES: If he does everything that can be expected of him we say three or four years later that, notwithstanding the fact that he performed every duty a careful business man would do, and what the law requires, and although somebody else was at fault, we are going to abrogate the legal rights of the creditor and absolve the guilty party. If that is not harsh treatment, I do not know what is. The new section, except for this retrospective clause, does not alter the law one iota. Who in Western Australia wants Subclause 3? Does the Minister know of anyone?

The Minister for Justice: No, I do not; nor does the hon. member.

Mr. HUGHES: My word, I do. I know one person who wants it.

The Minister for Justice: Will you tell the Committee?

Mr. HUGHES: No. Did Mr. Forbes know of one person?

Mr. McDonald: I am sure he did not know of one.

Mr. Watts: Give the Committee a chance to say whether it wants this retrospective clause.

Mr. HUGHES: Does any member of the Committee want it?

The Minister for Justice: It was well debated.

Mr. HUGHES: And it was in the New Zealand Act and in the Tasmanian Act and

it had to be included in this Bill somewhere. Before the Minister foists this clause on the Committee, I ask him to read Dr. Evatt's judgment in the case of Joseph and Campbell.

Hon. N. Keenan: You read it.

Mr. HUGHES: I have not got the report here. He there sets out lucidly that there can be no hardships; that if a person is given the equivalent of cash he gets the recognition of payment in cash, and that the passing of cheques, unless the cheques cover a substantial transaction, is of no value at all. Had members of the select committee read what Dr. Evatt says, they would not have insisted on this subclause.

Mr. McDONALD: This subclause might well be taken out. In future people are to have liability for shares which are not paid for in cash, or are not the subject of a properly filed contract, and if they have incurred this liability in the past and possibly people have given credit on the strength of their belief that the shares were not fully paid, that liability might well be preserved. There will not be many cases, although there are more than the member for East Perth thinks, where people have been or will be held liable for shares which have not been paid for in cash, or in respect of which no contract has been filed in the Supreme Court.

Hon. N. Keenan: They may have an action against their solicitors.

Mr. McDONALD: They may. I approach this measure from an entirely different angle from that of the member for East Perth. He approaches it with the idea that every clause has something sinister behind it.

Mr. Hughes: That is ridiculous.

Mr. McDONALD: I refuse to approach it on those lines. Companies in this State operate honestly and fairly and pay their debts. They are run by people who have common ideas of honesty.

Mr. Hughes: Why do you want all these disciplinary provisions?

Mr. McDONALD: I did not raise many objections. I have not spoken very much on this Bill. It might well go through with these disciplinary provisions. The public is getting every protection. The State is not full of company promoters and directors who seek to defraud the public. Only a small minority of those who form companies want to perform other than honest services to the people. The member for East Perth suggests that this clause has been put in to meet some private interests. I know nothing of that. It might well go out.

Mr. Hughes: Why was it put in?

Mr. McDONALD: Because there is some argument in favour of it. People may sustain very great loss and hardship through inadvertently becoming liable for shares by not filing a contract. It may ruin them. The Parliaments of New Zealand and Tasmania have agreed that there are arguments for it and have made it law. It has never been challenged so far as I know. It has been law for years. I prefer to see the hardship fall on the shareholder rather than on the creditor. I do not like retrospective legislation. The member for East Perth asked what axe Mr. Forbes had to grind. My reply is, "None at all." He said he represented no section, and anyone acquainted with him will accept his statement.

Mr. Hughes: But you would not agree with what he said.

Mr. McDONALD: The statement by Mr. Forbes is correct. The member for East Perth wants to say that cash means wool, or sheep or something of the kind. I do not agree with that; the word "cash" carries its own meaning. If the parties agreed that 500 sheep were worth £500, a cheque might be passed for the amount. It is a common practice for cheques to be passed representing bona fide transactions. I adhere to everything Mr. Forbes said in exposition of the law. There is nothing in his statement to which exception can be taken. When he said that this subclause, with which I do not agree, might save some people who have inadvertently incurred a liability of this kind, he was speaking correctly. He would prevent hardship to a number of people, but on the balance of principle, I favour the elimination of the subclause. Not many lawyers know the full effect of Section 26 of the Act, and in quite a number of cases its effect has been overlooked. I do not agree that many lawyers habitually overlook it and I can hardly believe that that was meant. Apart from this reference, I think Mr. Forbes gave a very fair statement of the law. He is certainly amongst the leading lawyers on company law in this State.

Mr. Tonkin: I think we should alter the law to make a solicitor liable for such an omission.

Mr. McDONALD: If a solicitor made a mistake, for instance in not advising a client that he was liable for £500 on shares being purchased, the solicitor would have to pay. In any case of want of skill on the part of a lawyer, and indeed of other professional men, there is a remedy. I repudiate the suggestion that Mr. Forbes had an axe to grind; it was quite unwarranted. We are indebted to the gentlemen who attended the Commission and volunteered evidence, and I consider their evidence has been helpful.

Mr. RODOREDA: I am getting tired of the homilies of the member for East Perth and of the fault-finding. Members of the Commission took it for granted that the witnesses were genuine. We did not question their *bona fides*; we considered they were attending to help us.

The Minister for Justice: So they were.

Mr. RODOREDA: It is not playing the game to suggest that certain clauses were framed with a sinister object in view or to meet a particular case. I wish the member for East Perth had carried his explanation a step further. He could have told us what effect the clause would have on a person who unsuspectingly purchased shares from a holder who in turn had neglected to file a contract. In good faith the purchaser, we may assume, pays full value without knowing of any liability, and when the company goes into liquidation or a call is made, he suffers an unsuspected liability. Is that fair to the public? The object of the provision is to protect the public.

Mr. Hughes: It would be a hardship, but what about the man who purchases stolen property? Is not he in the same position?

Mr. RODOREDA: There is no analogy between the two cases. This man purchases shares in good faith. There is nothing to show that anything is owing on them.

Mr. Hughes: He could find out by inquiry.

Mr. RODOREDA: By consulting a solicitor and inquiring at the Supreme Court. If we delete this provision, how will the situation be met? Surely some protection should be given to such a purchaser! The hon. member also said that New Zealand and Tasmania were the only places that had this provision, and why should we adopt it? Then when the Minister told him that every State had it, he asked why we should be influenced by other States. The hon. member cannot have it both ways; in that respect he was rather inconsistent. I should like to know what effect the deletion of Section 26 will have.

Hon. N. KEENAN: Subclause 4 refers to no contract being filed as provided by Section 26 of the Companies Act. What is the use of referring to Section 26 of the Act if it does not exist?

Mr. Rodoreda: It does exist in the Act of 1893.

Hon. N. KEENAN: No, it is referred to as something that must be provided against in this measure. I am told that the requisite provision is made elsewhere in the Bill. If it is not, it will have to be inserted. England, when revising with great care its company law, did not repeal Section 26. Surely we are not going to pioneer in this way. The grievance of the member for Roebourne is a just grievance, but what he complains of could not happen on a stock exchange, because a stock exchange would not give a quotation for any such shares. Shares not covered by contract will not be sold by a stock exchange to the public. Such shares are sold only by brokers outside the stock exchange. In the final analysis, if two persons are going to suffer, the rule of equity is: "You admit that somebody has to suffer, but you make that party suffer who has the least right to relief."

Here the question is: "Are you to sacrifice the creditor, or are you to sacrifice the person who has been guilty, in every instance, of some degree of negligence?" At present the member for Roebourne proposes to make the less guilty party suffer, namely the creditor. That is not in accordance with the practice of our rules of life and equity. Mr. Forbes, if correctly reported, certainly made a ridiculous statement when he said that nearly always solicitors ignored the effect of Section 26 of the Companies Act. I cannot think he was correctly reported there. The person who bought the shares would not suffer unless the solicitor was a man without assets.

The MINISTER FOR JUSTICE: The Royal Commission was most grateful to all the witnesses who came along, and I do not think any one of the witnesses had an axe to grind.

Hon. N. Keenan: No one has said so.

The MINISTER FOR JUSTICE: Unfortunately it has been said. We have

wasted enough time on this subclause. As regards Mr. Forbes and Mr. Blanckensee, who were witnesses, their evidence was questioned throughout, and the Royal Commission came to the definite decision that it was necessary to protect shareholders who had bought shares for a consideration other than cash. If it was not the fault of those shareholders, then in the Commission's opinion they ought to be protected. To-night we hear about no one except the creditor, who apparently is unable to look after himself. Let us take a vote on the question. If the Bill does not reach another place next week, probably the whole of the Royal Commission's work will be lost.

Mr. HUGHES: The member for West Perth gets hot and bothered and indignant if he thinks something has been said about Mr. Forbes.

Mr. McDonald: I do.

Mr. HUGHES: But the hon. member did not get hot and bothered when Mr. Forbes make a sweeping assertion against practitioners.

Mr. McDonald: Against some practitioners, and I disagreed with that.

Mr. HUGHES: The hon. member remained silent.

Mr. McDonald: No. I disagreed explicitly.

The CHAIRMAN: The character or probity of lawyers is not under discussion. The character of witnesses I will not permit to be debated.

Mr. HUGHES: The member for West Perth did not defend his brother practitioners.

Mr. McDonald: On a point of order. I most explicitly say that I did not agree.

Mr. HUGHES: When I brought the matter up.

Mr. McDonald: I never spoke before.

The CHAIRMAN: Order! What has caused the member for West Perth to interrupt a member orderly addressing the House?

Mr. McDonald: The member for East Perth says that I did not protest when remarks were made by Mr. Forbes regarding solicitors.

The CHAIRMAN: There is no point of order in that. The member for East Perth may proceed. The character of witnesses is not within the subject matter before the Chair.

Mr. HUGHES: I offer no apology for drawing attention to the sweeping and malicious statements of Mr. Forbes against brother practitioners. He ought to have been pulled up. I regret that the member for West Perth did not pull him up.

The CHAIRMAN: I will not permit the debate to proceed on those lines. I am not concerned with lawyers outside the evidence given by them either in support or in opposition to the subject now under discussion.

Mr. HUGHES: The member for West Perth, in illustrating what he submitted was Mr. Forbes's viewpoint, said I had suggested that under the Bill property could be cash and sheep could be cash. I did suggest similar things. In the leading Commonwealth case, furniture and book debts and goodwill of a business were treated by Dr. Evatt and other members of the High Court as cash. This is an attempt to reproduce the old Section 26. The subclause provides that when shares are allotted there is an obligation on the responsible officers who make a return of allotments to set out the number and nominal amount of the shares described by the allotment, the names and descriptions of the allottees, and the amount, if any, paid or deemed to be paid or due and payable on each share. There is an attempt to place on record at the Supreme Court full information for those who want to find out details. If the clause stopped there, I would probably agree that there was some question as to whether shares should be paid for in cash or not. I think the provision is probably regarded as a substitute for the old Section 26. I agree with the member for Roebourne that this is not as explicit as the old section which said they shall be paid for in cash.

Mr. Rodoreda: It expressly does not say anything about that.

Mr. HUGHES: It does not say they shall be paid for in cash but is not the implication in the second part that if they are not paid for in cash a contract must be filed? I agree with the hon. member that the old Section 26 that was omitted on Mr. Forbes's suggestion should be reinstated in order to clarify the position, and make it beyond all doubt that they must be paid for in cash. If the member for Roebourne could suggest a clause protecting everybody from loss—the original shareholder, the subsequent shareholder and the creditor—there would be no objection, but how can that be accom-

plished? The loss must fall somewhere.

Mr. Rodoreda: Is that inevitable?

Mr. HUGHES: As far as I can see, it is. The loss has got to fall on the creditor or on the original shareholder. It must fall on the subsequent shareholder as between that shareholder and the creditor. What this Committee has to do is to make a choice as to whether the least guilty party or the most guilty party should bear the loss. A person buying shares has all the protection in the world. He can search the share register at the office of the company concerned and can find out whether the shares have been paid for. If he buys shares without taking that precaution, and the shares have a defect in them, he must bear the loss. If it were not so, it would be quite easy as soon as the shareholder found out there was some likelihood of his being called upon to pay for the shares to transfer them cheaply to somebody else. Someone must suffer as the result of the negligence of somebody and it is a question of whether to place the loss on the guilty or the innocent party. I suggest that it should be placed on the party at fault.

Mr. RODOREDA: I am not quite satisfied with the answers to the queries I raised. The arguments of the member for Nedlands and the member for East Perth have been based on the ground that the old Section 26 is in this Bill and it is not.

Hon. N. Keenan: There is no difficulty in putting it in.

Mr. RODOREDA: That is correct; but it is not in now. This clause is retrospective. It applies only to shares issued prior to this Act. Section 26 of the existing Act does apply to those shares, and this subclause will have no effect whatever on any shares issued after the promulgation of this measure. Consequently this will refer only to a comparatively few shares. If we have no Section 26 or its equivalent in this Bill, in what position will the shares be that are issued for other than cash in the future? There is no obligation for any liability on those shares at all. One could not go to a court and win a case on this clause. The member for East Perth says it is an attempt to reproduce the effect of Section 26. It may be an attempt, but the attempt has not succeeded.

Mr. Tonkin: The liability has been shifted to the directors.

Mr. Hughes: The foundation of this clause is missing.

Mr. RODOREDA: And therefore all the arguments against and in favour of it have been based on wrong grounds! I suggest that progress be reported until we find out whether or not Section 26 should be included.

Mr. Hughes: I agree.

Mr. TONKIN: The Bill makes an attempt to prevent default which has been occurring previously. That is why there is no reason to include the old Section 26. Clause 59 sets out what must be done under these circumstances and a penalty is provided if default is made in complying with the requirements of the provision. While this provision exists directors are not likely to be very remiss in compiling these contracts and setting out the details. The possibility of this set of circumstances occurring in the future is so remote as not to be worth worrying about. This method of achieving the object is not as clear as Section 26 of the old Act, but it is an attempt to ensure that in future default will not be made. I do not like Subclause 3 any more than do other members who have opposed it. In my view it gives an advantage to the more guilty party as against the less guilty party. It is impossible to arrange that nobody shall suffer loss and if loss has been occasioned through default in the past, it is only right that that loss should be borne by the more guilty party. This subclause provides the opposite.

Mr. F. C. L. SMITH: Although we are not conveyancers or lawyers we all have to vote on the amendment, and I want to give my reasons why I favour striking out Subclause 3. It seems to me that Section 26 of the old Act imposed certain obligations on certain people who were given shares for other than a cash consideration and if they failed to observe those obligations they were in some circumstances rendered liable to heavy pecuniary penalties, in the case of liquidation, for instance. That might be so in other cases, too, under circumstances in which perhaps a new set of directors coming in and finding that certain shares were issued for no particular consideration and not for cash, might begin questioning why they were issued and come to the conclusion they were not rightly issued and could then demand cash from

the persons to whom they had been issued. Subclause 3 of Clause 59 of this Bill proposes to give protection to people who have failed to observe the provisions of Section 26 of the old Act which has been in operation since 1893 and contains certain obligations that should be known to everyone dealing in shares, and certainly to the legal profession who are giving advice to people dealing in shares. Consequently I agree with the member for East Perth that Subclause 3 should be deleted.

Mr. McDONALD: Will the Minister agree to postpone the further consideration of the clause? We could then proceed with the subsequent provisions.

The Premier: I wish we had done that last night!

Mr. McDONALD: I would like to consider the clause still further. Although last night I expressed the opinion that Subclause 3 could be deleted, I am now not satisfied that it would be safe to adopt that course without further considering possible consequences. For example, the Bill does not re-enact Section 26 of the old Act. We are asked to follow the English Companies Act of 1900, drop Section 26 of our Act and proceed on a different basis. Therefore, the new Companies Act will contain no provision such as Section 26 and the old Act is to be repealed. Should a company go into liquidation there will possibly be nothing in the new Act that will be applicable to the winding-up of concerns that may arise under Section 26 of the old Act. Such matters will be left in the air. Before we agree to the deletion of Subclause 3, further consideration should be given to the provision.

The MINISTER FOR JUSTICE: I have no objection to postponing the further consideration of the clause.

The CHAIRMAN: Before that can be done the amendment will have to be either dealt with or withdrawn.

Mr. HUGHES: If I ask leave to withdraw my amendment, will I have the right to move it again when the clause is before us for consideration later on?

The CHAIRMAN: Yes, definitely so.

Mr. HUGHES: Then I ask leave to withdraw my amendment.

Amendment, by leave, withdrawn.

On motion by the Minister for Justice, further consideration of the clause postponed.

Clauses 60, 61—agreed to.

Clause 62—Prohibition of provision of financial assistance by company in certain cases:

Mr. McDONALD: I move an amendment—

That at the end of Subclause 1 the following words be added:—"other than in the ordinary course of the business of the company."

Badly, Subclause 1 will make it unlawful for a company to give any financial assistance to a director. It is considered that such a prohibition is rather too wide. A man who is a director of a company may be the owner of a station in the North-West and may wish to deal with the company upon the ordinary terms. He may, for instance, wish to buy his wool packs and secure credit for some months before being required to liquidate the account. Under the subclause such a transaction would be prohibited. He could deal in cash with the company, but when it came to a matter of credit or a loan he would be covered by the prohibition. That appears to be rather too stringent and the subclause should be modified as suggested in my amendment.

I am aware that there is an argument against the amendment. It may be suggested that a director may, by virtue of his office, use his influence to secure the loan of a large sum of money or the supply of goods on credit and by such means deplete the capital and assets of his company. It may be suggested that that would be very unfair to the creditors who dealt with the company in ignorance of the advantage obtained by the director through his transaction with the company. The object of the provision is to ensure that a director shall not be in a position to use his influence in order to engage in a transaction that may be to the disadvantage of the company. On the other hand, it is rather remarkable to think that a man interested in the class of business in which his company is engaged, should be unable to deal with his own company. Those are the two views. This particular subclause does not appear in the Victorian Act in these words. The Victorian Act is the latest Australian legislation on companies. No great harm would result from amending the subclause to allow transactions between a company

and its director if they are confined to transactions in the ordinary course of business.

The MINISTER FOR JUSTICE: I regret my inability to agree to the amendment. The member for West Perth is always very fair; but this clause was discussed very fully, and the Royal Commission came to a definite decision. What the hon. member proposes would leave loopholes for abuse. If in the case of Boans, Ltd., Mr. Harry Boan had not been permitted to borrow from his own company the position of his estate would have been very different.

Amendment put and negatived.

Mr. HUGHES: The penalty provided for breach of the clause is the magnificent sum of £50.

The Premier: The director will also have to repay the amount he had illegally borrowed, instead of keeping it indefinitely.

Mr. HUGHES: If a director needed a loan of, say, £10,000, the fine of £50 would be no deterrent. If money borrowed by a director from his company was not returned within a certain period, the company should be wound up.

Mr. Rodoreda: In such a case, every director and every officer of the company would be liable to a fine of £50.

The Premier: And the director could be charged with holding the money illegally.

Mr. HUGHES: I move an amendment—

That in line four of Subclause 4 the words "not exceeding" be struck out.

Later I propose to move that the penalty shall be a fine of £50 per day while the money illegally borrowed remains unpaid to the company.

The MINISTER FOR JUSTICE: The amendment would be for the greater protection of the public.

Hon. N. Keenan: It is drastic.

The MINISTER FOR JUSTICE: I have not had time fully to consider its effect, but I doubt whether it will prove harmful.

Mr. McDONALD: The amendment reminds me of Lewis Carroll's "Hunting of the Snark." The snark incurred some penalty, and the decision of the court was that he be hanged by the neck until he was dead and then fined £50.

Mr. Needham: For every day he was dead?

Mr. McDONALD: It did not go as far as that. This proposed penalty is too great. In 99 cases out of a hundred, directors are honest. They do not suddenly become wicked because they are made directors of a company. Again, the penalty is out of line with all the other penalties provided in the Bill. Suppose a director borrowed £10 and inadvertently omitted to repay it, is he to be liable to a fine of £50 for every day the money remains unpaid?

Mr. Watts: Yes, if the amendment is carried.

Mr. McDONALD: Victoria has passed the latest company legislation, and a similar provision fixes the penalty at £100, not £100 a day.

The Premier: What steps would you take to make a defaulting director return money to whom it rightfully belonged?

Mr. McDONALD: He could be sued or made bankrupt. Possession could be taken of his goods. If he could pay and did not, he could be imprisoned. If a company got into difficulties, the creditors would see that any amount so borrowed by a director was repaid and the director could be fined the amount of the penalty. But such cases are exceptional. Companies wound up in this State during the last year could be counted on the fingers of one hand.

Mr. RODOREDA: I support the amendment. We are all agreed upon the advisability of preventing directors from borrowing from the company of which they are directors. The penalty should be high enough to act as a deterrent. A daily penalty would have the effect of making a director repay any borrowings quickly. The member for East Perth should go a little further. If his amendment is carried he should move to insert some reasonable amount, say £10 or £20.

Amendment put and negatived.

Clause put and passed.

Clause 63—agreed to.

[*Mr. Withers took the Chair.*]

Clause 64—Power to issue shares at a discount:

Hon. N. KEENAN: This clause purports to deal with preference shares, but if the Minister will bear with me, he will see that only Clause 63 deals with such shares. Clause 64 has nothing to do with preference shares. It is an innovation in company law to make provision for shares to be issued at a discount. The person for whom

the Minister has apparently much concern, the creditor, might easily be misled. From time immemorial the practice of company law has been against allowing shares to be issued at a discount. Some authority is given for this change, though I have not had an opportunity of seeing the references and of ascertaining under what conditions the alteration has been made elsewhere. Here the only protection is that it has to be sanctioned by the court. This is an entirely new step in company legislation. Why should we in this State with its infantile problems and industries plunge into law that has been made for far different conditions, and which is entirely contradictory to the principles handed down through the ages in respect of company law? We are doing that wholesale.

The Minister for Justice: Are we to stick to tradition?

Hon. N. KEENAN: Is that the Minister's frame of mind? If so, it is absolutely opposed to mine. I am always prepared to stick to tradition until I have reason to believe that tradition is wrong. Tradition represents the experience of the past, of countless generations in many cases, and always represents the wisdom of the ages, and so we stick to it unless there is reason to depart from it. Apparently the Minister thinks that if something has once been the custom it should be thrown on the dump heap.

The Minister for Justice: The hon. member was looking into the future a little while ago and spoke about subsidiary companies being established at Esperance and Broome. Now he talks about tradition.

Hon. N. KEENAN: Let the Minister put himself in place of any of the judiciary and let it be brought to his mind that Parliament has seen fit to give liberty to issue shares that are discounted. Remember, too, that that would be at a discount provided shares had already been fully paid for. This proposal affronts all the traditions handed down as ruling company law, and I do not wish to see those traditions thrown on one side without any protest. Whoever heard of any demand for this in Western Australia? That is what we have been asking the Minister with regard to every clause. I request the Minister to justify the introduction of this entirely new principle.

The MINISTER FOR JUSTICE: It seems to me that if there is anything new the hon. member opposes it. On the one hand he says he believes in tradition and on the other hand he looks to the future. This is something new to the State, but it is not new to the other States of Australia, and the provision is in conformity with what is required elsewhere. It is subject to a special resolution of the shareholders, and that again is subject to the court, so there are plenty of safeguards. When fresh money is wanted this gives opportunity to secure it and if shares have dropped in value they may be issued at a discount. Seeing that the company has full control and is in its turn controlled by the court, there is no harm in the provision. I do not see that there will be any fraud.

Hon. N. Keenan: Nobody suggested there would be fraud, but it will be misleading.

The MINISTER FOR JUSTICE: I do not perceive how; it is very clearly stated. Generally speaking lawyers dealing with company law will understand it. No liability companies are not included.

Hon. N. Keenan: Nobody suggested they were.

The MINISTER FOR JUSTICE: Probably nobody did. Because this provision has not been in the Act previously, the hon. member declares that the provision should not be made now. The hon. member says we should not take any notice of the United Kingdom.

Hon. N. Keenan: Did I say so?

The MINISTER FOR JUSTICE: And that we should not take any notice of the provisions in the other States. This matter is safeguarded by a special meeting of the shareholders and by the decision of the court. We should not stop people from acting according to their own judgment.

Mr. WATTS: I do not say this question of issuing shares at a discount did not come up for a certain amount of argument before the select committee. We were told, I think rightly, that in the other States of the Commonwealth these provisions occurred, as well as a number of other provisions which have and will come up for debate, and ought to be incorporated in our law, because it was desired, wherever possible, that companies which carry on business in this State should be registered here, and they would not be

likely to do that unless the same facilities were provided as was the case in the other States. Admittedly there has been no demand in this State for the provision to issue shares at a discount.

This measure, if it is made law, should stand for a considerable number of years and not have to be amended every few months to meet some eventuality or desire which may arise. The inclusion of this clause seems reasonable, although I have some doubt whether shares of a class already issued should be issued at a discount. There has, however, first of all to be a special resolution of the shareholders and then it is subject to the sanction of the court. It is difficult to assume, as the member for Nedlands would have us believe, that the decisions of the court in such matters are given without any regard to the circumstances of the particular cases, but simply because the Legislature happens to provide that shares may be issued at a discount in certain circumstances. This provision may be of advantage to a company whose shares might have to be issued at a discount if they are to be sold at all. I hope the Committee will not reject the clause.

Hon. N. KEENAN: The Minister may understand that an ex parte application is one on which only one side appears. If a statute authorises a company to issue shares at a discount, what would be the duty of the Supreme Court judge? He would say, "I am here to give effect to what Parliament has thought wise. I might think it exceedingly dangerous, foolish and bad, but that does not matter."

The Minister for Justice: It depends on the circumstances.

Hon. N. KEENAN: The application is made in accordance with the section which requires it to be made not as the result of a resolution. The special resolution must specify the rate of discount at which the shares shall be issued. It does not enter into the concerns of the company, or consider whether it is prosperous or needs money to carry on.

The Minister for Justice: Why do they go to the court?

Hon. N. KEENAN: Because they have to do so under this clause. This change of law was made only in 1929 in England after the special committee was appointed, and in 1938 in Victoria. We are hurrying along in this infant State of ours to keep pace with the great business countries in passing laws to deal with big business. The Minister is prepared to gallop down the road but does not know what is at the end of it.

The Minister for Justice: We are too traditional, too orthodox and too conservative in many of our methods!

Hon. N. KEENAN: I prefer being orthodox to being the opposite. The Minister did not give any reasons. He does not care for reasons. All he tells us is that the provision was well considered. On this occasion, as on Clause 61, he has all the other States to back him up.

Clause put and passed.

Clause 65—agreed to.

Clause 66—Reserve liability of company:

Hon. N. KEENAN: The clause provides that a company may, by its articles or by special resolution, determine that any portion of its share capital not called up shall not be capable of being called up except in the event of liquidation, that is, in the event of liquidation being necessary to pay its debts. In Clause 75 provision is made for a company to reduce its share capital and to apply to the court for an order confirming the reduction. The resolution, if not given effect to within two months, will become void. There is an overlapping of provisions. Here we have provision for a company to declare that it does not intend to call up any more of its share capital, except for the purpose of liquidation, and then we have provision for a company to say that it has too much capital, or that its assets have shrunk, or that the capital is excessive in relation to its assets, and it may obtain leave to reduce the capital. The Minister is prepared to give companies all sorts of choices. I do not like this provision although it has been the law for a long time.

Clause put and passed.

Clauses 67 to 70—agreed to.

Clause 71—Power of company to pay interest out of capital in certain cases:

Hon. N. KEENAN: At the outset the clause provides that where any shares are issued for the purpose of raising money to defray the expenses of constructing works or buildings or providing plant which cannot be made profitable for a lengthy period —what is meant by a lengthy period?—the

company may pay interest on so much of its share capital as is paid up for the period and subject to the restrictions stipulated, and may charge it to capital as part of the cost of construction of the work or building or the provision of the plant. The only proviso is that such payment may not be made unless sanctioned by the articles or by special resolution, and no such payment may be made without the approval of the court. Members may say there are two safeguards, but that is the wrong way of looking at it. By this proposal we are authorising a company to pay interest out of its capital; in other words, to pay dividends out of capital, because there is no difference between interest and dividends.

The only saving restriction is that the payment must be authorised by the court. It is no restriction to provide for a special resolution. No one can imagine a shareholder refusing to support a special resolution in the circumstances. What is the necessity for the provision? We have companies that have spent enormous sums on plant. One instance is the Great Boulder mine, which has spent over £200,000. This provision for paying dividends—that is the right word to use—out of capital is a most dangerous innovation, and again I say that the fact of its being subject to the approval of the court is illusory. The court would say that Parliament had approved of this being done and it was not for the court to say Parliament was wrong. Mining companies have erected immense plants, and there has not been any grumble by shareholders that they were not paid 5 per cent. on the amount which in the first place was collected by subscriptions from them and afterwards augmented by the product of the mine. Suppose a new plant represents half a million of money, as other great mining plants might do!

The Minister for Justice: Most of those plants have been built up gradually.

Hon. N. KEENAN: It took a long time to erect these plants. Nearly all the big mines in the State are limited liability companies. Here we have this entirely new provision, and I ask the Minister did anyone give evidence that it was needed in Western Australia?

The MINISTER FOR JUSTICE: The reason for the clause is to induce shareholders to make money available for development purposes. In the absence of inducement it would at times be highly difficult to get money for construction work. The provision appears in nearly all the Australian Acts.

Hon. N. Keenan: Did anyone in Western Australia ask for this?

The MINISTER FOR JUSTICE: Nobody asked me, and nobody has objected to it. It is a necessary provision. There are plenty of safeguards, including a special resolution of shareholders and an application to the court.

Hon. N. Keenan: Is there a scrap of evidence in favour of this?

The MINISTER FOR JUSTICE: No. It was discussed by the Royal Commission, whose members considered it a necessary provision. The only reason for the hon. member's objection is that this is something he never came across before.

Hon. N. Keenan: Do you realise that it means paying dividends out of capital?

The MINISTER FOR JUSTICE: I do not.

Hon. N. Keenan: Well, that is the trouble.

The MINISTER FOR JUSTICE: It is necessary.

Mr. TONKIN: I do not like this provision, especially in existing circumstances, when interest rates are falling. It could easily lead to a complete extinction of the capital. If the interest rate offering outside is 3 or 4 per cent., then under this provision shrewd shareholders can form a company, take a very long time to bring it to the stage of construction, purposely delay the construction work, and during that period draw 5 per cent. interest on the money they have invested. After they had used up most of the capital that should have been applied to the working of the company, they would get out and dispose of their shares to unsuspecting persons. For years we understood that it was reprehensible to attempt to pay dividends out of capital. Auditors were always on the lookout for such cases. But Legislatures are now giving facilities for payment of dividends out of capital.

The Minister for Justice: In certain circumstances.

Mr. TONKIN: A special resolution is a resolution passed by three-fourths of those attending a shareholders' meeting. The inter-

ested shareholders would turn up, and to get a special resolution passed would be quite easy. The general run of shareholders will not be aware of the position when the shrewd shareholders get out. In certain circumstances the court may decide to have an inquiry made into the conditions under which interest ought to be paid, but the court would not take such action unless it had reason to be suspicious. We have not had any indication that the court of its own motion would act in that way. Shrewd persons will see in this provision an opportunity to get a higher rate of interest than they could otherwise obtain. They will form a company, obtain a rate of interest at 5 per cent. for a considerable time, and then —when insufficient capital is left to carry on the business of the company—they will sell their shares.

Mr. Watts: Paragraph (e) deals with the rate of interest.

Mr. TONKIN: The rate will be 5 per cent.

Mr. Watts: Or such lower rate as may be prescribed.

Mr. TONKIN: What would cause the court to strike a lower rate?

Mr. WATTS: I move an amendment—

That in lines 3 and 4 of paragraph (e) of Subclause 1 the words "by the Rules of Court" be struck out.

The effect of the amendment will be that regulations will be framed and the rate fixed by regulation. Thus the fears of the member for North-East Fremantle will be overcome.

Hon. N. Keenan: I desire to move to amend paragraph (d).

The CHAIRMAN: The amendment before the Chair must first be withdrawn.

Mr. WATTS: I have no objection to withdrawing my amendment temporarily, if the Committee agrees.

Amendment, by leave, withdrawn.

Hon. N. KEENAN: I move an amendment—

That in line 4 of paragraph (d) of Subclause 1 the words "next after the half year" be struck out.

The court need not go to this length. If the amendment is carried, the maximum period would be a period which in no case shall extend beyond the close of the half year during which the works or buildings have been actually completed or the plant provided.

The MINISTER FOR JUSTICE: It seems to me that this a limitation of the court. The hon. member proposes to shorten the time by six months and thus take power from the court.

Mr. Tonkin: It is giving a direction to the court; what is wrong with that?

The MINISTER FOR JUSTICE: It seems to me not worth worrying about.

Hon. N. Keenan: It is not a question of whether it is worth worrying about but whether it is right or wrong.

The MINISTER FOR JUSTICE: Why cut out six months?

Hon. N. Keenan: Because I think the period is too long.

The MINISTER FOR JUSTICE: I do not think so. The court has discretion. It should know what to do and when the work is completed. Why not leave the matter to its discretion?

Mr. WATTS: The effect of the amendment as I see it is this: If the work is finished at the 30th September, as the Bill stands the court can order interest to be paid up to the 30th June the next following year. That is another nine months after the work is completed. The member for Nedlands wants to make the power of the court cease on the 31st December, in the year in which the work was completed; that would be a period of only three months over and above the time when the work was finished. I can see no objection to that. It seems to me that if the interest is paid up to the conclusion of the half year during which the work is finished, that should be sufficient. I do not mind restricting the power of the court to that extent.

Amendment put and passed.

Mr. WATTS: I move an amendment—

That in lines 4 and 5 of paragraph (e) of Subclause 1 the words "by the Rules of Court" be struck out.

Mr. Hughes: Who will prescribe them?

Mr. WATTS: The Governor-in-Council.

Mr. Hughes: Is the provision in the Bill?

Mr. WATTS: Yes.

Amendment put and passed.

Hon. N. KEENAN: Can the Minister explain paragraph (f)? Assume that shares are fully paid at 20s. and then this interest is paid which is practically a dividend, what is the position? It cannot possibly act as a

reduction of the amount that has been paid up.

The Minister for Justice: As a lawyer, perhaps the hon. member can explain it.

Mr. HUGHES: When people have their capital returned as interest, has that capital to be restored out of the subsequent profits before they can get further dividends, or can they get all the capital back by way of interest and then get dividends on the capital they have already got in their pockets? The paragraph says that where a party gets interest back out of capital, so far as the payment back is concerned it would be deemed not to be a reduction of capital. Say a person subscribed a pound for a share and received 10s. back by way of interest; apparently the capital is still deemed to be £1 though part has gone back to the shareholder. It seems to be a natural corollary that if portion of the capital is returned to subscribers as interest, the capital has been reduced. How could it be otherwise? If £1 is subscribed and 15s. is then spent in the purchase of machinery and 5s. is repaid to the subscriber, there is only 15s. capital left.

The Premier: They treat it in the same way as a loan from anybody else; they are paying interest for the time being on work that cannot be reproductive.

Mr. HUGHES: I could understand that if there were a provision in the Bill that where interest has been paid out of capital before any dividend can be paid out of the profits, that capital has to be restored. But what sense is there in saying that capital is not reduced when in fact it is? Say a shareholder has 5s. out of his £1 returned to him as interest. When the company begins to earn dividends, under this provision he will get a dividend on his 20s. and not on 15s. because we lay it down here that the capital has not been reduced. We should strike out the whole thing. If we strike out the word "not" the position might be created that the person who received the interest might be called upon to repay it.

The Premier: What difference would it make if the share capital is treated as borrowed capital?

Mr. HUGHES: There has always been a fundamental objection to paying back capital by way of dividends; or paying back other than on an application for a reduction of capital which is done by application to the court, and the words "and reduced" have then to be added to the company's name. The capital has not been reduced when it is paid back by way of interest, unless the shareholder has the obligation to refund it, or unless there can be no dividends out of future profits until that payment is recouped.

The Premier: It is money advanced for plant for the time being.

Mr. HUGHES: If £10,000 is subscribed for plant and £7,500 is put into the plant and £2,500 used to pay interest, it cannot be said that there is £10,000 worth of plant.

The Premier: That is what this provision is for. If they pay £2,500 in that manner it brings the capital up to £12,500 instead of £10,000.

Mr. HUGHES: I will accept that.

The Premier: It is interest payable on the construction of works during the period of construction, out of capital. The Government does that.

Mr. HUGHES: That is not what this says. If a company borrowed £10,000 from a different source to provide plant and machinery and paid another £2,500 interest before that plant became productive, it would be charged as a capital investment at £12,500.

The Premier: That is what this says.

Mr. HUGHES: No. In that case the £2,500 would come out of profits, but this provides for the return of capital. I move an amendment—

That paragraph (f) of Subclause 1 be struck out.

Hon. N. KEENAN: The Premier is correct in saying that if interest is paid during the course of construction the capital value of the plant is the cost of the plant plus the interest. But will he look at paragraph (f) and tell us what it means? It is a conundrum.

Mr. McDONALD: This clause is quite intelligible. It has been in the English Act for 12 years. It says that if a company proposes to construct some works which may take some time before they become reproductive, the company may pay during the period of construction interest to the shareholders out of capital, which normally cannot be done. If every shareholder subscribes 20s. for his share, the company may, in respect of each £1 of capital spend 19s. in construction and take 1s. of that capital during the period of construction and pay it to the shareholder by way of interest

on the £1. The Act says that instead of the 1s. being deemed to be a return of capital, it shall be taken as part of the construction of the works. The works will therefore be deemed to have cost 20s. The clause goes on to say that whereas normally the payment of that 1s. would be a reduction of capital and a return of capital, that shall not be the case in the instance we are now discussing. To make it clear that the capital of the shareholder is not reduced, paragraph (f) provides that the interest paid to him, although taken out of capital, shall not be regarded as a return of capital.

Mr. TONKIN: I should like to know what would be the position when an endeavour was made to pay dividends. Seeing that payment had already been made out of capital, if there was a surplus of income over expenditure subsequently, must the company first make good the charge against the work by way of interest?

The Premier: No.

Mr. TONKIN: Then the company must be paying dividends out of capital.

The Premier: No, it would be paying interest. We did that with the East Perth Power House, which took five years to construct.

Mr. TONKIN: That is a different proposition.

The Premier: No, a company may do that with regard to its shareholders.

Mr. TONKIN: A company may wish to erect a plant costing £10,000. If it borrowed £10,000 and constructed the work it would be entitled to charge against the construction the amount of money borrowed, plus the interest. When the work reached the producing stage and the company wanted to pay dividends, it would have to write off against its returns a proportion of the interest in order to put the asset at its proper value in the books.

The Premier: No, the value of the asset would be recognised as £10,000.

Mr. TONKIN: It would be necessary to depreciate the asset, and an asset loaded with interest on top of the amount invested would have to be depreciated to a greater extent than if it was not so loaded.

The Premier: It is a proper charge.

Mr. TONKIN: To prevent payment of dividends out of capital, it would be essential to charge against profit and loss account in subsequent years a proportion of the interest so paid.

The Premier: That would come under depreciation.

Mr. TONKIN: Would there be an obligation on the company to make good what is, in effect, a reduction of capital before starting to pay dividends to shareholders?

The Premier: No, it would charge depreciation at a reasonable rate, and that would reduce the capital liability by the amount of depreciation written off.

Mr. TONKIN: Of course that would result in the extinction of the liability over a period of years.

Mr. McDONALD: If a company contemplated erecting works at a cost of £19,000 and obtained £20,000 capital from the shareholders and the works took a year to erect, it would pay 5 per cent. to the shareholders and charge the cost of the works at £20,000. An alternative would be for the company to have a capital of, say, £5,000 and borrow the balance necessary to erect the works. If this were done, the company would be entitled to charge as the capital cost of the works the actual cost of erection, plus the interest. It seems to be virtually the same thing when shareholders use their own money to finance the period of construction as it would be if they borrowed the money and paid interest on it.

Mr. HUGHES: If the explanation of the member for West Perth is right, a company borrowing money for any purpose could legitimately charge the interest to capital expenditure.

[*Mr. Marshall resumed the Chair.*]

The Premier: No, it could not.

Mr. HUGHES: It is of no use saying that the value of the asset is the cost plus the interest, because the interest is a matter quite apart from the asset.

The Premier: You will find that, in addition to the contract price, you have to allow something for the interest during the period of construction.

Mr. HUGHES: Suppose a man buys a worker's home for £800 and, while it is being constructed, pays £20 for interest, the board says the capital value of the house is £820. If I told a buyer that the capital value was £820, he would reply, "Nonsense; I can build it for £800."

The Premier: The contractor would want progress payments while the place was being built, and the man would have to pay the interest on them.

Mr. HUGHES: But the house would be worth only what it cost, namely £800.

The Premier: No, £820.

Mr. HUGHES: Suppose the Premier bought a motor car on terms!

The Premier: Keep to the one item.

Mr. HUGHES: Well, the house cost £800 to build.

The Premier: The contractor would want progress payments, which cost money.

Mr. HUGHES: But the capital value is only the cost of the building. If the man was short of money and had to pay interest to finance the building, the interest would be no part of the capital cost of the house. Anyone with the cash could get the house built for £800.

The Premier: He has to pay interest on the money for four or five months, which means that he loses £20.

Mr. HUGHES: He could buy the house ready-made.

The Premier: If he paid cash, his money would not be earning interest.

Mr. HUGHES: It is the same as a man buying a motor car on terms.

The Premier: He has the immediate use of the car.

Mr. HUGHES: It matters not whether the investment is a motor car or anything else. One has to pay interest if one cannot pay cash, and a new buyer will not pay any more than the capital value.

The Premier: One writes depreciation off the capital value.

Mr. HUGHES: The Taxation Commissioner will allow full interest to be written off, but not depreciation to be written off.

Amendment put and negatived.

Clause, as previously amended, agreed to.

Clauses 72, 73—agreed to.

Clause 74—Special resolution for reduction of share capital:

Hon. N. KEENAN: I move an amendment—

That the following be added to stand as Subclause 3:—"(a) Such resolution and the intention of the company to apply for an order of the Court confirming same shall be published in a daily newspaper, circulating in Perth, twice, at intervals of one week between such publications, within seven days of the date of passing such resolution. (b) Any creditor or shareholder may appear before the Court on the hearing of such application."

I discussed this clause with the Minister some time ago, and I believe he has an amendment to move. The object of my amendment is to give information to persons interested, by advertisements published twice in the week.

The MINISTER FOR JUSTICE: I have no objection, but I want to amend the amendment by adding the following words to paragraph (a):—"Subject to the order of the Court any creditor or shareholder may appear before the court on the hearing of such application."

Hon. N. KEENAN: Who applies for the order? He would have to be a shareholder or a creditor.

The Minister for Justice: Yes.

Hon. N. KEENAN: Surely the amendment on the amendment means duplicating applications to the court. If this is agreed to, a shareholder would have to appear in Court or Chambers to ask for leave to appear. The whole application would be heard in Chambers, but the applicant would have to appear twice, instead of only once as under my amendment.

The Premier: The object is to avoid frivolous applications.

Hon. N. KEENAN: That could be done in any event. It would be difficult for him to attend the hearing of an application by the company, as he might not know the date.

The CHAIRMAN: Does the Minister propose to press his suggested amendment?

The Minister for Justice: No.

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

Clauses 75 to 88—agreed to.

Clause 89—Bringing in certificates to company for transfer:

Hon. N. KEENAN: I draw the Minister's attention to what appears to be a typographical error. Should not the word "transferor," in line 2 of Subclause 1 read "transferee"? The transferor is the person who executes the transfer. He may invoke the aid of the company to get possession of his share certificate, which may be held by a bank, a money lender or possibly by a trustee. He can always execute a transfer.

The Minister for Justice: The clause, as printed, is correct.

Mr. McDONALD: This clause is taken from the Victorian Act and its meaning is

clear enough. It is designed to cover the familiar case of a man who sells shares, particularly mining shares, and hands the transferee, or the broker of the transferee, the transfer, usually signed in blank. Very often these transfers are not registered. They may pass from hand to hand, the transfer being blank. The transferor remains liable in the event of the company going into liquidation. He is the person on the register of shareholders. He may want to have the share certificate and the transfer on it brought into the company, to have the transfer registered so that the transferor would be taken off the register of members, and be relieved of his liability in the case of the company going into liquidation. I think that is the reason for this provision.

Mr. WATTS: I have looked at Section 66 of the Victorian legislation from which these words are taken and judging from the wording of that section the word "transferor" is rightly used in this clause for the reason stated by the member for West Perth.

Clause put and passed.

Clauses 90 to 94—agreed to.

Clause 95—Perpetual debentures:

Hon. N. KEENAN: I would like to draw the Treasurer's attention to this clause. It keeps in existence a mortgage debt notwithstanding that the whole scheme of a company may alter, that it might be in a position to pay off the debt and borrow money at a lesser rate of interest, or might be in a position to redeem it without borrowing at all.

Clause put and passed.

Clauses 96 to 102—agreed to.

Progress reported.

House adjourned at 11.32 p.m.

Legislative Council.

Thursday, 27th November, 1941.

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

QUESTION—TAXATION.

Betting Fines as Allowable Deduction.

Hon. J. CORNELL asked the Chief Secretary: In view of the admission by the Premier that fines imposed by the law courts in connection with illegal starting-price betting are allowable deductions for income taxation purposes, will the Chief Secretary inform the House whether these deductions are applicable to the actual person fined, or are they allowed to the persons who control and conduct the premises wherein the offences occur?

The CHIEF SECRETARY replied: The deductions are applicable to the proprietor whether the fine is against the proprietor or his employee.

BILLS (3)—THIRD READING.

1, Rights in Water and Irrigation Act Amendment.

Returned to the Assembly with amendments.

2, Plant Diseases (Registration Fees).

Returned to the Assembly with an amendment.

3, Law Reform (Miscellaneous Provisions).

Passed.

BILL—METROPOLITAN MARKET ACT AMENDMENT.

Report of Committee adopted.