Legislative Assembly,

Wednesday, 5th September, 1906.

THE SPEAKER took the Chair at 4·30 o'clock p.m.

PRAYERS.

QUESTION—SEWERAGE WORK, MINIMUM WAGE.

MR. TROY asked the Minister for Works: 1, Has a minimum wage clause been inserted in the sewerage contracts now being carried out by Messrs. Atkins and Law and others? 2, If so, why is it not being observed? 3, Is the Minister aware that this work is particularly dangerous to the workmen, and requires the employment of specially skilled miners? 4, Is he aware that the wage now being paid on this work is 8s. 6d. per day of eight hours, leading hands 1s. per shift extra, but no extra pay for overtime? 5, Is he of opinion that this rate is an equitable rate of pay for skilled miners in Perth? 6, Will he include in the conditions for all future contracts a stipulation for the payment of a fair rate of wages as a minimum rate?

THE MINISTER FOR WORKS replied: 1, Subclause 3 of Clause 26 in General Conditions of Contract reads: "All persons employed by the contractor on daily wages in performance of any of the works herein referred to shall be paid by the contractor at the current rate of wages applicable to the trade at the place where they are so employed." 2, The department is not aware of any breach. 3, I am advised that the work is not particularly dangerous, and does not include many of the risks covered by mining operations. 4, No. 5, No representations have been made to the department in connection with the wages paid. 6, Subclause 3 of Clause 26 referred to in No. 1 provides for a fair rate of wages.

QUESTION—RAILWAY UNIFORMS, TENDERS.

MR. BATH (for Mr. Johnson) asked the Minister for Railways: 1, Are tenders for supply of railway uniforms now being considered? 2, If so, will he personally see that a standard rate of wages be guaranteed to those employed in the manufacture of these uniforms?

THE MINISTER FOR RAILWAYS replied: 1, Tenders were accepted on the 1st inst. 2, The following clause appears in the conditions of contract:—"All persons employed in the performance of any work in connection with the contract shall be paid at the current rate of wages locally applicable."

QUESTION—DIVIDEND DUTY COLLECTION.

MR TAYLOR asked the Treasurer: 1, Has every company in this State which earns profits furnished the Treasurer with copies of their balance-sheet annually, to enable him to assess the value of every dividend, profit, advantage, or gain intended to be paid or credited to or distributed among any members of such companies, as is required by the Dividend Duty Act? 2, If annual returns are not sent in by all companies, has the Treasurer any other means of assuring himself that taxation is not being evaded? 3, If the present law is not stringent enough, does the Treasurer intend to ask Parliament this session to amend it?

THE TREASURER replied: 1, No. Under Section 6 of the Dividend Duties Act 1902, companies trading in Western Australia, and not elsewhere, are only obliged to send in a balance-sheet after declaring a dividend. Companies trading in Western Australia and elsewhere are obliged to send in a balance-sheet annually. 2, No. 3, Yes; instructions were given to draft an Amending Bill last week.

PAPERS PRESENTED.

By the MINISTER FOR MINES: State Batteries Inquiry Board's Report.

BILL—BREAD ACT AMENDMENT.

Introduced by MR. VERYARD, and read a first time.

MOTION—GOLDFIELDS WATER CATCHMENT.

LANDOWNERS NEAR MUNDARING.

MR. A. C. GULL (Swan) moved—

That in the opinion of this House the Government should consider the advisability of so amending the By-laws of the Goldfields Water Supply Catchment Area as to enable freeholders within that area to utilise their holdings to better advantage than at present, or as an alternative to have them resumed by the Government at a price to be fixed by arbitration.

He said: In asking the House to assent to this motion, I shall confine myself to the by-laws regulating freeholds on the reserves within the catchment area. It must be borne in mind that most of the estates that have the misfortune to be so situated had been for many years prior to the building of the Mundaring Weir in possession of their owners. I will refer as briefly as possible to the gist of the by-laws, without inflicting too much reading on the House. I must first call attention to the definition of high-water mark:—

The highest point on either bank of any watercourse to which the water of such watercourse has risen, or may, owing to the construction of the Helena Weir or other works incidental thereto, at any time rise.

The first by-law that has any particular bearing on the question at issue is No. 8. The preceding by-laws prescribe certain sanitary conditions which are necessary, or at all events advisable, on all farms whether situated on the catchment area or elsewhere. But No. 8 deals with the manuring of land, and provides that—

No person shall deposit or permit to be deposited any fœcal matter, refuse, dung, manure, or other offensive matter in or near any watercourse within the catchment area, or within three hundred yards of high-water mark, or in any place where in the opinion of the inspector storm waters will be liable to wash such matter into any watercourse.

In the hilly country where these farms are located it is extremely difficult to find any patch of ground not within three hundred yards from a catchment, and on which offensive matter will not eventually drain into any watercourse; and if it were possible to find any such patches of ground there would be no incentive to manure them, because they would be ironstone and forest country, which could not be used except for grazing purposes, and then only if grazing were allowed on the catchment area. By-law No. 9 provides that no stable, cowshed, goat-shed, or any shed for stock shall be erected within three hundred yards of high-water mark; and in the event of such building being in existence, the inspector may order the removal of that building; and in this and in every case where removals are necessary the cost of such removal shall be borne by the owner and occupier of the land. It is impossible to use any building for the keeping of fowls, ducks, or other domesticated animals at any place less than three hundred yards from high-water mark. By-law No. 11 provides that manure or other refuse shall not be allowed to accumulate around such buildings, and must not be used on the land as fertilisers, but shall be disposed of as the inspector may direct. No. 13 says that no animal shall be stabled, housed, or yarded within 300 yards of high-water mark. No. 14 says that no person shall, without written permission, allow any horse, cattle, sheep, goat, duck, goose, fowl, or other species of live stock to stray over any portion of the catchment area. No. 15 says that no person shall keep any swine in any part of the catchment area. That has been amended by agreement, and the amendment stipulates the same clause as exists in many others, that they shall not be kept within 300 yards of any high-water mark. Consequently the amendment is of little or no use to the man in occupation of a farm, because of necessity his buildings, sties, and so forth for animals must be within reach of his homestead to be of any use to him whatever. No. 18 is one of the most objectionable by-laws. It deals entirely with manures and so forth, that may not be used within 300 yards of any catchment within the water service. No. 21, the last to which I take exception, and I think the most arbitrary of the lot, provides that it shall be lawful for the inspector or other authorised officer, at his discretion, at any reasonable hour, with or without notice, to enter any house or premises for the purpose of ascertaining whether any act or thing is being done or permitted within such house or premises in breach of the by-laws, etcetera. I am not for a moment going to say that these by-laws are not necessary in the interests

of the public health. I admit they are necessary; but if they are necessary it only shows that it is next to an impossibility for any man who has the misfortune to own an estate within the prescribed area to utilise it to its proper value. If these by-laws are not to be enforced in their entirety, I see very little or any use for them, because necessity may arrive at any time when the whole of the 35,000 acres, which I think is the amount of land alienated or in process of alienation, may be stocked; and directly these areas are stocked any relaxation that may be permitted by the authorities at present must of necessity cease. I know that at present a certain amount of stock, sheep and so forth, is permitted in the area; but what is to be the position as soon as the whole of the owners in that area place stock on their lands? If they are to be permitted to place stock in contravention of the by-laws, the latter are of no use. I am not arguing that they are of no use. I admit their necessity, but it points out that the man in the unfortunate position of being in the area is in a very invidious position. The value of the farm to a man is, in the first place, what he can make out of it; or if he does not want it himself, that he may lease it or sell it. I ask any member of this House whether, with these by-laws in existence, a man would dream for one instant either of leasing or buying any freehold property in that catchment area. I think, under the circumstances, any member would immediately say that he must, if he bought or leased a block, so run his head against the by-laws that the occupation of the land would be a farce and an unprofitable undertaking. I do not say for one moment that the secretary of the water scheme is going to drastically enforce the provisions of these by-laws; but he appoints inspectors, and those inspectors are bound to justify their existence, and they do it by making various complaints from time to time. Though these complaints are in some instances justifiable, in many instances they are not. It is necessary to give the officers free control in the interests of public health, but every argument points to the one thing, that the people in the catchment area are in a most unfortunate position. As I said a moment ago, if the various holders wished to stock their properties they would immediately be blocked; and if that is the position, I cannot help saying that as time goes on the position will be more acute, and eventually the Government will need to take these holdings and relieve the present holders of their properties. I do not think for a moment that any one will argue that it will not happen in the future; and if it will happen, it is better for the Government, when the holdings are in a lesser state than they will ultimately be, to consider the question of relieving the present holders in the area of their properties. Even if I fail for various reasons in this motion, I assert that this is a matter worthy of most serious consideration by the Government and by members of the House, whether even in the event of my failing to afford relief to these unfortunate men, they are to be subject to the land tax. If there is no relief to be afforded to them, surely the Government should take into consideration the fact that under the present conditions it is practically an impossibility for any man in that catchment area to improve his holding to such an extent as to be able to claim a rebate under the land tax. I am going to ask the Treasurer on recommittal of the Land Tax Assessment Bill to bear this in mind, and to ask him whether he will not see that my contention is a justifiable one, and to ask him to afford relief in that direction at any rate, if relief cannot be afforded in the direction suggested in my motion.

On motion by the MINISTER FOR WORKS, debate adjourned.

RETURN—DIVIDEND DUTY COLLECTION.

MR. G. TAYLOR (Mount Margaret) moved—

That there be laid upon the table a return, showing—1, The total amount collected under the Dividend Duty Act during the last financial year. 2, How much of that amount was levied on companies' profits apart from declared dividends which are paid in money, and how much of that has been collected. 3, What amount has been levied on money earned by companies within the State and invested in ventures outside the State, and how much of that has been collected.

This return would enable members to ascertain exactly how much taxation had been received under the Dividend Duty Act, and it would enable them, when the

financial statement was made by the Treasurer, to discuss it better. The information could have reasonably been covered by questions, so there was no necessity to labour the point, but members should have this information before we went in for fresh taxation proposals. We were informed by the Treasurer that it was intended to amend the Dividend Duty Act. This return would show us the necessity for its amendment.

MR. HOLMAN seconded the motion.

THE TREASURER (Hon. F. Wilson): The procedure adopted by the mover was the proper one, as the information asked for could hardly have been given in the form of reply to a question. It would take some time to get out the information. So far as Nos. 1 and 2 were concerned, he was willing to have the returns prepared and laid on the table; but with regard to No. 3, it was impossible for the Government to supply the information asked for. There were no means of ascertaining how much of the money earned by companies operating in this State was invested outside the State; and though it might be known that certain companies operating here did invest money outside the State, yet such investments were not shown in the balance-sheets. Even though these were shown in the balance-sheets, there were certain companies operating within the State and not elsewhere that were not compelled under the Act to send their balance-sheets to the Treasury. They had to make returns to the Treasury only as to those portions of their trading operation on which they had declared a dividend. His desire was to give the House all the information in his power. He wished members to be conversant with the method in which the Act was administered, and when the annual Financial Statement was presented to the House shortly, it would be seen exactly what amount had been obtained from these duties. The mover should agree to the withdrawal of paragraph 3 of the motion, as it was impossible to supply the information asked for therein.

MR. HOLMAN was pleased to have the assurance of the Treasurer that it was intended to amend the Dividend Duty Act this year. An amendment was necessary, for thousands of pounds earned here were sent out of this State every year for investment in foreign countries. He had referred to the question when speaking on the Address-in-Reply, and instanced the case of the Lake View Consols Mining Company, which sent about £70,000 for investment in Broken Hill and £50,000 or £60,000 to China. It was a grave injustice to this State that a company had made some hundreds of thousands of pounds profit here, and instead of paying duty on that money invested it in foreign countries, and even though dividends were declared in those countries, this State which had supplied the money reaped no dividend duty from those outside investments. The Treasurer should take such steps in the future as would insure that this State should receive that to which it was entitled from the profits made within the State.

MR. TAYLOR (in reply): Section 9 of the Dividend Duty Act dealt with companies doing business in this State, and provided that—

> The Minister may require any company to forward to him any farther or other balance-sheet and documents which in his opinion are necessary to enable the amount of duty payable to be correctly assessed or ascertained, and may require such balance-sheets and documents to be verified by statutory declaration.

That section appeared to give the Treasurer full power to ascertain the exact position of any company operating in this State. Last year the Adelaide Steamship Company increased its capital and distributed the new shares amongst its shareholders. Such proceeding should come within the interpretation clause of the Act, which read:—

> "Dividend" includes every dividend, profit, advantage, or gain intended to be paid or credited to or distributed amongst any members of any company.

Beyond doubt the money represented by the new capital was taxable under the Act; hence his motion. There were other companies, such as the Perth Gas Company, which started a few years ago with a capital of something like £20,000, its capital value now being about £100,000; and this increase of capital was distributed by the issue of preferential shares to the shareholders. The intention of the Legislature in passing the Act was to give power to the Treasurer to tax those companies which were making huge profits out of their operations within this State. If the existing Act did not give the Treasurer

sufficient power to carry out that intention it should be amended to give more power. If there was not the necessary machinery in existence by which that information sought in the third part of his motion could be furnished, it would be idle to call on the Treasurer to supply it. In the circumstances he would withdraw the third part.

MR. SPEAKER: Some member might move an amendment to strike out the third request in the motion; or the Minister might supply such of the particulars as he was able to obtain.

MR. TAYLOR would allow the motion to stand, the Treasurer to supply the information asked for in parts 1 and 2.

Question put and passed.

MOTION—ELECTORAL, EAST FREMANTLE, TO DECLARE VACANCY.

Debate resumed from the 29th August, on the motion by Mr. Johnson "That in consequence of the decision of the Chief Justice in the matter of the petition of Angwin *v.* Holmes, lodged under the Electoral Act 1904—that the election of Holmes, the sitting member, was void—the seat of the hon. member for East Fremantle be declared vacant."

THE ATTORNEY GENERAL (Hon. N. Keenan): Before dealing with the matter raised by the member for Guildford, I should like to congratulate him on the excellent manner in which he laid his case before the House, and also on the fact that, not being a professional man, he nevertheless dealt with the legal points in a manner that reflects the highest credit on his acumen, and on the diligence which he brought to bear on the subject matter in question. I notice that the member, when rising to address the House, pointed out that it might be necessary to some extent to weary members with certain long quotations which it was his duty to make. I can assure the hon. member that personally no such result was arrived at. On the contrary, I can assure him he maintained, as far as I was concerned, my fullest interest in the matter laid before the House to the end of his speech. Before dealing with the subject matter raised, I desire to rebut a possible suggestion that there was any delay on the part of those responsible for carrying out the judicial functions in this country, as to the hearing of that election petition. In regard to that the dates speak for themselves. It appears that the election was held on the 27th October. The election petition was filed on the 14th December, and the solicitor for the petitioner, in preparing his case, took out various summonses at different times for the purpose of examining witnesses. And may I point out, it was entirely in his hands to have taken out, a summons for all the witnesses at the one time. But no doubt acting in the interests of his client, he proceeded from time to time, as the information came to his hand. Before a petition of this character is heard, it is necessary that a summons should be taken out for what is called directions. The parties appear before a Judge to fix a date. The date is fixed upon for the hearing of the petition. That application was made for the first time on the 9th March, 1906, and a date was then fixed for the hearing of the petition, the 28th March, on which date the petition was first opened. The hearing of that petition lasted until the 2nd April, and judgment was then reserved. I find on examination of the records that on the 3rd April the Chief Justice was sitting in chambers discharging judiciary work, for which there was no other Judge available at the time. On the 4th and 5th April he was discharging the same work, and on the 6th, the 9th, the 10th, and the 11th he was sitting in the Full Court. It is perfectly clear, therefore, that he had no possible opportunity of considering the case of the petition and forming his reserved judgment until a date after the 11th April, and on the 12th of April judgment was delivered. That judgment covered 15 pages of foolscap, so that members will—and I say this in justice to the judiciary of the State—see that no time whatever was wasted as far as the Judges were concerned, or the particular Judge who heard the election petition, or that any reflection which conveys that was not justified by the circumstances of the case. It would be also impossible to shut one's eyes to the fact that the member for Guildford held a dual brief. On the one hand he was prepared to argue, and did argue, very ably, the legal

and constitutional question arising out of the circumstances of the East Fremantle election petition. On the other hand, it is apparent on the face of it that he wished to place the conduct of one of the parties to the election petition in the most favourable light. I am led to believe that because he pointed out to members that they would realise the importance of the facts he would lay before the House in the forthcoming election, the facts dealing with the possible delay. Let me say before I touch on the subject matter of most importance, that I refrain wholly and entirely from entering on that field of inquiry. I shall decline respectfully to follow the member in such an inquiry. I have only one duty to discharge, and that duty is in no way connected with making observations, whether favourable or unfavourable, which reflect on one party or the other in the election petition. Only one other somewhat extraneous matter I must refer to, and that is the possible inference the House is asked to form from the attitude and utterances of the Chief Justice on the occasion of the hearing of the election petition concerning the East Fremantle election. The member for Guildford pointed out that the Chief Justice refused a stay of proceedings, stating that the decision was final, and gave no right of appeal. Members might draw from this the inference that, as far as the Chief Justice was concerned, he looked on it as an Act of such a character that there was no right of appeal whatever. If that inference is to be drawn, let me point out that in the case of the Geraldton election petition, where the same point was raised, perhaps on more mature judgment the Chief Justice refused to pronounce any decision until the matter had been submitted to the High Court of Australia, that is until the East Fremantle election petition had been heard and determined. I am entitled to go this far, that if any inference is to be drawn from the conduct of the Chief Justice, an inference of a totally different character should be drawn from what he said at a later date when his judgment must have been of a more mature character. That is a matter I only refer to because it might influence the opinions of members, and might influence them, I will not say improperly because that word is open to misconstruction, but in an improper manner because such inferences should not be made. Now to deal with the real subject-matter raised by the speech of the member, I draw the attention of the House to this fact, that it begins really with a letter written by Mr. Le Messurier, solicitor for the petitioner, to His Excellency the Governor immediately after the decision of the election petition. In that letter Mr. Le Messurier said he was instructed by his client Mr. W. C. Angwin, who was a candidate for the seat, to inquire—

> Why the writ for the election for a member to represent the East Fremantle electorate in the Western Australian Legislative Assembly has not yet been issued. Under the Electoral Act 1904, Clause 171 (3), when an election has been declared absolutely void, as has been the case of the election on the 27th October last of Mr. J. J. Holmes, a new election shall be held, and under Clause 29 of the Constitution Act Amendment Act 1899, the writ for such a new election shall be issued by the Governor, except as provided in Section 30 of the said Act. The case in point is not provided for under the said 30th Section, and it follows therefore that the writ should be issued by Your Excellency. The order of court declaring the election absolutely void was taken out on the 18th April last.

I refer to that because one must recognise that as far as any legal dicta voiced by the member for Guildford are concerned, he is only doing so under instructions from a legal practitioner, who is not present in the Chamber. I do not say that in any sense derogatory to the member, because if he belonged to the profession he would be equally able to form strong opinions for himself. If it can be clearly shown, as I will in a moment show, that the opinion is one that no one applying common sense to the statutes would express, we should take every other information supplied to the member with considerable doubt. In the Constitution Act the section is so clear that even an articled clerk, one of the derided individuals referred to when dealing with the Legal Practitioners Bill, and who it was stated were only fit to sweep out offices—one of these would be fully capable of determining the section. Under Section 30, which I propose to read, it is provided:—

> Whenever a vacancy (otherwise than by the efflux of time, in the case of a member of

the Council) occurs in either House from any cause, the President or Speaker, as the case may be, upon a resolution by the House declaring such vacancy and the cause thereof, shall cause a writ to be issued for supplying the vacancy; and in case of a vacancy caused by death or resignation, or the acceptance of any of the principal executive offices of the Government liable to be vacated on political grounds, the President or Speaker may issue such writ without such preceding resolution when Parliament is not in session, or when such vacancy occurs during any adjournment for a longer period than seven days of the House affected by the vacancy.

Surely that language is so sufficiently clear that any layman should understand it. If a vacancy arises by reason of death or resignation, or the acceptance of any of the principal executive offices of the State, the Speaker or President may issue a writ provided the House is not in session, and if the House is in session there must be a resolution, unless there has been an adjournment for more than seven days. When any other vacancy occurs it is necessary before action is taken that a resolution shall be passed by the House declaring such vacancy and the cause thereof. That section is so absolutely and entirely clear that it passes almost one's comprehension to imagine how it is possible for a doubt to arise as to its meaning. Any layman reading it cannot miss the meaning of the section. Whenever certain classes of resignations which are referred to occur, the President or the Speaker, as the case may be, is entitled to issue a writ. He is entitled to do it if the House is not in session. If the House is in session it is absolutely necessary that the House shall declare the vacancy and the cause, and then only has the Speaker power to issue his writ. There is no section in that Act giving power to the Speaker or President to issue a writ for a vacancy occurring by reason of death, resignation, or otherwise unless the House is not in session. If a vacancy arises under other conditions the House declares the vacancy, and at the same time declares the cause. This very position had to be considered, and when the Coolgardie election petition was heard it was determined, as members will remember, some considerable time before Parliament met, as both parties were anxious for the election to take place as soon as possible. They were actively marshalling their forces, which is to a certain extent a costly proceeding, and the evident wish of all parties was to make the contest as short as possible. I was besieged with letters and telegrams from both sides asking me to advise the Governor or Speaker to immediately issue a writ; but we could not do so, anxious as we were to meet the wishes of both parties, who wanted exactly the same thing. We had to wait until the House met and report, through his Honour the Speaker, what had been the decision on the hearing of the election petition; and then the House determined that the Coolgardie seat was vacant by reason of the report made to it, and thereupon the Speaker was authorised to issue a writ, and only then. And this I would point out must be taken into account by members; because if we find some gentleman going astray in the interpretation of what after all is a most simple matter, it is only reasonable to assume that it is dangerous to follow him in matters that require very careful investigation indeed. There is only one observation I would like to make which is somewhat outside the argument, in regard to this question of having to wait until Parliament met, and until Parliament declared the seat vacant, and that is in relation to the remarks which the hon. member for Guildford felt he was justified in making in criticising the actions of the Minister who acted as the head of the Crown Law Department in the previous Administration. I refer to Mr. Moss. Clearly if a writ could not be issued until Parliament met, there could be no blame placed on the shoulders of the Minister for not recommending something to be done which could not be done. [MR. JOHNSON: Hear, hear.] And therefore I feel sure the hon. member will fully acquit Mr. Moss in the matter of any blame for not adopting a course of conduct which he will now see was not open for him to adopt.

MR. JOHNSON: Hear, hear. That is not my argument.

THE ATTORNEY GENERAL: There is a matter which I may mention although it is not within my own knowledge. A matter which relates to the interpretation of the statutes is one entirely within my knowledge, but I am now desirous of saying something only told me in confer-

sation, which can be confirmed, I am sure, by members who were in the Cabinet of which Mr. Moss was a member. In order that he might be free from a charge by any person of improperly using his position in the Government, being as he was the solicitor for one of the parties, he obtained the consent of the other members of the Ministry to refer the matter to Mr. Burt, a senior counsel in the State, who is a man everybody in the State respects, and who had nothing whatever to do with the subject matter on which he was called upon to give advice. As I say, I am only giving this not from any knowledge of my own or of any other member of the Cabinet, but on an authority which I believe is absolutely unimpeachable. And if members will rise to the occasion and question a statement of that character, as very often things are questioned, it can be confirmed by those who have better means of saying what happened than I have.

MR. JOHNSON: Did the Crown Solicitor confirm the opinion of the Minister?

THE ATTORNEY GENERAL: Of myself?

MR. JOHNSON: Did the Minister go to the Crown Solicitor previously to going to Mr. Burt, or did he ignore the Crown Solicitor?

THE ATTORNEY GENERAL: Unless I can ask this question I shall not be in a position to answer. I have not asked a question of this character. All I did was to ask a question from what arose during the statement of the hon. member, and that was whether he advised a certain course, or any course. If I had had any knowledge that there was any farther information required, I could have asked the question now suggested. Now to deal with the question of the right of appeal, in the first place I hope that in attempting to explain to the House matters that are entirely technical and legal, and therefore what a layman would describe as dry as dust, I shall not weary members, and that I shall not confuse their minds, but so deal with the matter that they will be able to grasp what I say. Rights of appeal are of two classes. The prerogative right of the Crown has always existed and always will exist until the day it is deemed fit to wipe away the existence of the Crown and have a State with no monarch at the head. The Crown has delegated in various degrees and phases powers to various authorities within the State. The prerogative right of hearing a complaint of any subject who has a grievance remains, and it exists to-day not in the person of the Sovereign, but in those law courts which are the courts of justice. Of course constitutional matters seem in a large degree to be matters of fiction, but they are not so, because they have come down to us through many years of history. The evolution has been so slow that to trace it we should have to go back to the very beginning and have to worm through miles of books and records, through many pages and many phases of our history, recounting incidents which members now-a-days living in comfort and in freedom forget that they ever existed. However, the position to-day stands exactly as it did when the monarchy first allowed these powers to be taken and exercised by its subjects under the constitution. The prerogative right of appeal still exists, and alongside the prerogative right there is the statutory right, because from time to time the Imperial Houses of Parliament and the Houses of Parliament in the various colonies and dependencies have passed laws under which they allow appeal. That right is a statutory right. It does not exist in that case as a prerogative of the Crown, but it exists by the will of the Parliament of the people, and these rights exist side by side. In the one case you have the statutory right, and you can rely solely on your statutory right. On the other hand there is a general right wholly apart from that statutory right of appeal, which has come down as a devolution of the rights and privileges of sovereigns to the courts constituted under them. It is in regard to the statutory right I have to ask the House to be good enough to listen whilst I point out to what extent it exists. In doing that I shall have to refer them to the Act under which the Commonwealth of Australia was first constituted. There is one important matter in regard to this Act which members must bear in mind, and it is this, that the Commonwealth Act is not one which was framed by the Commonwealth Parliament. It is an Act framed by the Imperial Parliament, and

it was open to every State in Australia to accept or reject it. If they did accept it, it became their Act, and they were bound by the conditions as any State is bound by the conditions of the Parliament it has appointed. It is of great importance to remember that, because there has been some suggestion of State rights in this matter. There is no question of State rights in the interpretation of the Commonwealth of Australia Constitution Act. It is not an Act enacted by the Commonwealth Parliament. If it were, there might be some insignificant but nevertheless possible argument on which to suggest a collision of State rights with Commonwealth rights; but this Act is one we have deliberately accepted. We have entered into it just as much as New South Wales, Victoria, Queensland, Tasmania, or South Australia, and we are equally bound by its provisions. And in so far as its interpretation confers powers upon a new court, we in conjunction with others have conferred those powers. Let us see what these powers are. It is somewhat a pity that we have not enough volumes to hand the Act round to members. The appellate jurisdiction of the High Court is conferred by the Constitution, not by the Judiciary Act. Sec. 73 of the former provides that the High Court shall have jurisdiction "with such exceptions and subject to such regulations as the Parliament prescribes to hear and determine appeals from all judgments, decrees, orders, and sentences" of Federal courts—and now come the important words—or "of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen-in-Council." The member for Guildford has unwittingly misled himself in not carefully scrutinising the form of that sentence and the words used. Under that subsection the High Court has jurisdiction to hear an appeal against any judgment of the Supreme Court of any State. Not only that, but there is the word "or," which is disjunctive. There is a comma, showing that the sense of the interpretation for the moment stops, and then come the words "or" etcetera. The hon. member has asked us to read the whole lot in one sentence. He has asked us to say that the power conferred on the High Court under this particular Act was only the power to hear and determine appeals from a judgment or order of the Supreme Court of the State, if that judgment or order was one from which, in the words of the section, "at the establishment of the Commonwealth an appeal lies to the Queen-in-Council." That is not so. Members reading the section will see that every judgment or order of the Supreme Court was made a matter of appeal to the new court then and there created, or intended to be created, because its creation was a subsequent matter. Farthermore, it was provided that any other court in the State, whatever class of court, which at the time of the passing of this Act had the right of appeal to the Queen-in-Council, was also entitled to have its orders, judgments, and decrees reviewed by this High Court of Australia. That is a matter which on reading the section members will see for themselves. I have pointed out that this is an Act which we have assented to. It is our Act, and we have no more right to challenge it than we have to challenge any Act which appears on our own statute-book. If you turn to the Electoral Act of 1904 of our own State you will find in that Act, as the hon. member has pointed out, that we departed from our previous practice under the Act of 1899 of having a court of disputed returns, and we provided that—

> The validity of any election or return may be disputed by petition addressed to the Supreme Court, and not otherwise, and the Supreme Court shall have jurisdiction to hear and determine the same.

The consequence is that when an appeal is heard under the provisions then made, it is an act taken by the Supreme Court, the result either of an order or decree or other form of judgment made by the Supreme Court. And under our Supreme Court Act it is provided that anything done by a single Judge is held to be done by the Supreme Court. In other words, we constitute one Judge in our own State as coming within the meaning of the Supreme Court. Owing to a blunder in hasty legislation such as this, we have to face a position which no doubt in more mature moments every member in the House would have been prepared to care-

fully guard against. This legislation was so hurried that we find that whereas it was the intention of the Electoral Act that as regards those entitled to vote for members of the Legislative Assembly only the condition of residence should apply, the Act never repealed the Constitution Act of 1899, which provided that in the case of half-caste natives, those who possessed property up to a certain value, should be entitled to be placed on the roll for the Legislative Assembly. Among other measures to be dealt with this session will be an amending Bill to remove the extraordinary anomaly resulting from the attempt to rush through new legislation before considering its effect on existing legislation. This raises the argument I have now to address to the House. I regret to have to use the word "argument," because in a matter of this kind one must fall in not only with the spirit but with the actual necessities of the position. It is necessary for me to argue this question as if I were appearing before a court; and that necessity places me under a great disability, because I know that members have no desire to address themselves to a legal question as Judges, and no desire to discharge a duty which in many cases might be objectionable, for the one reason that they have not had an opportunity of training their minds so as to enable them to form a careful and correct opinion. But the necessities of the case force me, as I say, to argue before the House as if it were a conclave of Judges sitting to decide the issue. I have pointed out the broad question which would arise from the right of general appeal. Let me now farther point out that all appeals are capable of classification, not only under the heads of prerogative right and statutory right, but by reason of the fact that an appeal may be either general or of a restricted character. A general appeal raises the whole issue, raises the merits, and any points of law arising in the hearing of the merits, and any matter which may be included within the four corners of the case. A special appeal is limited to the subject matter set up under certain limited conditions. It is made under certain limited conditions; and therefore the court of appeal has a much-restricted jurisdiction and a much more restricted right to grant relief than it has when reviewing a case on the broad lines of a general appeal. I have so far dealt briefly with the case on the lines of a general appeal, which comprehends all the subject matters raised by the order or judgment of the Supreme Court. But I will point out to the House later on that it is fortunately not necessary to consider the matter of a general appeal to any greater extent than we have considered it already, because this case will narrow itself down to a much smaller and more restricted issue. That smaller and more restricted issue arises from this consideration. If a House of Parliament confers jurisdiction on any body or organisation or court, and provides at the same time that such body shall not be bound by any rules of evidence in the conduct of the business, in the hearing of the matters brought before it, and farthermore that whatever decision is arrived at shall not be the subject matter of any appeal, is it not perfectly clear that the House intends that the proviso shall apply only when the court or other body acts within the jurisdiction conferred? I wish members to appreciate that point, because it is of the greatest possible importance. When the House creates a new body, or confers on some existing body certain powers, the House says when so doing: "You are to exercise these powers in conformity with a certain jurisdiction which we confer upon you; and if you do so, then we say also that whatever decision you may arrive at will not be the subject matter of appeal." For the purpose of this part of my argument, I am stating the strongest case that could be made by the member for Guildford; for I am now putting his case more strongly than he himself would put it, or would ask anyone else to put it on his behalf. And in these circumstances there arises the consideration that if the body on which a certain jurisdiction is conferred goes outside that jurisdiction, then no longer does the provision apply that whatever decision it may arrive at is not to be subject to appeal. And clearly so, because the body in question might arrive at most irrelevant decisions; might use the powers given it, not for the purpose for which they were conferred, but for a purpose totally different. And

that this is so I can fortunately prove to members by calling their attention to a few cases which will be within their own recollection—cases arising under the Industrial Conciliation and Arbitration Act. By that Act Parliament created an entirely new and special court; not a court of law, because, as I shall show, the greatest possible care was taken that it should not be governed by any rules of law. Section 74 of the Arbitration Act provides that the court shall, in all matters before it, "have full and exclusive jurisdiction to determine the same in such manner in all respects as in equity and good conscience it thinks fit." Members will bear that in mind—"as in equity and good conscience it thinks fit." And in Section 75, Subsection 8, Parliament directed that "the court may accept such evidence, whether strictly legal or not, as in equity and good conscience it thinks fit"—a farther repetition, to make it perfectly clear that no rules of law governing the tendering of evidence in a court were to apply, but that the court had full liberty to accept any evidence it chose, so long as that evidence in some measure fell in with equity and good conscience. And in Section 87 it is provided that proceedings in the court shall not be impeached or held bad for want of form, nor shall the same be removable to any other court by *certiorari* or otherwise; and no award, order, or proceeding of the court shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature on any account whatsoever. When I read, as I shall read, from our Electoral Act some of the provisions to which the member for Guildford referred, it will be seen that they are far less strong than that. It would be impossible to go farther than Parliament went in that provision which I have just read from the Arbitration Act. First of all, provision is made that evidence of any character is to be received, so long as the court is of opinion that such evidence falls in with equity and good conscience. And then it is provided that in no manner whatever is an order made by the court to be the subject matter of an appeal. I say that provision holds good so long as the court acts within the four corners of the jurisdiction conferred. If for one moment it goes outside that jurisdiction, although the section I have read would appear beyond question to make the issue as determined by the court a final issue, I shall point out to members that there has never been any hesitation in allowing an appeal to the ordinary courts constituted in the various States. I shall now refer to only one case, because I feel that members do not wish a matter of this kind to be laboured; and I feel also that members must themselves be aware, because we take a deep interest in the proceedings of our Arbitration Court, of applications made, heard, and determined by the Full Court and by the divisional court, arising out of Arbitration Court proceedings, when it was alleged that those proceedings were in excess of the jurisdiction conferred on the court. One case is reported in Volume IV., part 4, of the Court of Arbitration proceedings in this State, and relates to Mr. Coultas. The Court of Arbitration made an award respecting the trade in which Mr. Coultas was an employer of labour. The award was made on the 19th December, 1904; and in certain clauses it provided that work was to be done in a certain manner and under certain conditions. After the award was made Mr. Coultas appealed on the ground that the award was in excess of jurisdiction. His second allegation was that the clauses dealt with a matter which was not an industrial matter. The appeal was heard before our Supreme Court; and both Chief Justice Stone and Mr. Justice McMillan delivered judgments. The result of the judgments was to uphold the contention of the appellant, Mr. Coultas. It is, however, immaterial whether the Supreme Court upheld or dismissed the appeal. That is not a matter that concerns my argument, save that, even though there was a statutory provision that the decisions of the Arbitration Court should be final, and that the court could receive whatever evidence fitted in with good conscience and equity—even then, if a party feeling aggrieved can contend and can sustain the contention that the court has exceeded the jurisdiction conferred by Parliament, the decision of the court becomes subject to review, and is liable to be quashed. I will refer to another case, in which the application was made by the

other side; because I feel that members opposite (the Labour party) would like to hear not only an appeal by an employer, but a similar application made a workers' union. This application was made by the Coastal Boilermakers' Industrial Union of Workers. It is not necessary to wade through the matter of the application, the object of which was to exempt the union from an award, and to set aside the award as far as they were concerned, the reason alleged being that although they had been included in the award, they had not had any dispute with the company which was the respondent at the hearing of the petition from which the award resulted.

MR. TAYLOR: The union did not tender any evidence.

THE ATTORNEY GENERAL: They did appear at the hearing, and asked to be struck out; but the Arbitration Court refused the application, and held that if it made an award, it would make it apply to the Coastal Boilermakers' Union, as well as to other unions. The union then took part in the proceedings, being forced to do so, and subsequently applied to have the award set aside on the ground of excess of jurisdiction—that there was no dispute between them and their employers, and that the court had no right to investigate the matter and to make an award which should become binding on the union. That application was based entirely on the allegation that the Arbitration Court had exceeded its jurisdiction, and that the jurisdiction having been exceeded, the award was open te review by the Supreme Court of this State; and the appeal was heard, with the result that a rule *nisi* was granted, and that finally the rule *nisi* was confirmed. However, as I say, the result of the appeal is immaterial for the purposes of my argument. I am now pointing out merely that an appeal does lie; because I am not for one moment, in citing these cases, suggesting nor should I in any manner be justified in suggesting what will be the result of the appeal now pending in respect of the East Fremantle petition. It would be most improper for me to say that this appeal is based on grounds which are likely to be successful; and it would be equally improper for me to express an opinion that the appeal is likely to be dismissed when heard. For that reason members must not conclude that the cases I have cited have been cited with a view to pointing out that the East Fremantle appeal, when heard, will probably be decided in any particular manner. I cited those cases merely to show that an appeal does lie in circumstances such as I have pointed out to-night.

MR. JOHNSON: Before the Minister leaves that point, I would ask, does he argue that the Supreme Court exceeded its jurisdiction in the matter of the East Fremantle electoral petition?

THE ATTORNEY GENERAL: I thought that my argument was perfectly clear; but I will answer the hon. member by finishing my comparison. Here in the Arbitration Act we find provisions which, as pointed out, are more extreme in the way of providing for a decision of the court being final than are the similar provisions in the Electoral Act. That fact will be fully grasped when I read the provisions of the Electoral Act.

MR. TAYLOR: You have cited cases in which the Arbitration Court exceeded its jurisdiction.

THE ATTORNEY GENERAL: I shall refer again to that matter.

MR. TAYLOR: Does it follow that the Supreme Court exceeds its duty when deciding on the East Fremantle petition?

THE ATTORNEY GENERAL: The member for Mount Margaret has a very quick mind, and has anticipated a future portion of my argument, and if this had been a court of law I would have been obliged to ask him for a little patience. Under the Electoral Act the only provision made as regards the decisions of the court being final is short and bald. Section 167 says:—

> All decisions of the court shall be final and conclusive without appeal, and shall not be questioned in any way.

Whereas in the Industrial Conciliation and Arbitration Act it is guarded in most intense detail. There it is provided that they shall not be "liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature on any account whatsoever." So members will see that the provision in the Industrial Conciliation and Arbitration Act is of a far stronger nature than that in the Electoral Act. To resume

the facts—because I must bring the facts before the House in order that I may point out the question that does arise—notice of general appeal was given by the appellant on the 28th April, that is the general appeal which I hope members will bear in mind I explained to them. It brings into question all the facts of the decision and all the points of law arising on the hearing, and not any limited set of facts or limited set of questions. This notice of general appeal was given on the 28th April of this year. Subsequently to giving this notice, the whole case was submitted to Mr. Isaacs, the Attorney General for the Commonwealth and a distinguished lawyer in the Eastern States, for an opinion by him. I read the case as submitted to Mr. Isaacs. It is a case simply of bald facts, following almost entirely the statement made by the member for Guildford last week, but leaving out the comments the hon. member made from time to time and which I have studiously avoided following.

MR. BATH: That was an appeal to Mr. Isaacs as a lawyer and not as Federal Attorney General.

THE ATTORNEY GENERAL: The hon. member will recognise that the Attorney General is not a private practitioner as Attorney General, but that he has the right of private practice and is then simply the individual.

MR. BATH: They appealed to him as a practitioner.

THE ATTORNEY GENERAL: I simply wished members to know who was the Mr. Isaacs I referred to. I desired them to grasp the fact that the individual I refer to is the Mr. Isaacs who at the present time, is Attorney General to the Commonwealth. I read the case as submitted, and it is simply a bald narrative of facts, and does not in any way suggest anything that may suggest an opinion of any character. It is simply a bald narrative of facts and one that would be accepted by the member for Guildford himself. I have read the opinion given by Mr. Isaacs, but I do not intend to read that opinion or any portion of it to the House, because it would be improper to do so. I have, however, the right to assure the House that Mr. Isaacs' opinion is that an appeal does lie, and he recommended that it should be by way of special leave, and that leave should be asked for that purpose. What he recommended that an appeal should lie for was in respect of a matter that I will now bring under the notice of the House, and it relates to jurisdiction. Under our Electoral Act in Section 164, it is provided that—

> The court shall inquire whether or not the requisites of Section 160 have been observed, and, so far as rolls and voting are concerned, may inquire into the identity of persons, and whether their votes were improperly admitted or rejected, assuming the roll to be correct; but the court shall not inquire into the correctness of any roll.

MR. TAYLOR: That is our Act.

THE ATTORNEY GENERAL: Members will see that this Act casts on the court a burden, which in an ordinary procedure would fall on the shoulders of the appellant. If anybody goes into a court to make his case, he has to show that he has complied with all the conditions precedent required before the case is heard. In the case of election petitions, not only is that requisite, but it also puts the responsibility on the court itself. The Act says the court shall inquire whether or not the requisites of a certain section have been carred out. Among those requisites was one in which it was necessary to prove that the petition was filed in the central office of the Supreme Court within 40 days after the return of the writ. At the hearing of the petition the point was taken for the respondent that no proof was before the court that the petition had been filed within 40 days after the return of the writ, though it was true it was filed on a date which would have been within that time if the date had been accepted as the one appearing in the *Government Gazette* and signed by the Under Secretary as the date on which the writ should have been returned. The question then arises: Do the words in that section mean, "after the return of the writ," or are we to interpolate into it "after the date fixed for" the return of the writ? In other words are we to take the section as it stands, that is the actual day of the return of the writ; or are we to interpolate certain words, as I suggested, to make it read "after the date fixed for the return of the writ"?

MR. TAYLOR: A quibble.

THE ATTORNEY GENERAL: I am not expressing an opinion. It must not be taken that I am expressing an opinion. I am merely pointing out what a certain case is, and I expect hon. members opposite to do exactly the same, that is that they will not express an opinion. It would be grossly unfair to do so. [Interjection by MR. BATH.] If members on the opposite side of the House offend, it leads to members on this side of the House offending; and if there should be blame, the blame should fall on those who start observations of that character. I have voiced this and will continue to voice it, that I have no desire to express any opinion on the merits. I am simply putting the case. I point out that this point was put before the court.

MR. TAYLOR: That is really the point of appeal.

THE ATTORNEY GENERAL: The point was raised as to whether the duty lay on the petitioner of showing that he had filed the petition within 40 days of the actual return of the writ, and furthermore whether it was not also, by the special words of the section, for the court to inquire independently of the duty cast on the petitioner. That is the point that goes to jurisdiction, because it is a condition precedent to the hearing by the court of the subject matter of any petition that the court shall be satisfied that these requisites have been complied with. If the court is not satisfied that these requisites have been complied with, it is debarred from taking any farther steps in the nature of hearing the petition. Treat it as extravagantly as any member pleases, let me assume for the moment that the words meant "the return of the writ," then it would be the duty of the petitioner to prove that he had filed the petition within the time required by the section of the Act; and it would be the duty of the court, if the petitioner did not do so, to inquire for itself, and to satisfy itself that such a course had been followed, that the petitioner had filed the petition, before it went a single step farther. This condition precedent not being complied with, the jurisdiction of the court to hear anything farther absolutely ceases. So if the respondent to the petition raises that question successfully, he raises a challenge to the farther hearing of the petition. Members will remember that I pointed out in the wording of the Constitution Act that a wider issue arises; but on this smaller and narrow issue of jurisdiction, unless the respondent to the appeal can satisfy the appeal court that the words have the meaning that he places on them, that they refer to "the date fixed for the return of the writ," and not the actual date of the return, there is a possibility of the appeal being successful, because the question of jurisdiction arises. There is no doubt from the conditions quoted by the member for Guildford, and quoted again by me, that an appeal arises once the question of jurisdiction arises. Now I wish to deal with the cases that were raised by the member for Guildford, and quoted in this House. One was the case of Parkin and James. In that case the hon. member read portion of the judgment delivered by the Chief Justice of Australia; but the decision in that case is really a decision which, if I were arguing a case in a court of law, I should certainly quote as being in my favour. I am referring to the general question of hearing appeals from any order of any Supreme Court of a State. The heading of this case says:—

> The words "the Supreme Court of any State" in Section 73 of the Constitution are used to designate that court which at the time of the establishment of the Commonwealth was in any particular State known by the name of "the Supreme Court" of that State. Held therefore that, subject to the conditions mentioned in that section, an appeal lies to the High Court from every judgment, etcetera, which according to the law of a particular State is a judgment, etcetera, of the Supreme Court of that State.

That is the decision boiled down. It is quite true that the Federal Chief Justice, who is the most versatile man who ever sat on any bench in any part of the world, not only discussed the real issue raised in that case, but went abroad for the purpose of enlightening us, and we feel grateful to him for doing so. The only question raised in that case was this. In Victoria in chambers, which is not in court as members may be aware, a certain decision was given on what is known as an originating summons. That decision was attempted to be appealed against, and the argument raised was that it was not an order or decision of the Supreme Court. A number of

Victorian statutes were quoted to show what is the position of chambers as compared with the Supreme Court. However, the Federal Chief Justice swept all on one side, and having gone fully into the matter held that as the decision arrived at on an originating summons is a final decision, and as the decisions quoted did not show that in any sense the decision was not of the Supreme Court, the appeal was one that would lie direct to the High Court of Australia, instead of, as before, to the Supreme Court of the State. It was only in that case that, incidentally, he travelled beyond the direct subject matter of the case and dealt with conditions that arose under the terms of Section 73 of the Commonwealth Constitution Act. That is the case referred to by the member for Guildford, dealing with an appeal direct from a Supreme Court in Australia to the High Court. The hon. member also mentioned the case of Theberge and Laudry, two French gentlemen apparently who were desirous of representing a constituency of one of the provinces in Canada. The petition in that case alleged that the respondent was guilty of certain acts of bribery, such that, if he were guilty, would disqualify him for a number of years from offering himself as a candidate for Parliament. The petition was heard by three Judges, and two found the charges proven and one dissented. The appeal was taken against that judgment, and it was a general appeal. It was what I have pointed out to hon. members, an appeal that deals with everything in the case. The appellant wished to have this conviction for bribery removed, because it imposed a grave disability. He wished to have the finding of the court upset on what was a question of fact. He wished also to have the finding of the court upset on various questions of law which had arisen in the case from the respondent's evidence. Members will see, if they have read the case, that the real object of the appeal was to escape the long term of years in which the appellant was destined to be a dog that should not bark, because of his having transgressed the law relating to bribery in that State. The distinction between that case and the one under review in this instance is that here—at any rate as far as the constitutional aspect of the case is concerned—we are not concerned with questions of fact, but are concerned only with the special leave which has been granted to appeal on the question of jurisdiction. This matter of jurisdiction, as I have pointed out, had to be supported by affidavit and argued before the court, before the special leave to appeal was granted on the 12th June last. It is important to bear this in mind, because it amounts to this, that the court having heard an *ex parte* application, the grounds being stated by counsel, and the court being satisfied that a *primâ facie* case was made out that there was a question of jurisdiction, it granted the leave to appeal. This question of jurisdiction having been investigated, the court granted special leave, taking care that the other party should be entitled to appear when the court sits next in Western Australia; and I understand the court will sit in October in our State. The member for Guildford has pointed to the fact that the leave granted was subject to the right of the other party to apply for discharge of the special leave. Leave is always given in this form when it is granted on an *ex parte* statement, the rights of the other parties not then before the court being fully preserved. So while in all matters of an *ex parte* nature the rights of those not before the court are duly preserved, this does not mean that the court expresses even the most remote opinion that the rights of the parties not then before the court are such as to require its intervention, but means that it will not, in the absence of the other party, do anything which may infringe the rights of that other party. That is the real explanation, and not the one given, unwittingly I believe, by the member for Guildford that the court was in hesitation on the point. If the court was in hesitation, it would be its duty there and then to investigate that which created the doubt.

MR. JOHNSON: Did not the Chief Justice express a doubt? The reports made it appear so.

THE ATTORNEY GENERAL: I have seen the order made in this case, and I do not go by any newspaper report of the case. It is a good rule in regard to newspaper reports — and the hon. member must know this in his own ex-

perience—that they are not at all safe guides in matters of a legal or technical character. In fact, one is never allowed to read a newspaper report in a court of law, for the reason that newspaper reports, not because of any desire to be inaccurate, but because of the necessities of their hurried publication, do not receive that care which should be taken in printing matter of importance; and this necessity leads newspapers to publish accounts which, by reason of some part of the context being left out, are sometimes of a most garbled nature. Newspaper reports are not things to which any person can pay even the most remote attention, when dealing with questions of a technical character; and nobody would object more strongly than the member for Guildford if, on an occasion when some technical matter is being examined, I were to produce a newspaper and quote comment from it. He would at once discover that the comment was such as no one should pay attention to. What we can pay serious attention to are the acts of the court itself. The court is not of that class of organisation which acts hastily, without thought, which says one thing and does another. Possibly there are such organisations in existence, but they are not the courts of law. A court of law is the very last possible body which could be imagined to go on the principle of giving one opinion in a matter; then drawing up an order and signing it, giving a totally different opinion in the same matter. Therefore when in the present case that order was granted and signed—I have myself seen the order—giving special leave to appeal on the question of jurisdiction, that order stands and must stand as the opinion of the court, unless the steps taken later by the other party are of such a nature as will make it appear advisable to the court that the opinion must be set aside. But until it is so set aside it must stand as the opinion of the court. The order of special leave has been granted by the Chief Justice of Australia, and bears his sign manual.

MR. JOHNSON: But is it the opinion of the Chief Justice?

THE ATTORNEY GENERAL: The Chief Justice alone made the order; because the court was sitting as a court of two, and in a court of two the senior Judge rules. In a court of two, if any difference of opinion arises between one Judge and another Judge sitting with him, it is the rule in the legal profession that the junior Judge expresses his dissent and then withdraws his judgment. The procedure is that the senior Judge delivers the judgment, and then the junior Judge, if he differ from his senior, also delivers his judgment, but immediately withdraws it in deference to the senior colleague. But no such difference occurred in this case. What happened was simply that an order was made by the senior Judge; therefore in the absence of any difference of opinion, we must regard that order as the expression of the unanimous opinion of the court.

MR. JOHNSON: Does the Attorney General contend that the Chief Justice did not express a doubt?

THE ATTORNEY GENERAL: I contend that there is no evidence whatever of any doubt. I contend farther that it is an insult to a man of the standing of the Chief Justice of Australia to suppose that if he had any doubt in the matter he would not there and then have had the matter argued before him. I say it is an insult to a man of the standing of the Chief Justice of Australia to suppose that he would take a course which might be taken by some pettifogging magistrate. If the Chief Justice had a doubt about any matter which came before him, it would be his duty to have the matter argued and the doubt determined immediately; and I feel sure that, wholly apart from his duty, a man of Sir Samuel Griffith's character and standing would not neglect so obvious a course in dealing with this question.

MR. WALKER: Is it not a fact that when the court comes here, it is to decide whether or not there is any right of appeal?

THE ATTORNEY GENERAL: In reply to the hon. member, let me state the exact position of affairs. When the leave to appeal was granted, there was reserved to the other party the right to appear and show cause why that leave should be discharged. When the court sits in Perth it will allow that other party an opportunity of doing so; and I presume if the other party can advance sufficient reasons to induce the court to

change its opinion, the court has a right to say that it will go no farther in the matter. Members must understand that it is open to the court to revise its opinion if the respondent, through his counsel, can show sufficient cause to make the court alter its opinion already formed on the *ex parte* statement. But on the other hand if, when called upon to show cause against the hearing of the appeal, the respondent does not do so, or if he does so and fails to adduce sufficient reasons to the court to induce it to alter its opinion in any form, then the leave given will stand. That is the exact position of affairs to-day. One party only has been heard, and on an *ex parte* statement has convinced the court that there is a right of appeal. Therefore the court has made an order in a form which grants what is asked for, subject to the right of the other party to show cause against that right; and when the case comes on for hearing, the other party (and the member for Kanowna no doubt knows this) will have the right to offer reasons and to have those reasons argued. If he can then convince the court that the order made on the *ex parte* statement, and which had been the judgment of the court in the first instance, was not a correct judgment, of course the court will reconsider its judgment and discharge the order. But it is necessary to show that the order made is a wrong one, to show by argument that the proper and right course was to reverse the order, as soon as the other party has for the first time an opportunity of appearing. Members will understand again that I desire to express no opinion in regard to that. It would be absolutely wrong of me to do so before the hearing of this case for special leave granted by the Chief Justice; it would be expressing an opinion in favour of one or other of the parties, which would be a wrong action not only on my own part but on that of any other member of this House. It would be equally wrong to express an opinion that the respondent will be able to submit reasons sufficient to induce the court to revise its previous decision and discharge the order. That would be identifying myself with one of the parties, expressing an opinion in order that it might carry some weight if it could carry any—that would be the object of it. I have, in conclusion, only to draw members' attention to the facts of this case, though I feel certain that the House is sane enough to negative a motion of this character; and I do not think the mover will press it to a division when he has considered the possibilities which would arise if the House were foolish enough to accept it.

Mr. Johnson: You have not suggested yet that I should withdraw the motion.

The ATTORNEY GENERAL: The hon. member has sufficient sense to see the desirability of doing so. I wish to point out what the position would be were the House sufficiently foolish to accept the motion. Would we by doing so bind in any way the hands of the Chief Justice and his fellow Judges of the High Court of Australia? Surely we are not foolish enough to suppose that. The High Court would proceed to hear that appeal without caring whether this House had carried this motion or carried all the resolutions that could be written. What does the High Court care for us or for our opinions? What does it care even for the Commonwealth Parliament? The High Court has been created under a constitution higher than any power in Australia, past or present; it has been constituted under the Constitution which itself created this Commonwealth; and there is no power even in the Commonwealth Parliament which can limit the High Court to the smallest extent in the discharge of its duties. If there is no power in the Commonwealth Parliament to do so, how much less power has a State Parliament? It would be ridiculous for us to enter upon a struggle which would have no merit on our side, and in which we would be faced with inevitable defeat. Supposing we were to order a fresh election and some candidate were to be returned as the elect of East Fremantle; then suppose that the High Court, without regard to our futile and worthless protest, proceeded with the hearing of the appeal and upheld the appeal—and when a case of this kind is pending we must face all the issues—and declared Mr. Holmes duly elected, what a scene would be witnessed on the floor of this House! We should have two persons claiming the one seat, and there would be all the

elements of a wretched burlesque on the floor of the House, of a character which would hold us up to the laughter and contempt of the civilised world. And are we to risk all this for a gain, at the utmost, of a single month in time? That is the utmost time which even the member for Guildford claims we would gain if the House were foolish enough now to anticipate the sitting of the High Court. I ask members to take a reasonable view of this question, and if they do so I do not think the House will take the risk I have stated. If we do make that grave mistake, we shall be doing something which will certainly place us on the page of history, but only in a light in which none of us desires to appear; and all for the sake of a few days' time, which in view of the time that has already elapsed must appear comparatively insignificant. I regret exceedingly with other members that a situation has arisen which necessitates the temporary disfranchisement of the electors of East Fremantle—everyone must regret it—not because we on this side have one supporter less, but because it is a loss to the State and because we desire to have in the framing of our laws the assistance of the representative of every constituency in the State. But while I do regret that, it is not a regret of such a character as would warrant me in taking the course suggested by the member for Guildford, and doing something which I on my part am satisfied would be of a most foolish and improper character.

At 6·30, the SPEAKER left the Chair.
At 7·30, Chair resumed.

MR. T. H. BATH (Brown Hill): In regard to this question that has been spoken to by the Attorney General, the member for Guildford in introducing it made use of certain remarks to the effect that it was the duty of the Government on the assembling of Parliament to take action in regard to declaring the seat for East Fremantle vacant, and failing the recognition of their duty, it was the right of members to keep them up to their duty by insisting that some action should be taken. It is well known here that although any member has the right to move a motion of this description declaring a seat vacant, it is a matter that is essentially left to the Leader of the House for the time being. And I thought up to the time the member for Guildford introduced the motion, the Government, on a question of this kind, quite apart from party considerations and as the result of mature consideration, would deal with the matter; and if they had investigated it both from the point of view of the procedure of the House and from any legal standpoint that might arise, they would take action accordingly when the House met. But the information which the member for Guildford has introduced has placed an altogether different complexion on the whole affair. It will be within the memory of members that when the matter was brought up by reason of the communication of the decision of the Supreme Court, the member for Subiaco asked the Premier if he would make a statement in connection with the matter; and the Premier promised that he would do so after he had had time to consider it. And in the course of a day or two, as a result of the consideration, the Premier made a statement to the House which was practically to the effect that under the provisions of the Constitution Act the High Court was given the right to hear appeals from the Supreme Court of any State, that in pursuance of the right of appeal, they had the right to sit in judgment in an appeal from the decision of the Supreme Court of the State. Feeling at the time that the Government should give the matter the fullest consideration, that they had not made this statement to the House without making the fullest investigations as to all later decisions bearing on it, I accepted the statement of the Premier, because I considered then, and I consider now, it is essentially a matter on which no party consideration should enter whatever. It is the duty by the custom of the House, and of all other Parliaments, for the Leader of the House for the time being to move a resolution dealing with a seat which the circumstances may justify. The Attorney General in replying to the speech of the member for Guidford has taken exception to the conclusions which he drew from the remarks of the Chief Justice when giving his decision in the East Fremantle case, wherein the Chief Justice refused a stay of proceedings on that

occasion, and stated that his decision was final. The Attorney General has declared that the member for Guildford has, whether consciously or unconsciously, attempted to mislead the House by making it appear that when the opinion of the Chief Justice—and there can be no doubt it was the opinion of the Chief Justice, or he would not have given utterance to it—was given in regard to the Geraldton election petition, the Chief Justice had changed his views in regard to the matter. Is it not more reasonable to assume that the Chief Justice has been guided in his decison in the Geraldton petition by reason of the fact that the Government or Parliament had taken no action in the matter? That is a point which members should bear in mind. We have to recollect that the Chief Justice must hear and give a decision, and that afterwards it is left to the Government of the day or Parliament itself to take the necessary action in the matter in order to carry the decision into practical effect. Having given his decision in the East Fremantle case, and the Government or Parliament not having taken any action on it, it is only reasonable to assume the Chief Justice had borne this fact in mind, and had refrained from giving his decision in the Geraldton petition pending the decision in the East Fremantle case; because I presume he had come to the conclusion that Parliament had given every consideration to the matter, and after mature consideration had thought there was some justification for the appeal, that therefore the seat had not been declared vacant. That does not imply that the Chief Justice had altered his opinion from the time he gave his decision in the East Fremantle case, when he refused a stay of proceedings and declared his decision was final. In regard to the question as to the jurisdiction of the High Court to hear appeals, the Attorney General has taken precisely the same action as was taken by the Premier in making his statement to the House, and I presume that statement, written as it was in legal phraseology, was drafted by the Attorney General for the use of the Premier in making the statement, because the Attorney General has practically repeated the same words in dealing with the matter to-night. But in the course of his remarks the Attorney General has quoted a provision in the Constitution Act, and has also quoted the remarks of the High Court up to a certain point, without quoting other remarks used by the member for Guildford in support of his argument. The Attorney General states that the Constitution Act provides:

> The High Court has jurisdiction to hear and determine an appeal from all judgment orders, decrees, etcetera of the Supreme Court of any State, or of any other court of any State from which an appeal lies to the Queen-in-Council.

And because there is a comma after "State" and the use of the conjunction "or," the latter qualification of the right of appeal does not apply to any decision of the Supreme Court. But I would like to point out that in the course of the qualification the word "other" is used. It states: "The Supreme Court of any State, or any other court of the State." If there is the right of appeal from the Supreme Court of a State or some other court of a State, if that qualification were not to apply to one or to the other, the word "other" would not be used in connection therewith. It is evident that the construction which the Attorney General has placed on the words cannot be correct, because the decision of the High Court which the member for Guildford quoted goes on to deal with the matter. It states:—

> But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies . . . . . to the Queen-in-Council.

So there we have the contention which the member for Guildford urged, contained in the decision of the High Court in the particular case quoted. It is remarkable that the Attorney General in dealing with the case quoted the first part and absolutely failed or refrained from quoting the second part, which bears out the contention of the member for Guildford. When the member for Guildford made his speech and cited these cases, and the Attorney General secured the adjournment of the debate in order to look into them, we were under the impression that he was going to investi-

gate the cases in the fullest possible manner. It is remarkable, seeing the time the Attorney General has had, that he has not gone into the question and has not in any way attempted to answer the contention of the member for Guildford; and has avoided making reference to that plain statement contained in the decision of the High Court of Australia wherein they give a decision that there is no right of appeal to the High Court from the Supreme Court of the State unless a similar appeal would lie to the Privy Council. That is the very kernel of the argument of the member for Guildford, and it is that contention that should have been answered by the Attorney General if he wished to justify the position of the Government in the matter. Then again, while we have had a considerable amount of argument in regard to the meaning of various Acts in this State and a good deal of legal phraseology from the Attorney General, we have had absolutely no reference or no reply to the case quoted by the member for Guildford in regard to the decision of the Privy Council in connection with the case from Canada, which is precisely on all-fours with the present case under discussion. That I consider was the strongest argument the member for Guildford urged in favour of his motion. The judgment given by the Privy Council in regard to that case—and I submit it was an argument and a case that called for consideration from the Attorney General—should have received attention to-night. Members who heard the speech of the member for Guildford, or if they did not hear it have read his remarks on the case as contained in *Hansard*, will agree that it is a case that should have been fully dealt with by the Attorney General and answered effectively in order to destroy the contention of the member for Guildford, unless we are to assume that the Privy Council gives a decision in one case one way, and then in another case on precisely similar grounds gives a decision in exactly the opposite way. We can only assume that in the case in point they have given a decision which is a precedent for other cases of a like nature. And that being so the Privy Council have decided that there was no right of appeal in the Canadian case, which is precisely on all-fours with the case we have before us to-night. The Privy Council having decided that there was no right of appeal in the case, it follows as a natural sequence that the High Court, which is bound practically by the same precedents, has no right to hear an appeal in the case which we have under consideration. The Attorney General seems to have based the whole of his argument to-night on the interpretation of what is meant by the return of the writ. We know that in the writs which are issued the date is specified for the return of each writ; that is, writs are returnable on or before that particular date. In many cases the returning officer, if all the returns are in, gives his decision prior to that date, but he only does it at his own sweet will. No one knows other than himself and the person who receives a writ on what particular day he is going to return it, and the petitioner who is desirous of taking advantage of the sections of the Electoral Act providing for petitions is certainly not cognisant of the date of the return of the writ other than the one specified in the writ itself and published in the *Government Gazette*. If it were interpreted to mean the day on which the returning officer actually did return the writ, the petitioner would be in a state of uncertainty, because he would not know on which particular day the returning officer was going to return it. But where there is a date specified, as it is specified in the writ itself and also published in the *Government Gazette*, he knows exactly the day, and that for 40 days hence he will be precisely within the limits. When members on this (Opposition) side of the House said it was only a quibble, I am sure they did not desire to accuse the Attorney General himself of quibbling; but I think members of the House will agree that it is a quibble to substitute for the date so specifically stated in the writ and specifically published in the *Government Gazette* some other date which is determined by the sweet will of the returning officer for the time being.

MR. ILLINGWORTH: If the writ be returned seven days later, what then?

MR. BATH: There is provision made. The writ must be returned on or before a certain date.

MR. ILLINGWORTH: It is not always fulfilled, though.

MR. JOHNSON: If it were seven days late, that would make the Attorney General's case worse.

MR. BATH: The member for West Perth (Mr. Illingworth) has asked, supposing it were returned seven days later. But before it could be returned seven days later they must make provision by some *Gazette* notice that it must be returned at a later date. The returning officer is liable to vitiate the proceedings if he returns the writ later than the date specified on the writ and advertised in the *Government Gazette*. The Attorney General has stated that it would be foolish for this House to take any action in this matter in view of the fact that the case is to be argued before the High Court as to whether the right of appeal is given from the Supreme Court to the High Court. The question to be considered by members of this House is as to the rights and privileges of the House, and as to the particular construction which is placed on the statutes, which are so definitely placed within the cognisance of the Supreme Court and not of any other body. Although the Attorney General states it is bald, it is not only bald, but plain, because it lays down the dictum that there is no appeal from that decision. In view of that fact members should be alive to the necessity of protecting our privileges in that respect. We would be infinitely more blameworthy if we were blind to those privileges, even if we went to some of the risks the Attorney General so eloquently stated, rather than silently acquiesce in denuding this State of the powers it undoubtedly possesses. Members who have devoted any study to constitutional history or struggles for liberty will recognise that the greatest inroads on the rights and privileges of nations have been the result of a lack of vigilance on the part of the people themselves in the protection of their rights and privileges. There can be no possibility of any power, whether within or outside the borders of any nation, being able to destroy or take away the privileges of that nation if the people themselves who own those privileges are alive to the ownership of them and are vigilant in protecting them. But if on the other hand they silently acquiesce in an insidious process of taking them away by acts which appear small in themselves but which in the aggregate very often mean the loss of very important rights and privileges, there will be danger. And so in this case, if we silently acquiesce in allowing the right of appeal, whereas all the decisions which have been quoted by the member for Guildford and which in no sense have been refuted by the Attorney General say there is no right of appeal, then we are really encouraging the High Court to intervene where they have no right to intervene. It is, I say, an infinitely more praiseworthy course for members of this House to be ever vigilant and to use every opportunity of guarding whatever rights and privileges we undoubtedly possess; and in this case it would have been more to our credit, more to the advantage of Western Australia, and more in the way of a conservation of our State rights, if the Government had closely investigated this matter, if they had pursued their investigations, and had for instance made themselves acquainted with the decisions quoted by the member for Guildford. For instance, if the legal adviser, whoever he may be, whether the present Attorney General or the gentleman who occupied that position prior to his taking office, had made the Premier acquainted with those cases cited by the member for Guildford, I guarantee the action of the Government would have been altogether different from that which was taken. It is not too late to remedy the matter. It is not too late for them to be alive to the position they occupy, in the face of the overwhelming evidence, evidence not refuted, of the rights of Western Australia in this matter. They should take action at the present time, even if only a month intervenes between our action and the time set down by the High Court for determining whether there is a right of appeal or not. The Attorney General has by a course of legal reasoning on extraneous issues perhaps appeared to make a good case, but the whole weakness of his position is practically evidenced by his attitude in regard to what is no doubt a lack of acumen on the part of the legal adviser of the plaintiff in the East Fremantle election. The Attorney General by the quotations he has made from our various Acts showed that this legal adviser had taken a wrong course in

making an appeal to the Governor to issue a writ; but that does not vitiate the other arguments which have been advanced by the member for Guildford; and the Attorney General has acted like every other lawyer would do by pointing out a wrong course taken in that particular, and trying to show therefore that a wrong action has been taken in every other particular. That is the attitude of the lawyer every time; if he has a weak case in other respects he will try and show up some weakness in the argument of his opponent on some issue which may not be of very great importance so far as the main issue is concerned, in order to vitiate the whole of his argument concerning the whole question. In this instance it would have been better and more convincing to the House if the Attorney General in his remarks here to-night had attempted to refute or answer the cases which have been cited by the member for Guildford, notably the case of the appeal to the Privy Council on an election petition which was on all-fours with the one we have under discussion.

MR. T. WALKER (Kanowna): The Attorney General commenced his speech to-night by complimenting the member for Guildford (Mr. Johnson) on the able speech he had delivered in setting forth the case on behalf of the constituency of East Fremantle. I would in like manner wish to compliment the Attorney General—if my compliment is of any value—on the very able way in which in my humble opinion he evaded the main issue. His speech from a lawyer's standpoint was exceedingly interesting, and it must have been a lesson to members on both sides of the House to listen to the way in which a bad case could be made a better one. The Attorney General has done no more than to put forth an apology for depriving the electors of East Fremantle of their right to be represented by a member in this House; and it is on that ground we are concerned in this matter at all. It is not a question as to the side on which lawyers make the best argument, nor in my opinion is it a question as to the wisdom or otherwise of taking this case to the Supreme Court or to the High Court of this realm. The question is, has this House supreme authority to attend to its own composition? That is the question, and I submit that this phase of the question was entirely avoided in the speech of the Attorney General. The Attorney General prefaced his specific cases by reference to English history, in which he told us that the right of appeal to the Crown was always open to the humblest citizen of the realm. He gave us clearly to understand from his standpoint that this prerogative always exists as against anybody, any court, any composition of citizens in the realm. But it is within our knowledge that the whole struggle in history, to which we owe so much, has been to limit the prerogative of the Crown, to bring to this body those powers once exclusively claimed by the Crown. It was very interesting to listen to the Attorney General as he told us how the Crown, presumably the fountain head of all authority, had delegated to certain bodies the functions they now perform in the courts. The courts, I gather from his remarks, originally were no more than the separate officers of the King, performing functions delegated to them by His Majesty. He argued that by-and-by these courts obtained special prerogatives to perform those functions and those only, and in that way we got in the courts a sort of delegated royal prerogative, from the benefit of which no citizen could be excluded. Everyone had a right to appeal there. But the Attorney General never for a moment alluded to the fact that the highest court in the land is the Court of Parliament. It is the court which creates all the others. It, and not the Crown, delegates to the Supreme Court of this State all the powers the Supreme Court enjoys. In that respect the Attorney General seemed to me to evade the real question at issue. If I may be pardoned for showing how we have claimed those liberties, and obtained them in the face of the strongest opposition, permit me to read a short extract from *Hallam's Constitutional History*, wherein the author deals with that struggle in the acute stage, in the reign of James I., the father of the celebrated Charles who caused the civil war. It was in the reign of the former that the battle was fought with the keenest-edged weapons. This is what the Commons

then declared, and the declaration is the foundation of all our liberties:—

The Commons now assembled in Parliament, being justly occasioned thereto, concerning sundry liberties, franchises, privileges, and jurisdictions of Parliament, amongst others not herein mentioned, do make this protestation following: That the liberties, franchises, privileges, and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the King, State, and defence of the realm, and of the Church of England, and the making and maintenance of laws, and redress of mischiefs and grievances which daily happen within this realm, are proper subjects and matter of counsel and debate in Parliament; and that in the handling and proceeding of those businesses, every member of the House hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion the same; that the Commons in Parliament have like liberty and freedom to treat of those matters in such order as in their judgment shall seem fittest; and that every such member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the House itself) for or concerning any Bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliament business; and that if any of the said members be complained of and questioned for anything said or done in Parliament, the same is to be showed to the King by the advice and assent of all the Commons assembled in Parliament, before the King gives credence to any private information.

I have quoted this passage to show that so long ago as in the time of the Stuarts the privileges of the Commons were guarded more jealously than life itself. In another reign, when the King ordered the Speaker not to put a motion, did not members in the House hold the Speaker in his Chair till the motion was put, in defiance of the King? And when the King himself, armed with all his royal prerogatives, and armed with more than prerogatives, armed with weapons, and bringing with him a small army to the door of the House, upbraided the Speaker, did not the Speaker then maintain the rights, dignity, and privileges of the assembly, of which this House is a lineal descendant? Did he not say to the King himself, "I have neither eyes to see, nor voice to speak, but as the House directs me"? That is the spirit which should actuate this House. Now what are the facts with reference to this case and to the court whose decision is being appealed against? Those Houses of which this House is a copy have special courts within themselves, so to speak, to try election petitions. In the Eastern States to-day, every House, at the beginning of a Parliament, appoints an elections and qualifications committee, which committee tries all cases of disputed returns. When a petition is lodged against any member taking his seat, the committee deals with the matter, and its decision is reported to the House, and the House thereupon decides what course to take. Who would think of questioning any formality or any informality of that court? It is entirely beyond the jurisdiction of any of the law courts of the land. That elections and qualifications committee examines its witnesses, considers such matters as are submitted to it, comes to its conclusion, reports, and the report is final. In this case this House has by law displaced that committee of elections and qualifications, a part of the House, by a special court created for the specific purpose of dealing with disputed returns, with election disputes purely and simply. It cannot go beyond those matters. It is a court with delegated authority from this House, responsible to this House only. The court has taken the place of the elections and qualifications committee. To that extent the court becomes a function of this House, a part of this House. It does work delegated to it by this House. That provision may be wise or it may be unwise. We know it is at times disagreeable for members to have to perform the functions of an elections and qualifications committee; so to save time, and perhaps to avoid disputes as to the constitution of the committee, the court has been appointed. But it is specially provided by law that the court shall deal with disputed elections, and that its decision in such matters shall be as final as if it were the decision of an elections and qualifications committee within the House itself. And as there can be no appeal to the Supreme Court from any decision of a committee appointed by this House, neither can there be an appeal to a court from the decision of the court which decides disputed returns, which court is only a convenience, doing the same work by another process. But the Attorney

General tells us that if the court goes outside the authority delegated to it, then there can be an appeal. I submit that if there can, it can be an appeal to this House only; it cannot be an appeal to another court. No court in the land has jurisdiction over the constitution of this House. That remains entirely with us. The members of this House, properly constituted, with you, sir, in the Chair, have the sole regulation of this body; and no court can interfere in the slightest degree. If the Attorney General's contention were valid for a single moment, when are we to be safe? When are we to be sure that we shall have sitting in this Assembly a member for any constituency? For lawyers can always find some technical flaw, some informality; and if they cannot find it they can allege it; and if they can allege it they can take it to the court and, as in the present instance, may for months deprive a constituency of its right to be represented in this House. The law never contemplated the possibility of any such course as that. The law expressly states that the decision of the court of disputed returns shall be beyond appeal, shall be final. But the Attorney General meets the argument by saying "There is another law for providing for similar processes, providing also that the decision of a certain court shall be final; and yet the decisions of that court are appealed against." But it is quite a different court. It is a separate court, with its separate jurisdiction, altogether apart from this House. It is a court in and of itself, and among the other branches of the Supreme Court; and its decisions may properly be revised if they are in dereliction of duty, or if they are bad in law. It is not so with the court appointed to decide disputed returns. It is a part of this House, and therefore liable only to our supervision. We, by our Electoral Act, have taken away that prerogative of which the Attorney General made so much. When we have taken it away, there can be no appeal. This House, in the management of its own business, stands superior to the royal prerogative. Have we not had instances in the House of Commons where the King has sought to prevent members from sitting, and the House has taken the part of the members? Have we not had other instances where the law has declared that a man had a right to sit, and the House has refused to allow him to take his place? Have we not the instance of Wilkes, who wrote in the *North Briton* his libel on the King, and who was excluded for a long time from the House, which, in spite of the law courts, kept him excluded? The Commons claimed the right to regulate their own membership, the right to deal with their own members. Was there not a similar instance in the case of Mr. Bradlaugh? Do we not remember how he was again and again elected, returned to his seat in the House, and the House incontinently cast him on the door-step? These instances clearly show what are the privileges of this House. The Commons will not allow either King or court to interfere with them in the conduct of their business and in the protection of their rights. These are established by laws for which the bloodiest battles in England have been fought; and are we to forget them so easily? I submit that there is no parallel whatever between the Arbitration Court and the court which decides disputed returns, which is a part of this Parliament, performing the delegated functions of this Parliament. That court is a part of us. And the Attorney General never for a moment answered the Canadian cases cited by the member for Guildford. The Minister did not in any way show that the arguments of the Privy Council Judges were fallacious. I have not the work at hand, but I have here the quotations reported in *Hansard*, though I suppose I shall not be allowed to read them. I should like to read one passage.

MR. SPEAKER: The proceeding is not strictly in order; but I allowed the leader of the Opposition to do so, and I shall allow the hon. member. The circumstances in the case were special, as the hon. member had not access to the original quotations.

MR. BATH: The Attorney General read the quotations from *Hansard*.

THE ATTORNEY GENERAL: No.

MR. SPEAKER: I did not notice the Attorney General read from *Hansard*, or I should have drawn his attention to it.

MR. WALKER: I shall read the quotations only, and not any speech in *Hansard*:—

But, in the opinion of their Lordships, a somewhat different question arises in the present case. These two Acts of Parliament, the Acts of 1872 and 1875 (Canadian Acts) are Acts peculiar in their character.

And I am submitting that this is on all-fours with our case. The judgment goes on:—

They are not acts constituting or providing for the decision of mere ordinary civil rights.

Observe the distinction—

They are Acts creating an entirely new, and up to that time unknown, jurisdiction in a particular court of the colony for the purpose of taking out, with its own consent, of the Legislative Assembly and vesting in that court that very peculiar jurisdiction which, up to that time, had existed in the Legislative Assembly of deciding election petitions, and determining the status of those who claimed to be members of the Legislative Assembly.

Now, it was upon that very fact that the Judges gave their decision, that an entirely new court had been created, taking out of the hands of the Legislature that jurisdiction over election matters that up to that time had been vested in the Legislative Assembly itself. We have done precisely the same thing. We have vested that power in this court, and we have declared that its decisions, whatever they are, shall be final, and that there shall be no appeal from them. How can we get behind that? No informality can vitiate the decision of that court. The only power to review the decision of that court is this Parliament, the court that created it and the court which is, strictly speaking, the parent of that special court. The judgment went farther and said:—

These are considerations which led their Lordships not in any way to infringe, which they would be far from doing, upon the general principle—

This was emphasised by the Attorney General—

that the prerogative of the Crown, once established, cannot be taken away except by express words; but to consider with anxiety whether in the scheme of this legislation it ever was intended to create a tribunal which would have, as one of its incidents, the liability to be reviewed by the Crown under its prerogative.

Observe how strictly on all-fours with our case this is. The judgment proceeds:—

In other words, their Lordships have to consider not whether there are express words here taking away prerogative, but whether there ever was the intention of creating this tribunal with the ordinary incident of an appeal to the Crown. In the opinion of their Lordships, adverting to these considerations, the ninetieth section, which says that the judgment shall not be susceptible of appeal, is an enactment which indicates clearly the intention of the Legislature under this Act—an Act which is assented to on the part of the Crown, and to which the Crown therefore is a party—to create this tribunal for the purpose of trying election petitions in a manner which should make its decision final to all purposes, and should not annex to it the incident of its judgment being reviewed by the Crown under its prerogative.

I would have been pleased to hear the Attorney General argue away these emphatic words on the part of their Lordships giving this decision. To my mind there is no getting behind it. Here it is distinctly stated as regards this court over which the prerogative of the Crown has no say, because the prerogative is taken away by an Act of the Parliament itself; and by that Act being assented to by the Crown, the Crown has willingly assigned to Parliament and to this court its power to dispense with what ordinarily and under other circumstances would be the right of every citizen, the right of the royal prerogative.

THE ATTORNEY GENERAL: Is that decision not exactly the same as in the Arbitration Court here?

MR. WALKER: No, it is not. The hon. member must see that the two courts are entirely distinct. One has power delegated by Parliament, the other is a court entirely independent of and having no relation to Parliament. Both courts are created by Acts of Parliament, but Parliament delegates its own authority to one court.

THE ATTORNEY GENERAL: All authority is delegated.

MR. WALKER: We must see the distinction. The one court deals with ordinary citizens outside, but this particular court deals with the regulation and constitution of this Assembly. There is a wide distinction between the two. The ordinary right of citizens to seek the royal prerogative in the ordinary pro-

cesses of law cannot be taken away; but the contention has always been that this House will not be interfered with, even by the King—is that not a distinction?—or by any court created by the King, or by any power delegated by royal authority. No power outside this House has any right to interfere with its constitution. That is all we are fighting for—our ancient rights and privileges as expressed so long ago in the reign of Charles I., as they are involved in this instance. We have expressly created this court to see that this House has its proper sitting number within it; but the moment a sitting member has reason to be dissatisfied with the judgment of that court, what is the conclusion arrived at? The member is aided and abetted by the Crown law authorities; and I say this without any desire to prejudice this case when it comes on. There can be no question that the Crown, represented by the Ministry, has assisted by every means in its power the member who has been disqualified by the court itself to keep the seat in this House vacant. [Several LABOUR MEMBERS: Hear, hear.] There is no gainsaying that, and the speech of the Attorney General to-night was an apology, nothing more nor less, for the course taken by the Government. It should be the duty of Ministers to protect this Assembly and not to protect rival candidates outside, on whatever side they may be. Ministers should protect this tribunal. Where now is the ancient spirit of this Assembly, having created this tribunal to do work which was done previously by a body of its own members, the elections and qualifications committee, when that court, doing this work, is interfered with? What does it mean but interference? And look at the far-reaching character of this interference. As soon as it was found by the Judge of this court that an appeal had been at least tacitly permitted to a higher tribunal, he refrained from giving his decision on a case that was before him until the other case had been decided; and as yet we have to wait another month before that case is decided. What is the result? The member for Geraldton (Mr. Carson) was kept out of his place in this House for I do not know how long, and he may not be entitled to sit here now. He may be illegally sitting in this House. We do not know. The decision is not given. We have stopped the function of this court. It will not decide until the High Court has spoken.

MR. SCADDAN: It cannot, in the face of the Government's action.

MR. WALKER: No; apparently the Government have taken the part of one of the parties to this action—a thing that should not be done. In a matter of this kind the Government should have no thought of any individual, but should have every consideration for the rights and privileges of this Assembly. These are matters that should come under the protection of the Government. The Government should not see what can be done to give a member a chance to get into this House without obedience to the court. It should be the duty of the Government to protect the court which the Legislature of this land has created. Should not the House have faith in its own decisions? Upon what ground is there a possibility of an appeal lying? Only on the ground as to whether a certain writ was returned on a particular day. I submit that the Judge in the court on that occasion decided that matter. He gave an opinion on it. It came under his judgment. His attention was directed to it. This is not one of the things he neglected to do. The Attorney General quoted that the court "shall" do certain things, meaning that it was compulsory on the Judge to perform these duties in his inquiry. The Judge did so. The matter was submitted to him, and he decided that the objection urged by the representative of the then allegedly sitting member for East Fremantle was void, and that it had no weight.

MR. LYNCH: And he heard the case on its merits.

MR. WALKER: I submit that the Judge was obliged to take the recognised authority for his decision on this point provided by law itself. We have a paper published by Government authority, which has all the weight of legal evidence. It is legal evidence. It is declared to be so by the laws of the land. The *Government Gazette* says that a certain document shall be returned on a certain day.

THE ATTORNEY GENERAL: On or before a certain date.

MR. WALKER: That is so. It shall be within that time. It gives a limit. If the writ is returned at any time within that time it is legal, and there is nothing wrong about it, and his Honour had that point before him. The Attorney General speaks of disrespecting Judges and of speaking lightly of their decisions; but what respect do we pay to this Judge's decision when we cavil at it in this manner? The Chief Justice of this State has ruled on that point as he was authorised to do by the Act that created this tribunal. He therefore fulfilled the obligations placed upon him by Act of Parliament. He gave his decision, and the law says that, having given that decision, it shall be final and there shall be no appeal from it.

MR. BOLTON: He refused an appeal.

MR. WALKER: Yes; he did so as the interpreter of the law. Whom are we to take as an authority—the Attorney General or the Chief Justice? The Chief Justice has ruled. He has given his decision. He refused an appeal. He said that no appeal could lie. The Attorney General says it does lie.

THE ATTORNEY GENERAL (in explanation): The hon. member must at any rate do me this justice, that I purposely refrained from saying whether an appeal would lie or whether it would not lie. I pointed out that it would be open to the court to hear the respondent or the other party, and to decide that the original granting was wrong; and I expressly said that I wished to convey no opinion as to whether that appeal did or did not lie. I hope the hon. member will do me the justice to say that I did refrain from giving an opinion in favour of one party or the other.

MR. WALKER: I do the hon. member every justice in that respect, but no one could help but feel the impression that his entire speech created, apart from the specific parentheses here and there introduced by way of caution. What also did the hon. member argue? The Chief Justice of the Commonwealth had ordered an appeal, and therefore he argued that the appeal did lie; and he threw every discredit on everybody or everything that threw any suspicious doubt as to the real attitude of mind of the Chief Justice of the High Court. Now there is a report of this case which says that the High Court granted the leave asked for; but that the Chief Justice, Sir Samuel Griffith, expressed a doubt as to whether that court had jurisdiction to determine the appeal. This would be a question, he said, to be decided when the appeal came before the court; and it reserved leave to the respondent to move. The Attorney General, in his desire to be fair, put quite a different construction upon the decision of the Judge in this case. He led us to imagine that it was on the merits of the case that the leave to appeal had been made an order of the court. That was not so. The facts of the case are that the court was moved to grant an appeal at once; but the Chief Justice took the point that he was not sure, he had his doubts, as to whether in this case an appeal was permissible. But that it might be argued, that it might not be decided without the court hearing argument at which both sides could be present, he granted leave; that is, he permitted not the arguing of the case on its merits, as the Attorney General wished to convey, but permitted the arguing as to whether the appeal can be heard or not. The point for argument is not now whether or not the recent member for East Fremantle was rightly or wrongly unseated. Before that stage can be reached, another stage has to be passed—the court has to be convinced that it has the right to listen to an appeal at all. And already the Judge has sounded a note that he does not think there is a case for appeal in a matter of this kind. That is the position; but the Attorney General would lead us to believe quite differently, that the case has gone so far on its merits and that the right which has been granted to the respondent to appear was only a customary right and the usual course of procedure; whereas it seems to me that in Melbourne at least they took notice of it as a special feature of the case, this expressed doubt of the Judge himself as to whether there was any right of appeal at all. But even if there had been no doubt and the case were perfectly clear, I submit that we should be lacking in our duty if we allowed the courts to interfere with the constitution of this Assembly. We pass laws to guide us, laws by which we are governed, and it

is our duty to maintain those laws. The Attorney General drew a distinction between the State and the Commonwealth, and tried to infer that those who argued as I am arguing now were raising the question of State rights. There is no question of State rights in the battle at all; it is not a question as between the State and the Commonwealth. The question is, are we a sovereign body? That is the point. Have we the undisputed right to deal with those matters which our Constitution has delegated to us, or are we liable to interference from any source outside? Can His Excellency the Governor interfere with this House; can the King himself interfere with this body? The laws protect us against the interference even of those great personages, and they equally protect us against arbitrary or unjust interference from the courts themselves. The courts have no standing, no rights, no privileges here whatsoever. This House protects its own rights; and this is only a question of protecting our own sovereignty as a legislative body. That is the whole question. And it would be the same if it were the Privy Council attempting to interfere, and not the Commonwealth High Court. We should still have the right to fight the question, and we should be as fully justified in doing so if it were the case cited but not answered by the Attorney General. Are we not doing our own body an injustice? This House is not properly constituted until these seats are filled. Our laws provide that there shall be a representative for East Fremantle, and so long as we permit the people of that constituency to continue disfranchised we are not doing our duty. What right have we to disfranchise those people? We have kept them now for months without a voice in this Chamber; we have done them an injustice, and it is in their cause I take this stand. Can we plead for anything higher than the right to protect those who should be protected against actions which may be dictated more by, shall I say, personal friendship or private reputation than by a regard for the welfare and well-being of this Assembly? It is a duty to protect ourselves as a body before protecting any individual outside. And it is nothing short of a scandal that we should have shown such ineptitude and remained inactive while the laws governing this body are practically set at defiance. That is what it means when we come down to the bed-rock of the question, that we can be fooled by any enterprising lawyer, who may at any time upset the decisions of our own body and interfere with us in the discharge of our duties. I shall vote for the motion because it is a duty to protect our own sovereignty, our own institutions as a legislative body, to protect ourselves against interference from any quarter; it is a duty we owe to every member of this House and to the constituency that we have kept disfranchised during all these months. If we do not display a firm spirit and a determination to retain our powers in our own hands, what will become of us? We shall degenerate step by step, until ultimately we shall not have a privilege left, and shall be open to interference on the part of anybody who chooses to take upon himself that impertinence. I hope the motion will be carried, for it has to be remembered that what has occurred in East Fremantle may occur in any other constituency. By a fictitious appeal to the court and afterwards by finding an excuse for fictitious appeal to a higher authority, the rich man who at any time desires to keep a Labour representative or a poorer man on either side out of the House can easily do so. He has only to lodge a petition in the Supreme Court, wait until a decision is given, and if it be against him he can take it to the higher court, and even then he may claim the royal prerogative and carry his petition to the Privy Council. I want to impress upon members that we make our own rules for the regulation of this Chamber, and no power has the right to dictate to us in this respect. Even the Supreme Court, which is our own creature, could not have spoken in this matter if we had not delegated to it the right to do so; and in delegating that right, Parliament said "When you have spoken, no one may interfere with that judgment." Are we going back on that, in deference to what may prove to be a fiction when the matter comes to a test? In deference to the whimsicalities of the law or alleged law, we have already disfranchised one constituency, and are setting an example which may do this House great injury. We need the representative of that con-

stituency in this Chamber, on whichever side he may sit; and by keeping him out of his seat we are interfering with his liberty and with the liberty of those of his electors whose ancient rights go back to the time of the oldest struggle for liberty in British history. At present we are depriving those people of their inherent rights as Britishers, and it is to restore their rights to them without delay that I shall vote for the motion of the member for Guildford.

MR. F. ILLINGWORTH (West Perth): In the strongest possible manner I would argue in support of the views which have just been presented to the House. The rights of this House are the main question to be considered. I wish to point out, in a few words, what are the rights of this House in the question. Did we, or did we not, leave in that Electoral Act the right of appeal. That we did not intend to leave any such right I am certain, for I was in the House when the Bill was passed, and no one would have been stronger than myself in opposition to it had there been any suspicion in my mind that such a right as has been suggested existed under that measure. The question to be decided is not whether this House has sovereign powers. We have those powers, and every member of the House may stand up and claim, for all he is worth, the maintenance of those sovereign powers. The point we have to consider, however, is whether in passing the Electoral Act we did, by Section 94, provide that the decision of the Supreme Court should be final. Did this Parliament—unintentionally no doubt—omit to sufficiently guard the transfer of our power so as to prevent this very question of appeal from arising? The question which has been put before the court is whether we did or did not fail to guard the rights of this House. If we have failed to guard them t,he remedy must be sought at the earliest possible moment by repealing the particular section and amending the Act. The question now to be raised is whether we did or did not make a mistake and fail in our duty, and that question will be settled by the appeal. If we did so fail, we must accept the consequences of the failure.

MR. SCADDAN: This House is the highest court.

MR. ILLINGWORTH: I admit that; but if a court which has sovereign power fails by inadvertence or neglect to guard its own rights, the best thing to be done is to remedy the defect as soon as possible. At present the right has been assailed, and the view presented to the court is that we left the power of appeal in the Electoral Act when transferring our power to the Supreme Court. What is asked for is a decision whether the High Court has or has not the power to listen to this appeal. That question has not yet been tested, and until it is decided I contend that this House is powerless by having inadvertently failed to guard its right in a proper manner, and until that question has been decided I am of opinion it did not so fail. I am of opinion they are so sufficiently guarded. What we have to do is to seek an amendment of the Electoral Act, and conserve our powers. If it is found we have failed at all, it is our first duty to amend the Act at the earliest moment, but not until the appeal which has been made is decided. We are going out of our way to fight an enemy which may not exist. It is sufficient for us to deal with the question when the High Court has accepted an appeal. It is not for me to express an opinion, but I should think the High Court will not accept the appeal. Until it does, we must hasten slowly and wait for a decision of the court, and then deal with the Electoral Act.

MR. J. C. G. FOULKES (Claremont): I have listened with great interest to the address given by the Attorney General, and also the speech of the member for Kanowna. Both these addresses dealt with constitutional law, and no subject has caused so much discussion during the last 40 years in the old country as that subject has. It is a subject dealt with by very few lawyers. It is a speciality in itself, and in the old country there are only about three or four lawyers who have made a study of that particular subject. Therefore it is a subject on which the ordinary layman and most lawyers, in my opinion, are not able to form a correct impression. I quite admit, with the member for

Kanowna, that we are in a most unfortunate position. When the Electoral Act was passed I know it was the intention of the House that there should be no appeal from the decision of a Judge. To show how anxious the House was on that point, a discussion arose that if a petition was lodged against the return of a member the appellant should deposit a certain sum, I think it was £50, as security for costs for the hearing of the appeal in our own Legislature. If at that time the Legislature intended there should be an appeal from the decision of the Judge, I feel certain that the amount fixed would not be sufficient to pay the cost of the appeal. I mention that incident to show how clear was the intention of the House that there should be no appeal to any court except our own. Unfortunately for us a fresh power has appeared on the horizon, the Federal Parliament. In those days we had no idea the Federal authorities would try to steal our State rights.

MR. TAYLOR: We passed our Electoral Act in 1904, four years after the Commonwealth was established.

MR. FOULKES: Since that date the Federal Parliament has developed, and we see signs and tendencies on the part of that Parliament to take away State rights.

MR. LYNCH: You are prepared to sign them away, apparently.

MR. FOULKES: I will deal with that question afterwards. At the time, if we had apprehended it I feel certain the Legislature of the day would have stated in unmistakable terms that they did not wish an appeal from our own Judges. The member for Kanowna has maintained that this House should be the sole judge of its own affairs, and he has gone back to ancient history showing that during the last 500 years in the British Parliament, the House of Commons has insisted on being its own judge on matters appertaining to itself. About 30 years ago the House of Commons recognised that it was not on all occasions the best judge to deal with matters appertaining to itself, and for that reason the House of Commons appointed election Judges to deal with all cases arising from disputed elections.

MR. WALKER: As a matter of convenience.

MR. FOULKES: I do not say it was a question of convenience. The House of Commons recognised that they were not the best judges to deal with these particular matters in dispute. Owing to the feeling of partisanship on both sides of the House, they saw quite clearly that they were not the proper persons to deal with election disputes. I mention that because it was only after many years of experience that they arrived at that decision, and from what I read in the public Press of Great Britain there is no anxiety on the part of members of Parliament or the general public of Great Britain to revert to the old practice of allowing the House of Commons or the House of Lords to settle these matters in dispute. They are prepared to leave them to the election Judges. I mention that fact because the member for Guildford seeks to persuade us that the best thing for us to do is to decide these matters for ourselves. I maintain that is a risky step for us to take, although I am strongly in sympathy with the motion, because I am anxious to maintain our State rights. Still I see there is great danger if we ask members of Parliament, who in most cases are partisans, to decide cases of this kind.

MR. SCADDAN: We are not deciding anything.

MR. FOULKES: We are asked now to declare the seat vacant. That is what it comes to.

MR. WALKER: According to law.

MR. FOULKES: The experience of the House of Commons has taught me that the Legislature, where there is a dispute arising over an election, is not the best judge to decide the matter in dispute. This evening we had two speakers — the member for Kanowna with great ability maintaining his side of the question, and the Attorney General maintaining the other side. I do not know which is right. Nor can any member in the House, however impartial, say certainly which member is correct. (Interjection.) I see one member is satisfied, but there are 35 members in the House now, and when I asked the question, only one member out of the 35 has said that he felt quite satisfied as to which of the two members is correct in his interpretation. The member for Kanowna referred to the case of Mr.

Bradlaugh, who was returned for the city of Northampton. When the time came to take the oath—at that time there was a law in force for every member to take the oath of allegiance—Mr. Bradlaugh, for certain reasons, objected to take the oath. It was not a question of disloyalty to the Sovereign, but he refused to take the oath; and the House of Commons passed a resolution that as Mr. Bradlaugh had not taken the oath, therefore he was not eligible to sit in the House of Commons.

MR. WALKER: He was under the impression he could affirm.

MR. FOULKES: The House of Commons declared the seat vacant. Mr. Bradlaugh went back for re-election, and maintained that the House of Commons had no right to prevent anyone from taking his seat in Parliament. We see he did not agree with the member for Kanowna. The House of Commons said what the member for Kanowna said, that they should be the judges of whether the person was eligible to sit in the House of Commons or not. Mr. Bradlaugh maintained that the House of Commons was not the judge: it was a matter for the constituents to decide. The case went on from court to court, and ultimately somehow or other, I forget how it was, Mr. Bradlaugh took his seat in the House of Commons. He himself recognised that he was not on very sound ground because he introduced a Bill, which was carried unanimously, that it be not necessary for a member to take an oath, that it should be sufficient if he affirmed. I only mention that point to show that Mr. Bradlaugh having fought out the case—he fought many other cases in the old country—recognised in the end that he was not on safe ground. This is not the first time in recent history that Legislatures have come in conflict with the judiciary. In South Africa, in the Transvaal, when President Kruger was ruler in that country, he appointed Judges. The Legislature in the Transvaal passed Acts of Parliament. Legal proceedings followed on these Acts between private individuals, and these matters came before the various Judges in the Transvaal, and the Judges gave decisions on the matters in dispute. When President Kruger and his Parliament heard of the decisions, they had those decisions brought before the House, and passed a fresh Act of Parliament straight away annulling the decisions which the Judges had arrived at. This caused, as members can quite understand, a lot of confusion in South Africa. It was one of the great causes of dissatisfaction in the Transvaal, the chief cause of dissatisfaction, that the Parliament of that country interfered with the decisions of its Judges.

MR. SCADDAN: That is what this Government is doing.

MR. FOULKES: That is what we are asked by the member for Guildford to do. Here is a case that is at present before the Judges of Australia. It has been brought before the Supreme Court of Australia.

MR. JOHNSON: It has never been.

MR. FOULKES: The member for Guildford is not quite correct in that. The matter has been brought before the Chief Justice, and he himself when the case came before him stated he had grave doubts whether he had the right to hear the appeal. The Chief Justice of Australia, who is looked on as one of the best legal authorities in Australia, for everybody listens to his opinions with the utmost respect, on this subject expresses grave doubt whether there is the right of appeal to the Federal Court, yet we are asked by the member for Guildford to decide offhand whether there is an appeal to that court or not. It is a most unreasonable thing to come to a decision of that kind. The majority of members are laymen, and with all due respect to the Attorney General he does not pose as an authority on constitutional law, and I am sure the member for Kanowna does not. If the Chief Justice of Australia expresses a doubt as to whether there is the right of appeal or not, we may——

MR. WALKER: Be safe to follow the doubt.

MR. FOULKES: I think we should be doing a risky thing to pass a motion and come to a decision when one of the best legal authorities in Australia has already stated that he has grave doubts on the subject. [Interjection.] I am aware that our own Chief Justice, as no doubt the Chief Justice of Australia and other legal authorities——

MR. WALKER: He has not heard the case.

MR. FOULKES: I admit he has not, but there appeared to be sufficient facts brought before him to convince him at any rate that there was a certain element of doubt with regard to this State. I agree with the member for West Perth that it is a most unsatisfactory condition to be in. This state of affairs might arise: we may after a general election have a dozen seats disputed, and we may have the two sides of this House of practically even numbers. I can remember the time when the Daglish Ministry had a majority of, I think, about three or four. Perhaps the hon. member (Mr. Daglish) can correct me on that point, for he knows better than I do what majority he had. On several occasions he only got a majority of one, and I am sure there must have been many occasions when the existence of that Ministry was at stake. The margin was so small at that time that a contingency might have arisen owing to the absence of members when the Ministry might have been put out of office, which might not have been the case had the full complement of members been present. I think that our first and earliest duty is, as the member for West Perth has stated, to see that we amend our Act, if it requires amendment. We shall know best whether it does require amendment when the Federal Judicature has given its decision on this case. [Interjection by MR. WALKER.] It is a most unfortunate thing for East Fremantle that it is practically disfranchised, but that is through no fault of this Parliament.

MR. SCADDAN: It is the fault of the Government.

MR. FOULKES: It is not the fault of the Government, and it is not the fault of this House. It is owing to the fact that the Federal authorities may claim the right to hear this case. If the Federal Judges decide that they have the right to give leave for this appeal, I think we should be placed in a serious difficulty if we opposed them on that point.

MR. SCADDAN: How do you propose to compensate the East Fremantle electors?

MR. FOULKES: It is not a question of compensation. No amount of compensation can be given to them. It is impossible to devise any means of compensation. A legal difficulty has sprung up owing to the manner in which our last Electoral Act was passed by this House. Members of the House committed a mistake, I have no doubt, although they did it unwittingly, as I said just now. We had no apprehension at all, it never dawned upon us, that this state of affairs might arise. The member for Guildford was in the House at the time that Bill was passed, and he will remember that it was passed after a great deal of discussion, and it only came into law at the end of the session. A mistake has, I say, been made, and it is most unfortunate that East Fremantle is the constituency.

MR. SCADDAN: We do not admit a mistake.

MR. WALKER: A mistake is being made now.

MR. FOULKES: A mistake has been made owing to the fact that we did not make that section more definite. Still, I maintain that where the Chief Justice, Sir Samuel Griffith, has expressed grave doubt on this point we should be doing a most risky thing to decide offhand like this, without having more and better authorities on this point than have been adduced.

MR. BATH: Where would you get a better authority than the Privy Council case cited?

MR. FOULKES: We have heard extracts from that case, and I would like to hear the opinion of the Federal Court upon that Canadian case.

MR. BATH: They are not allowed to give a decision on that.

THE ATTORNEY GENERAL: Yes, they are.

MR. BATH: They could not review that decision.

THE ATTORNEY GENERAL: Yes.

MR. BATH: No.

MR. FOULKES: I feel certain that the case will be brought before the Federal Court, and even if not I am quite sure the Federal Judges will refer to it.

MR. BATH: The Attorney General should have known of that case.

MR. FOULKES: All these points could be dealt with.

MR. BATH: It should have been dealt with when the Attorney General was considering this matter and advising the House or the Government.

MR. FOULKES: I dare say he did consider the point, but this is the risk he ran. Supposing he had recommended his Excellency the Governor to declare the seat vacant, perhaps Mr. Holmes would still have gone on with his petition. I do not say he would have done so, but he might have gone before the Federal Court; and supposing he had done so and the court had decided that Mr. Holmes had to take his seat in this House, we should have had two members coming up for East Fremantle. And who would decide the point?

MR. WALKER: The House.

MR. FOULKES: But as the member for West Perth has said, the House has transferred its rights to our own Judges here.

MR. HOLMAN: And the Judge has given his decision.

MR. FOULKES: But would he give his decision to that effect in opposition to the decision of the Federal Court?

MR. TAYLOR: He has already given it.

MR. FOULKES: But supposing the Federal Court decided that Mr. Holmes was entitled to the seat. (Interjection.) There are all kinds of possibilities.

MR. SPEAKER: If the hon. member would address the Chair, he would find very much less interjection.

MR. FOULKES: I was replying to the hon. member.

MR. SPEAKER: I cannot allow interjections to continue at the rate they are going on.

MR. FOULKES: The numerous interjections I have had show what difficulties there are in regard to this point. The last few interjections I have had, three of them, were made within two or three minutes. They are all supposing this and supposing that. But it shows what difficulty there is with regard to this subject, and I for my part shall refrain from giving a decision on it; therefore I shall vote at present in favour of allowing this matter to be tried by the Federal Court, and if their decision goes against our State rights, then it will be our duty to amend our own Electoral Act as far as possible, and I hope it will be done this session and that therefore we shall preserve our rights.

MR. WALKER: Supposing a decision is given and it does not satisfy Mr. Holmes, and Mr. Holmes wants to take it to the Privy Council, will you hold that we ought to wait until the Privy Council has decided?

MR. FOULKES: If Mr. Holmes has the right to take the case to the Privy Council——

MR. TAYLOR: You would hesitate.

MR. FOULKES: I would hesitate very much. It proves quite clearly to me the mistake we made when we passed that Electoral Act two years ago. Whether Mr. Holmes will go on with it or not remains to be seen. Sufficient for the day is the evil thereof. I take it that the partisans in this case, Mr. Angwin and Mr. Holmes, are reasonable men, and I fancy that when they obtain a decision of the Federal Judges—and the member for Kanowna will agree with me that taking them altogether they are the three best lawyers, I should say, in the whole of Australia—it will satisfy both parties. For that reason and the other reasons I have mentioned, I think we should be doing a most risky thing in agreeing to the motion brought forward by the member for Guildford.

MR. H. DAGLISH (Subiaco): The member for West Perth (Mr. Illingworth) in his opening remarks made certain statements that I think we all agree with, namely that it is the duty of this House to protect its rights. I do not think anyone can dispute that point. It is a duty not to the House itself but to the electors, because in conserving our rights we are really protecting their interests, and in this case it seems to me that although at present this matter is being discussed in the Federal High Court, the question is one really of the rights of Parliament, and we should follow the precedent established for centuries by the British Parliament of making Parliament the supreme arbiter of its own rights, the supreme arbiter of its own power. There is no question that it is in our power, and we are simply following precedent if we define our rights and insist on retaining them.

MR. ILLINGWORTH: We have transferred our power.

MR. TAYLOR: No.

MR. DAGLISH: The whole question hinges on the accuracy of that statement. As far as ordinary plain English goes we have undoubtedly definitely said with regard to disputed elections that we have not and we will not transfer our rights. We have transferred our power to this extent, we have transferred our duties as a court in disputed elections to our Supreme Court; but we have said that the Supreme Court having given its decision there shall be no appeal, and the statement is made unequivocally in two or three different forms. We are asked to take a reading of the law which is different from the common-sense reading of it. I know that legal readings and common-sense readings do sometimes differ; but the section on which the whole question hinges seems to me to be so plain in its language that "the wayfaring man though a fool may not err therein;" that the veriest tyro able to read at all and gifted with the slightest understanding could not make a mistake with regard either to the intention of Parliament or to the effect of the enactment. The question is whether the elections which come into dispute in this State from time to time are to be settled under our electoral law, by our State court, by our locally constituted authority, or by some other court at a distance having no special knowledge of our electoral law and to which we never proposed to give the power to settle disputes that arise.

MR. ILLINGWORTH: The question is: did we or did we not give that power?

MR. DAGLISH: I defy the hon. member to find any section in any Act of Parliament more definite in its nature than Section 167. And so far as I can understand from the Attorney General, the whole question hinges on whether our failure to establish specifically a court of disputed returns gives a right of appeal because of the fact that the body which gives the decision on a disputed election is the Supreme Court, and there is a right of general appeal from any decision of the Supreme Court. I do not know whether I correctly caught the Minister's words; but I understood him to say that if we had retained what was termed the court of disputed returns, then there would be no appeal

THE ATTORNEY GENERAL: No general appeal.

MR. DAGLISH: And that we distinctly took away any special appeal by the terms of Section 167?

THE ATTORNEY GENERAL: No.

MR. DAGLISH: The words of the section are: "All decisions of the court shall be final and conclusive, without appeal, and shall not be questioned in any way." The same statement is repeated in about four different forms. First: "All decisions of the court shall be final"—that would seem to an ordinary reader to finish the matter; but the section proceeds, "and conclusive." The third repetition is, "without appeal;" and the fourth repetition, "and shall not be questioned in any way." Our Supreme Court heard this case, and reported, I presume in the ordinary way, that the election for East Fremantle had been declared void. Then our duty is plainly laid down. Parliament should step in as soon as that report is made by the Supreme Court; and it became the duty of this House, when it met, to pass a motion declaring the seat vacant. We have failed in our duty, and the position is either that election is void, or it stands. If it is void, then this House has obviously neglected a plain duty in refusing to pass the necessary motion and to hold another election.

MR. ILLINGWORTH: Meanwhile an appeal has been lodged.

MR. DAGLISH: If the election was voided, then this House should have carried the necessary motion. If the election is not void, then the member for East Fremantle ought to be in his place to-night. Undoubtedly the election has been either upset or not upset. If it has been upset, then the House is failing in its duty until a motion like that of the member for Guildford be carried. But if the election has not been upset, then East Fremantle is being very badly treated by its member, who ought to be present in his place, attending to the duties with which he has been entrusted by his constituents. I wish to say that I am not arguing this question either as a friend or an opponent of either candidate. Mr. Holmes having been declared elected, and then in my opinion unseated—I am speaking exactly as I should speak were the positions reversed

—it seems to me plain that the continued absence of Mr. Holmes from his seat in the House is evidence of his recognition of the fact that he has no right here. He recognises that he is not a member of the House, that the election has been declared void, and that therefore he has forfeited his privileges.

THE ATTORNEY GENERAL: Is that the only motive that could keep him away? What about Mr. Carson?

MR. DAGLISH: I understand that he was trembling and timid. He did not know what grave danger he might be stepping into; did not know what precipice was before his feet. But the position of the member for Geraldton (Mr. Carson), if the Attorney General will allow me to give the gentleman that title, is no better now than when the Premier said a few words advising him to take his seat. If the member for Geraldton could have incurred any penalty before the Premier said those few words, there was no magic in the words to relieve the hon. member from any penalty which he would have incurred had he taken his seat before those words were spoken. But the point is, either there is or there is not at the present moment a member for East Fremantle. If there is not, let the House do its duty to the people of East Fremantle. If there is a member for East Fremantle, let him, on the other hand, come here and attend to his parliamentary work. And I cannot get away from the fact that the gentleman who was representative of East Fremantle has recognised, by his absence from the House, that his election has already been finally and conclusively upset. Now we come to the question of appeal. I should be glad indeed to see disputed election petitions removed altogether from any court; because after all we do not want election disputes determined on legal arguments of great subtlety, such great subtlety that although we have had the decision of one Chief Justice in regard to this election, it seems that there are points on which the Chief Justice of the High Court may differ in opinion from our local Chief Justice. We do not want to have election battles fought in the law courts. We do not want, either, to have a candidate who is forced to appeal against the result of an election, starved out by the cost of the legal proceedings, starved into submission, forced because of the want of a long purse to accept what he thinks is a wrong decision. That is the position to which we are coming. Already an appellant has to put up a substantial sum before he can lodge an appeal at all. If he puts up that sum, he has to risk incurring heavy legal expenses. I understand that in arguing a case like this, that may last two or three days, very heavy expenses are incurred. The member for Guildford had a case about four years ago, and if my memory serves me rightly, a couple of days' hearing cost him about £200, without an appeal, without any special expenses. It cost him £200 to respond to a petition in our Supreme Court. What is it about to cost the member who is justifying his retention of a seat, if he has to go to the High Court? And presumably, if there be a right of appeal to the High Court, there is likewise on the same ground a right of appeal to the Privy Council. Why, it means that more than half of us in this House can have our seats taken from us by litigation, no matter how strongly we hold them by the will of our electors.

MR. ILLINGWORTH: That is the fault of the Act.

MR. DAGLISH: I am putting the position as it is, if we are wrong in passing the present motion. If there is a right of appeal, then the man returned in thoroughly legal fashion to Parliament, if he has but a short purse, is placed at the mercy of any unscrupulous candidate who chooses to pursue him from court to court; and the member elected may be actually forced out of Parliament simply for the want of money, by his inability to provide for his representation in the various courts to which the case may go. I contend that the proper court of appeal from the decision of our Supreme Court—the proper court to which any member dissatisfied with the decision of our Supreme Court ought to go—is constituted by the electors of his constituency. Surely they can settle the point in dispute more quickly and more effectively than it can be settled by any court whatever. The court can but say either that the election is void, or that it

stands good. And if it be void, then there must be a resort to the people of East Fremantle. If it holds good, there must be in a short time, on the dissolution of Parliament, a resort to the people of East Fremantle. Meanwhile, the whole issue could have been settled before now, probably at no greater expense than is being incurred by the present legal proceedings, had that reference been made to the people of East Fremantle which this motion, if passed, will cause to be made. I earnestly trust that Parliament will stand by its own Act, an Act couched in exceedingly clear language, and will stand by it apart from the Canadian precedent, and a very strong precedent it seemed to me, quoted by the member for Guildford. Apart from that precedent, the words of our Act are so strong and so conclusive, and the intention of Parliament in passing it is so evident, that it seems to me a duty on the part of this House to carry the motion which the member for Guildford has submitted.

MR. G. TAYLOR (Mt. Margaret): It was highly gratifying to me to-night to hear the able speech of the Attorney General on an exceedingly small technical point, or I think I shall be more correct if I say on a legal quibble. So far back as last November, when Parliament met after the general election, I was so satisfied, from information I received, that this seat would be voided if the petition were tried before the court, that I moved for a return containing the report of the inquiry by the Electoral Department. The motion was passed last session, but the return was not laid on the table until this session. When moving for it last session I was twitted by members on the Government side with being a partisan, with being prejudiced, with making wild statements against high, honourable, and reputable people. But now I find that the report of the departmental inquiry, made at the instance of the then Chief Electoral Officer, Mr. O. Burt, contains in several places recommendations to the Minister to prosecute some of those high and reputable people, for speaking against whom I was twitted by members on the Government side when I moved my motion. That being so, I am pleased that this motion has been moved, and that arguments have been advanced from both sides of the House in the way in which they have been advanced. When I spoke previously I did not speak as a partisan. The evidence is clear that we, on this side of the House, have no desire to make this a party question, or this position would have been taken up as soon as Parliament met. We then thought that the Government would have done their duty and moved to declare the seat vacant. It was not done; and as time passed, it became necessary that someone should take action in the matter; and the member for Guildford, with no party feeling of any kind, moved as he did. We have discussed this matter with no party feeling. No doubt the Attorney General really evaded the points of the strong arguments brought forward by the member for Guildford and stated by the learned Judges in England in connection with the Canadian case cited, though the hon. gentleman dealt very extensively with the Tasmanian case cited. The Attorney General also put forward his own phase of the Geraldton case. So I am fair in putting forward this phase of that question as it appears to me as a layman. When our Chief Justice decided the East Fremantle case and voided the seat, he was perfectly satisfied on the evidence advanced that it was the proper course for him to pursue. Subsequently the Geraldton case was tried, and our Chief Justice reserved his decision. The Attorney General argues that it was on mature judgment, and after greater consideration, that the Chief Justice reserved his decision in the Geraldton case; but I am fair in putting this phase of the question, that the Chief Justice had decided the Fremantle case on the evidence and had voided the seat. Had no appeal been taken, the decision of the Chief Justice in the Geraldton case would have been similar to that in the East Fremantle case. Why did the Chief Justice reserve his decision? Had there been any idea in the mind of the Chief Justice that the seat should not be voided, there was no necessity for him to reserve his decision. His action would have been, it is plain to see, that he would not have reserved his decision; but the decision was reserved. The Chief Justice had in his mind that he had

already decided a case and voided a seat. He said to himself: "This evidence is sufficiently strong for me to void this seat also, but what is the use of my doing so when there is a case pending in the Federal High Court?" That is a fair assumption for me to take. It is a fair way to view the decision of the Chief Justice. Had the Chief Justice intended, according to the evidence before him in the Geraldton case, to uphold the seat of the hon. member, he would have given his decision; but his opinion was that the seat should be voided, and he said "What is the use of it? I have voided a seat and the case has gone to the High Court. The Government have not done their duty in declaring the seat vacant." It is fair for me to assume that the Chief Justice thought the Government had acquiesced in this appeal to the High Court. The Chief Justice said to himself: "I have directed, they have not acted. I will reserve my decision." That is my opinion of what was in the mind of the Chief Justice, though no one can tell what was in his mind or what decision he would have come to in the Geraldton case on the evidence adduced. The Attorney General has pointed out also very clearly that it would be idle on the part of this House and would make us appear as asses to carry this motion. The Attorney General asked whether the Chief Justice of the Commonwealth would take into consideration the attitude of this House. Would a man in the high and lofty position of the Chief Justice of the Commonwealth and with the versatile brain of that gentleman take any notice of what this House would do? In my opinion no court will give a decision it has no power to enforce. Suppose we carry this motion to-night and declare the East Fremantle seat vacant, and an election takes place in accordance with the Electoral Act of 1904, and a gentleman is returned to represent East Fremantle before the High Court will sit in Western Australia; and supposing the present litigants go on with their appeal, and the High Court decides to quash the decision of our Supreme Court, how is the High Court going to enforce the decision? It is an awkward position for the High Court as to whether it can enforce the decision. That aspect of the question appeals to me; and I am perfectly sure that if this House does its duty, the gentleman who is appealing to the High Court will see the necessity of advancing no farther arguments. It has been pointed out by the member for Subiaco (Mr. Daglish) that it simply means, if we are to allow our power to slip through our fingers, that in the near future it will be the man with the longest purse who will occupy a seat in this House. It is quite apparent that, were it not for the money behind the litigants to-day, the High Court would not have been moved; and has it not been argued by members who have cause to know that the reason this appeal was not heard outside this State was because of the shortness of the purse of the petitioner? That is known beyond doubt; and whatever feeling there may be on party lines, we should be solid in maintaining our rights as members of this House. It has been pointed out by the member for Subiaco that the Electoral Act under which this dispute arose specifically and distinctly says that there shall be no appeal. It is not owing to any lack on our part in the passage of that measure, but it is because of the Federal Constitution Act, passed years before, that a right of appeal is allowed to the High Court. The decision in the Canadian case, quoted by the member for Guildford, held that there is no right of appeal to the Privy Council; and that being so, there can be right of appeal from the Supreme Court here on a matter on all-fours with the case under review in that Canadian decision to the High Court of Australia. Of course the legal member of the Government disagrees, and I must congratulate the hon. gentleman on the able manner in which he put his case forward.

MR. TROY: And evaded the point.

MR. TAYLOR: A person listening to a lawyer pleading his case, and especially a lawyer putting up his defence, must recognise that the lawyer deals in his arguments with the weak points of his opponents, and slides quietly over the strong points. The strong point in the argument advanced by the member for Guildford was the Canadian case, and neither the Attorney General nor any member on the Government side of the House has replied to that statement. It

stands as yet unchallenged. But I must congratulate the Attorney General on the able manner in which he evaded the point. The hon. gentleman spoke for an hour and a half and rarely touched the point, and failed altogether to refute the strong argument advanced by the member for Guildford. I have no desire to delay this motion, but I point out that it is correct for this House to carry it, notwithstanding the arguments advanced by the legal gentlemen who sit on the Government side. The member for Claremont (Mr. Foulkes) hesitated somewhat when the question was put to him, whether if the High Court did not give the decision that Mr. Holmes desired, and if Mr. Holmes wished to take the case to the Privy Council, he (Mr. Foulkes) would wait for the Privy Council decision or not. It seems to me that lawyers always desire to keep a case going from one court to another, because they invariably do not lose much through the transit. It generally affects those who are easily led from one court to another, and who have to find the wherewithal to take the case or cases along. Notwithstanding the statement made by the Attorney General I hope this motion will be carried. I do not wish to argue from the "State rights" point of view—that drops out of the question—but I wish to maintain the rights and privileges of this House. That is the point. The Act gives specific power to deal with the decision, and I hope the House will not lose the opportunity. I will support the motion.

[MR. ILLINGWORTH took the Chair.]

MR. W. D. JOHNSON (in reply as mover): In rising to reply to some of the reasons given by members why they cannot support the motion, I must say that I am pleased I brought it forward, if for no other reason than that this has been an interesting and instructive debate. It will be my duty to try to remove any doubts as to the power members have to decide the question for themselves. Let me first refer to some of the remarks of the Attorney General. I do not propose to go over the points that have already been answered by the speeches delivered by members on the Opposition side of the House. The Leader of the Opposition took away several points that required explaining by me, and the member for Kanowna did likewise, but there are two or three points I desire to refer to. At the outset the Attorney General misunderstood me when I made reference to the delay that occurred in connection with the hearing of the petition. I did not desire to cast reflection on the Chief Justice, who heard the petition, and I do not desire to cast reflection on anybody in connection with the delays; but I desire to remove the accusation levelled against the petitioner, that he, and he alone, was responsible for the delays. I desire to remove that from the public mind, because unquestionably it has been held by a number of people that the delay was due to the petitioner, and the petitioner alone. The delay was not due to the petitioner, neither was it due to the respondant, with the exception that I believe he has delayed the matter by going on with an appeal which is not allowed according to the Electoral Act. Apart from that, up till the time the appeal started there was no delay that anyone could take a great deal of exception to. I would be the last to cast reflections on the Judge who sat in this case, and I am sorry the Attorney General thought I desired to do so. The first point made by the Attorney General was in connection with the change of opinion that possibly arose in the mind of the Chief Justice on the two petitions he heard in connection with the recent elections. When the first petition was heard the Chief Justice gave it as his opinion that his decision was final and conclusive, and that there was no appeal. Later on there was another petition lodged, and because the Chief Justice did not decide that petition and give the same opinion, the Attorney General would lead the House to believe that the Chief Justice saw the error of his way, and realised that his first opinion was wrong, and that after mature consideration he reversed it. Is not this the real position? We had the decision of the Chief Justice wherein he stated his decision was final, and that there was no appeal. What followed? What was the duty of the Government of the day? What was the duty of Parliament? According to the opinion of the Attorney General, was it not the duty of Parlia-

ment to immediately declare the seat vacant, and proceed to the election of a new member? But we have to realise that for one month this Parliament sat and disregarded altogether the fact that the Chief Justice had notified us that he had declared the election null and void, and practically called on us to issue a new writ. We did not do so. What other decision could the Chief Justice come to but that Parliament did not wish to uphold the rights and privileges that we had, and therefore he delayed the matter for farther consideration? That is the true position to my mind. The fact that the Chief Justice did not decide the Geraldton petition, and did not give the same decision therein as in the East Fremantle case, does not cast doubt on the decision of the Chief Justice as to whether he was right or wrong in the first place? There is a reflection on the House in not carrying out its duties when notified by the Chief Justice that he had decided that the election was null and void. Then the Attorney General proceeded to make a great deal out of the fact that I read a letter written by the legal adviser to the petitioner which was sent to the Governor. I brought forward that letter, and I did not make a great point of the fact that the letter was written to the Governor. I realised after all that there was a doubt, and a very grave doubt, as to whether it was the duty of the Governor to issue a writ, and not the duty of the Government; and in order to lead to my argument I read the letter written by the legal adviser to the petitioner. I desired to refer to the letter written by the legal adviser to the petitioner, and in referring to it I quoted the fact that Mr. Moss figured in many ways in the petition. I did draw attention to the fact that all the authorities I had looked up, and all the authorities I had spoken to on the question, were decidedly against the opinion given by the then head of the Crown Law Department, Mr. Moss, as adviser to His Excellency the Governor. Considering all the authorities were against him I thought Mr. Moss was wrong on that occasion, and I am convinced at this moment that the advice given at that time was absolutely wrong. Then the Attorney General states that after all it was not only the authority of Mr. Moss, but he went also to Mr. Burt, a well-known legal authority in the State. But the Attorney General did not tell us if Mr. Burt was consulted on the question of whether there was a right of appeal. It is possible Mr. Burt was consulted to find out whether it was the Speaker who should issue the writ, or whether the Governor should issue it. When the Governor replied on the advice of Mr. Moss—for no doubt it must have been on his advice when His Excellency replied—he did not state it was not his duty to issue the writ. He did not raise that point at all, but he raised the point that he understood an appeal was pending; consequently, although the Attorney General made a lot out of the point, there was very little in that issue at all. I only introduced it to show that Mr. Moss, in replying to the petitioner, did not state that he was wrong in saying the Governor should issue the writ, or that it should be issued by the Speaker, but he stated that he understood an appeal was pending, which was the reason the writ was not issued. The Attorney General then got to the crux of the question, the question that arises and the only question we have to consider, as to a right of appeal. That is the big question, and the Attorney General argues that there is a right of appeal by quoting the Constitution Act, Section 73. I have read the subsection referred to by the Attorney General, and I have got others to read it also, and I cannot for the life of me put the same interpretation on that subsection as was given to it by the Attorney General. The point I make is this. If there is an appeal to the High Court there must be an appeal to the Privy Council. And if there is no appeal to the Privy Council, then there is no appeal to the High Court. In order to make that clear I quoted certain authorities—I do not want to repeat them now—to show that the High Court itself realised that there was no appeal to the High Court unless the same appeal rested with the petitioner or with the defendant to go to the Privy Council. That is beyond the shadow of doubt. If there is no appeal to the Privy Council, then there is no appeal to the High Court; and it is idle for the Attorney General to quote Section 73, because his interpretation of

that section does not agree with mine. I am not saying that my interpretation is better than that of the Attorney General, because we know he is a better authority than I am. I have asked members and others, and everyone agrees that the interpretation put on it by the Attorney General is open to question. I am not going over the authorities quoted, but the fact remains that the authorities quoted by me are conclusive; that they do demonstrate to members that if there is no appeal to the Privy Council there is no appeal to the High Court. The Attorney General proceeds to draw a comparison between the Arbitration Act and the Electoral Act. The member for Kanowna has combatted that, therefore it is not necessary for me to cover the same ground. I agree with the member for Kanowna that there is no comparison between the two measures, therefore the argument of the Attorney General is far-fetched. It seemed to be one of those arguments which he grasped at to bring forward, and if he has convinced members I am sorry for them. The great point that was emphasised by me, and I was beginning to think after hearing the argument or the want of argument on the part of the Attorney General that he had overlooked my point, was the Canadian case, which has been referred to so much since the Attorney General spoke. I was of opinion that I had failed to convince members that that case was identical with the case under review, and that the decision of the Privy Council was sufficient to convince members there was no appeal in this instance. I thought that I had failed in my object; but from speeches delivered since the Attorney General spoke I find that I did not neglect that point. Members on this side have pointed out that the Attorney General was trying to draw a red-herring across the trail, by stating that in the Canadian case there was a question of damages, and there was a question of the defendant serving a sentence in gaol, therefore that case was not identical with the case under review. That is beside the question. It is true there was a question of damages also other considerations in the Canadian case, but the Privy Council did not go into those matters at all. They took into consideration whether there was an appeal under the Canadian measure, and the Canadian measure is identical with our Electoral Act. When the Privy Council stated that the Canadian Government had laid it down that there should be no appeal from the Supreme Court, especially in connection with a measure of this description, that shows, when we have almost the same words in our measure, that there is no appeal to the Privy Council, and there is no appeal to the High Court. I submit that the Attorney General did not go into this phase of the question, but left it alone. That was the big point, and it convinces me that my arguments were right, and my conclusions absolutely correct. Just let me in a few words sum up the whole position. In 1904 we passed an Electoral Act, and we stated in that Act that a Judge of the Supreme Court should decide for us questions which were originally decided by a committee called the Elections and Qualifications Committee. We stated in that measure that the Judge should be guided by equity and good conscience rather than by legal technicalities. And we stated that the Judge's decision should be final. Let me right here reply to the arguments of the member for West Perth and the member for Claremont. These two members stated that they were prepared to support the motion, or they inferred that they would have been prepared to support the motion had we not left a flaw in the Electoral Act. The member for West Perth in particular desired with me, when we were passing that measure, to make the decision of the Chief Justice conclusive, and he stated that had there been no flaw in the Act, had we carried out our intentions, he would have supported the motion. Who says there is a flaw in our measure? No one else has said there was a flaw. Our Chief Justice has not said so. The Chief Justice said distinctly that he has given a decision, that his decision was final. There has been no question as far as the Chief Justice is concerned as to a flaw in our Electoral Act. Then we come to the High Court. The High Court has not decided that there is a flaw in our Electoral Act. The High Court has not stated that there is an appeal from our Electoral Act. The member for West Perth has led us to believe that he is of

opinion a right of appeal exists to-day, and that it has been admitted by the High Court. There is no right of appeal admitted so far. There was an *ex parte* application, on the hearing in relation to which it has been stated the Chief Justice is prepared to hear an argument; but he points out that whilst ready to hear the argument in favour of the appeal, he has very much doubt whether he has a right to hear the appeal.

MR. ILLINGWORTH: If he says that, there would be no flaw. You must wait and see.

MR. JOHNSON: You have the decision of the Chief Justice of the Supreme Court, and that is exactly what he states, that there is no appeal. The point I want to make is that the member for West Perth in particular says if there was no flaw—and I want to convince the hon. member that nobody claims there is a flaw—he is talking about something which does not exist. The Chief Justice of our own State says there is no flaw; and the Chief Justice of the High Court does not say there is, either. Even the Attorney General does not argue that there is a flaw.

MR. ILLINGWORTH: I never said that there was.

MR. JOHNSON: If the hon. member has not said so, he must vote for the motion. He said that if there was no flaw he must support the motion.

MR. ILLINGWORTH: A question has been raised.

MR. JOHNSON: Who has raised the question? It has never been raised. The only people who could possibly raise it, if it has been raised at all, are the legal advisers of Mr. Holmes. Of course they are absolutely justified, and we would expect them to raise a flaw or to try to make a flaw if a flaw does not exist. Surely the member for West Perth is not going to take their authority and is not going to be convinced by an interested party that there is a flaw in our Electoral Act? He will surely take the better authority of the Chief Justice of our Supreme Court. Surely the Chief Justice is a better authority than the advisers of an interested party, whose very duty it is to try and discover a flaw in an Act which has been under review by the Chief Justice of our own State, who does not hold there is any flaw at all. Consequently I look with confidence to securing the vote of the member for West Perth on this question, because he said that if there was no flaw he would vote for the motion; therefore, if he does not vote for the motion he is prepared to accept the opinion of the advisers of Mr. Holmes in preference to the opinion of the Chief Justice of our own State. We say in our Electoral Act that it shall be decided on equity and good conscience, and that there shall be no appeal; then that we were absolutely justified is shown by the fact that the measure went before the King-in-Council and His Majesty-in-Council approved of the measure; consequently we were justified in having these election petitions decided as outlined in our own measure. I have pointed out in quoting the Tasmanian case, which was not referred to by the Attorney General, that even had we left out the section where we state the decision of the Judge of the Supreme Court shall be final, and had we simply had a provision that the Judge should be guided by equity and good conscience, then, according to the Privy Council, there would have been no power of appeal. In the Tasmanian case to which I referred, or the decision which I read, the Privy Council decided that where the statute says the Judges of the Supreme Court shall be guided in their decision on any particular matter by equity and good conscience, there is no appeal from that. That decision should be conclusive that there should be no appeal. But we go one farther. We state that there shall be no appeal, and we have been told in the case cited, *Theberger* versus *Laudry*, that the Privy Council uphold that view. Some members said they questioned whether they should vote for this motion because of the view of some legal authorities in this State, interested parties, the advisers of the defendant in an election petition. They are prepared to take that advice in preference to the advice of the Privy Council on a measure that has been assented to by His Majesty-in-Council. The question simply boils itself down to this. We have stated that we are going to reserve to ourselves the right of handing over the decision of these election petitions to

a Judge of the Supreme Court, and his decision shall be final. Although we have all right on our side, and our view is concurred in by two of the great authorities of the land, we say as members of Parliament that we are not men enough, that we have not that confidence in ourselves, to protect our rights from encroachment, and to assert that we are going to enforce our rights on every occasion. This is the position. It is no use bringing in the question of there possibly being two members sitting, or the question of its only delaying the matter for another month, or bringing in party politics. That is beside the question altogether. The question is this: are we going to enforce those rights we undoubtedly have, or are we going to allow outsiders to dictate to us members of Parliament who have extreme power in this matter that we shall do or shall not do certain things? We have the right, and I appeal to members with all confidence to carry this motion to demonstrate to the country that we can pass laws, and farther that when we pass laws we are men enough to put them into force. The Attorney General concluded by trying to make out some imaginary case, and he went on to state that this motion will not have any influence on the High Court. It is undesirable that it should, and I do not anticipate that it will. It is true that this motion will not have any influence on the High Court; but while that is true, is it not a greater truth that no one should have an influence upon this Chamber? We have all power; we have all these privileges given us; and I appeal with all confidence to members to carry this motion, to demonstrate to the world at large that Parliament passed this Act to reserve to itself the right to decide these questions, and consequently I expect members to carry the motion to demonstrate that we are going to protect these rights.

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

Ayes	...	...	14
Noes	...	...	23
Majority against		...	9

AYES.	NOES.
Mr. Bath	Mr. Barnett
Mr. Bolton	Mr. Brebber
Mr. Collier	Mr. Brown
Mr. Daglish	Mr. Cowcher
Mr. Heitmann	Mr. Ewing
Mr. Holman	Mr. Foulkes
Mr. Johnson	Mr. Gordon
Mr. Lynch	Mr. Gregory
Mr. Scaddan	Mr. Gull
Mr. Taylor	Mr. Hardwick
Mr. Underwood	Mr. Hayward
Mr. Walker	Mr. Illingworth
Mr. Ware	Mr. Keenan
Mr. Troy (*Teller*).	Mr. McLarty
	Mr. Male
	Mr. Monger
	Mr. S. F. Moore
	Mr. Piesse
	Mr. Price
	Mr. Smith
	Mr. Veryard
	Mr. F. Wilson
	Mr. Layman (*Teller*).

Question thus negatived.

ADJOURNMENT.

The House adjourned at thirteen minutes past 10 o'clock, until the next day.

Legislative Assembly,

Thursday, 6th September, 1906.

THE SPEAKER took the Chair at 4·30 o'clock p.m.

PRAYERS.

QUESTION—LIQUOR LICENSES, LOCAL OPTION.

MR. BATH (for Mr. Daglish) asked the Premier: Is it the intention of the Government to introduce during the present session a Bill to provide for local option in regard to licenses to sell liquor?