eration when deciding whether a man is entitled to receive benefits, After hearing Dr. Hislop state that, I have no doubt that those countries do take into consideration the condition of the miner's lungs; and there is no doubt about the damage that has been caused to their health.

Every time I travel through the Murchison I pass Day Dawn, Cue, and the Great Fingal Mine where the miners point out the cemetery which is filled with the graves of young miners who died before they reached 30 years of age; most of them died before they had worked 10 years in the mines. The reason is that the dust in those goldmines bit into the lungs far more severely than did the dust in the mines on the Golden Mile.

The Hon. R. F. Hutchison: They died slow lingering deaths.

The Hon. J. D. TEAHAN: My own father, who was a miner, died a lingering death without receiving any compensation for the injury to his health. He was a powerfully built man, but in the last five years of his life the dust played havoc with his health and his physique. We have been very slow in our efforts to extend to such miners benefits under the Workers' Compensation Act.

One reason perhaps why improvements and benefits were not granted earlier was that many of the goldmines had a short life. For instance, the Menzies Muncipality lasted for 15 years; the Bulong Municipality for 10 years; the Broad Arrow Municipality for a little over 10 years; and the Kookynie Municipality for just on 10 years. In their day they were thriving municipalities, but overnight they dwindled considerably. The Golden Mile has been operating for 70 years, and the people who are in a position to know say that it will last for at least another 30 years, and possibly longer. That might be a reason why improvements were made in the mines there.

Dr. Hislop said that quite a considerable time could elapse after a miner left the mines before the incidence of silicosis showed up. Yet, at the same time, a certificate could be given that his lungs were damaged beyond repair. He also said, in November, 1960, that he knew of workers who in recent times were most unfairly treated in respect of workers' compensation after they had left the mines; and among other things he declared that we have to establish the fact that the worker has silicosis, and we have to determine that position mainly by X-ray examinations. Further, he said that the whole thing was absurd and needed a complete review.

It is admitted that damage has been caused to the health of these goldminers: that is an established fact. The next step is to tie up their injury with the benefits under the Workers' Compensation Act. This evening Dr. Hislop referred to several medical authorities and pointed out they were in doubt as to the correct way to handle the position.

Having studied the position of the miners I am inclined to agree with the proposition put up by the Minister for Mines that an inquiry on a Governmental level be held, and something done as quickly as possible to compensate miners whose health has been damaged. The aim before us is how to compensate them. I give my blessing to this motion which seeks an inquiry into the matters referred to.

Debate adjourned (on amendment to motion, as amended), on motion by The Hon. R. H. C. Stubbs.

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines) [6.2 p.m.]: I move—

That the House at its rising adjourn until Tuesday, the 30th October.

Question put and passed.

House adjourned at 6.3 p.m.

Legislative Assembly

Wednesday, the 24th October, 1962

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CONTENTS—*continued*

The SPEAKER (Mr. Hearman) took the Chair at 4.30 p.m., and read prayers.

QUESTIONS ON NOTICE

PERISHABLES FOR NORTH-WEST: AIR-FREIGHT SUBSIDY

Commencement Date: Composition of Recommending Committee

1. Mr. RHATIGAN asked the Minister for the North-West:

   (1) What are the names of those now on the special committee mentioned in his reply to my question No. 14 of the 18th October, who recommended that the air-freight subsidy on perishables shall not commence until the 1st December, 1962?

   (2) What experience, if any, have the members of this special committee had in growing salads in the Kimberleys?

   (3) Has he given consideration to my suggestion made in the Address-in-Reply, page 414 *Hansard* No. 4 of 1962, that the committee appointed to make recommendations on the air-freight subsidy consist of agricultural officers stationed in the north?

Mr. COURT replied:

(1) and (2) The information requested by the honourable member in these questions was made available by the Premier on the 23rd August, 1961, *vide* page 498 of *Hansard* as follows:—

(1) Mr. G. Slater, Secretary, Transport Board.

Mr. W. M. Nunn, Superintendent, North-West Division, Department of Agriculture.

Mr. K. N. Birks, Research Officer, Treasury Department.

(2) Mr. Nunn has had extensive experience throughout the north over the past 11 years. He is fully conversant with problems associated with growing vegetables in that area.

(3) Yes. Mr. Nunn's experience, knowledge, and close association with agriculture in the north is considered adequate.

KUNUNURRA SCHOOL

Completion Date and Number of Pupils

2. Mr. RHATIGAN asked the Minister for Education:

   (1) Will the proposed new school at Kununurra be completed in time for the commencement of the first term in 1963?

   (2) How many pupils will this school accommodate?

Mr. LEWIS replied:

(1) It is not possible to state when this school will be completed, but construction is scheduled to commence immediately after the wet season.

(2) In its intial stages the school will comprise one room, which could accommodate up to approximately 50 children.

MIDLAND JUNCTION WORKSHOPS

Ablution Facilities for Employees

3. Mr. BRADY asked the Minister for Railways:

(1) Is any consideration being given to improve the primitive washing facilities at the Government Railway Workshops at Midland?

(2) Are the various sections of the workshops provided with showers?

(3) Can workshops employees expect any improvement in these matters in the near future?

Mr. COURT replied:

(1) Improved facilities for the railway workshops at Midland are currently under consideration.

(2) Apart from the amenities block in the foundry, showers have been provided for employees engaged in stoking of workshops' boilers and spray painting of wagons.

(3) Yes. The improvements envisaged are interlocked with sewerage and drainage problems which are yet to be resolved.

STANDARD GAUGE RAILWAY

Tenders for Sleepers

4. Mr. H. MAY asked the Minister for Railways:

(1) With reference to tenders called for 9 ft. x 5 in. and 8 ft. x 4½ in. sleepers for the standard gauge railway, when can tenderers expect notification of same?

(2) As it is not known at present by those who have tendered whether 9 ft. x 5 in. or 8 ft. x 4½ in. sleepers will be needed, and they are unable to commence cutting as a consequence, is he in a position to state which size sleepers have been decided upon?

Mr. COURT replied:

(1) The State's recommendation is at present being considered by the Commonwealth whose approval is necessary in accordance with the provisions of the Railway Standardisation Agreement Act, 1961.

(2) Answered by No (1).

LEGAL PRACTITIONERS

Complaints Against.

5. Mr. GUTHRIE asked the Minister representing the Minister for Justice:

How many complaints against legal practitioners were dealt with by the Barristers' Board of Western Australia—

(a) in the calendar year 1928;

(b) in the calendar year 1961;

for neglect or undue delay in the conduct of the business of any person by legal practitioners?

Mr. COURT replied:

(a) 1 informal complaint.

(b) 2 formal complaints.

ESPERANCE

Estimated Cost of Water Supply Scheme

6. Mr. MOIR asked the Minister for Water Supplies:

What is the estimated total cost of the Esperance water scheme with respect to—

(a) supply;

(b) reservoir;

(c) reticulation to consumer;

(d) meters on consumers' property;

(e) other costs?

Mr. WILD replied:

(a) £15,000;

(b) £11,000;

(c) £45,000;

(d) £5,000;

(e) Nil.

Wharf Charges

7. Mr. MOIR asked the Minister for Works:

Will he indicate the wharf charges at Esperance for the years 1959-60; 1960-61; 1961-62?

Mr. WILD replied:

	Charge Per Ton.		
	1959-60	1960-61	1961-62
	s. d.	s. d.	s. d.
Copper	13 9	13 6	13 6
Magnesite	—	9 0	12 6
Gypsum	32 0	32 0	32 0
Fertiliser	14 0	14 0	14 0
Fuel Oil	11 0	11 0	11 0
General	20 0	20 0	20 0

In addition to the rate quoted, fertiliser and general cargo carry an additional percentage as a Stevedoring Authority levy which at present is 51½ per cent.

KUNUNURRA

Provision of Ambulance

8. Mr. RHATIGAN asked the Minister for Health:

(1) Did he read a report in *The West Australian* newspaper of the 22nd instant with the heading as follows:—

N.W. Worker Badly Hurt,

and there not being an ambulance at Kununurra, it was necessary to convey Mr. Zoccali, the injured worker, to Wyndham by "van"?

(2) When will a suitably equipped and staffed ambulance be stationed at Kununurra to serve a population of approximately 800 people?

Mr. ROSS HUTCHINSON replied:

(1) Yes.

(2) An order has been placed. A specially built body is necessary, but delivery of the ambulance should take place before the end of the year.

BROOME

Medical Facilities

9. Mr. RHATIGAN asked the Minister for Health:

(1) Did he read an article in *The West Australian* of the 20th instant, as follows:—

Plane Flies Sick Woman from Broome.

the last four lines of which read: It was decided to fly her to Perth because of the limited medical attention available at Broome?

(2) Does this mean a shortage of medical personnel at Broome, or does it mean that the building is in such a bad state as not to allow the medical staff to perform their duties satisfactorily?

Mr. ROSS HUTCHINSON replied:

(1) Yes. The transfer of the patient to Perth was arranged by the doctor in Broome after consultation by telephone with the Commissioner of Public Health because of the peculiar difficulties of the case and not because of any "limited medical attention available at Broome."

(2) No, on both counts.

GOVERNMENT BUILDINGS

Inspections during Construction

10. Mr. HAWKE asked the Minister for Works:

(1) On what date was the decision made to have no inspection of any kind carried out by the appropriate officers of the Public Works Department during the course of construction of Government buildings such as schools and hospitals where such buildings had been designed by private architects and were to be constructed by private contractors?

(2) Who made the decision?

Mr. WILD replied:

(1) and (2) No decision was necessary. It is standard practice in the architectural field, and in the building field of operations, that architects carry out the design, construction, and supervision of buildings, to which they are entrusted. No distinction in this direction is made between work for which they are commissioned by the Government, or by private owners.

COUNTRY SWIMMING POOLS

Government Subsidy

11. Mr. HALL asked the Treasurer:

(1) What is the limit of the Government subsidy for the erection of swimming pools in country towns?

(2) How many miles from the coast must towns be before they can receive Government subsidy?

(3) Has there been any occasion where the Government has granted a subsidy to towns on the coast, and what were the special circumstances governing the action to grant a subsidy?

(4) Is it the intention of the Government to make available finance by way of subsidy to towns situated on the coast, for the purpose of erecting swimming pools?

(5) If so, what towns have applied for the subsidy, and what towns have been approved?

Mr. BRAND replied:

(1) One-third of the cost with a maximum Government contribution of £10,000.

(2) 35 miles.

(3) Yes, for Derby, because of the unsuitable conditions for swimming in the sea.

(4) No, unless special circumstances exist as was the case with Derby.

(5) Answered by Nos. (3) and (4).

DRAINAGE RATE

Wilson and Albany Areas

12. Mr. HALL asked the Minister for Works:

(1) Has consideration been given to the drainage rate as affecting Wilson and Albany areas?

(2) If so, what is the proposed increase or decrease percentage?

Mr. WILD replied:

(1) The following rates have been approved for the year ending the 31st August, 1963 in the Wilson Drainage District—

Category (a) 10.650d. on unimproved capital value.
Category (b) 3.881d. on unimproved capital value.
Category (c) 1.935d. on unimproved capital value.
Subject to a minimum rate of £1 for each parcel of land.

(2) The approved rates for year ending the 31st August, 1963 show an increase over the previous year of—

Category (a) 62.7 per cent.
Category (b) 63.0 per cent.
Category (c) 62.6 per cent.
Minimum rate 48.1 per cent.

PORTS

Financial Returns

13. Mr. HALL asked the Minister for the North-West:

(1) Can he advise why Fremantle, Albany and Bunbury are the only operating ports for which financial returns are prepared to include interest on capital and repayment to sinking funds?

Control of Geraldton, Esperance, and North-West Ports

(2) What authority controls the ports of Geraldton, Esperance, and those of the north-west?

Mr. COURT replied:

I should explain that part of this question should properly be handled by the Minister for Works. However, he has made the information available.

(1) Because each of these ports operates under separate Statutes which provide for regulations to be made regarding interest and sinking fund contributions.

(2) Harbour and Light Department.

DOGS

Attacks on Persons, Sheep, and Poultry

14. Mr. GRAHAM asked the Minister for Agriculture:

(1) During the past ten years what are the recorded totals of attacks by—

(i) alsatians;

(ii) other breeds of dogs;

on

(a) persons;

(b) sheep and poultry;

respectively?

(2) What were the dates of these attacks?

Mr. NALDER replied:

(1) No record is kept of such attacks. Recent outstanding cases involving stock killing were a half-bred Alsatian shot by an Agriculture Protection Board dogger near Southern Cross in 1960, and reported locally to have killed several hundred sheep. It was mated to a dingo bitch which had five pups. Another two which had caused big sheep losses were destroyed in 1961 in the same area by an Agriculture Protection Board dogger. A further three half-bred Alsatians were destroyed recently by Agriculture Protection Board doggers east of Kalgoorlie before they reached station country.

(2) Answered by No. (1).

FIREARMS AND AMMUNITION

License to Sell: Conditions

15. Mr. GRAHAM asked the Minister for Police:

(1) What are the safety requirements of any person holding a license to sell firearms and ammunition?

Thefts of Firearms by Youths

(2) What is the explanation of youths being able to steal usable firearms from stores?

Mr. CRAIG replied:

(1) Regulation 27 of the Firearms and Guns Act requires that a dealer keep his firearms in a strong room or similar receptacle fastened by a lock and key, while the premises are not open for business. This, in many instances, has been effected by reinforcing vulnerable points of the building, or a self-contained portion, to make it thief-proof.

(2) The explanation of youths being able to steal usable firearms is that dealers had probably not been complying with this regulation.

A circular to all dealers was issued in September last and this has been followed by a physical inspection to see that the regulation has been complied with. This circular is as follows:—

Dear Sir,

In view of the number of breaking and enterings, both in this and other States, which have resulted in the theft of firearms, in many instances concealable weapons and ammunition, the security of Firearm Dealers' premises should be reviewed.

Regulation 27, made pursuant to the Firearms and Guns Act, 1931-1961, reads as follows:

All firearms in the possession of any person licensed to deal in them, or to manufacture or repair same, shall be kept by such person in a strong room or similar receptacle securely fastened by lock and key during the period that such persons' premises are not open for trade.

This Regulation has not been administered strictly in the past and where windows, doors and other vulnerable points of the overall building have been reinforced so as to make the complete building, or a self-contained portion thereof, in effect a receptacle similar to a strong room, it has been considered a sufficient compliance.

This is still the policy as regards firearms generally but as regards concealable weapons and ammunition further care is needed. A person who effects an illegal entry should not be able to make a selection of concealable weapons and ammunition.

Over the years, with the alterations to premises, etc., the provisions of security have tended to be overlooked by some occupiers. The reason for this letter is to again stress the necessity of keeping weapons secure.

Most of the dealers approached have shown a willingness to co-operate in these measures, no doubt realising as I do, that if the thefts of firearms continue, more especially if someone is injured by a stolen firearm, public reaction will be such as to insist on very stringent security measures being enforced. This would involve most dealers in heavy expense, which can be avoided by acting before that position develops.

I have been instructed that all future reports of thefts of firearms from dealers are to be critically examined and in proper case forwarded to the Crown Law Officers for any necessary action.

Trusting that the necessity will not arise.

Yours faithfully,

Inspector.

KENT STREET HIGH SCHOOL

Provision of Tennis Courts

16. Mr. DAVIES asked the Minister for Education:

When is it proposed to provide tennis courts at Kent Street High School for the use of students?

Mr. LEWIS replied:

It is hoped to construct tennis courts during the 1963-64 financial year if funds permit.

WORKING CONDITIONS IN WESTERN AUSTRALIA

Comparison with Eastern States and Great Britain

17. Mr. JAMIESON asked the Premier:

In view of the apparent difference of opinion between trade union officials in Great Britain and Government spokesmen from this State, on working conditions in Western Australia, will the Government sponsor a delegation from the British Trades Union Council to visit Australia and report back to their council on—

(a) the comparison of wages in various trades in Western Australia with those of the Eastern States and Great Britain;

(b) the comparison of Australian conditions with those in Great Britain under which tradesmen work;

(c) the comparison of Western Australian compensation provisions with those of the Eastern States and Great Britain;

(d) the comparison of penal provisions under the Western Australian Arbitration Act with those of the Eastern Australian States and those applying in Great Britain?

Mr. BRAND replied:

No. Nothing useful could be achieved by sponsoring such a delegation for this purpose.

STAMP DUTY

Sales of Penny Stamps and Embossing Machines

18. Mr. JAMIESON asked the Treasurer:

(1) What were the Treasury receipts from the sale of one penny duty stamps and penny embossing machines during each of the last five financial years?

(2) What was the percentage of penny duty stamps used on receipts of—

(a) £1 to £2;

(b) £2 to £5;

during the last financial year?

Mr. BRAND replied:

(1)

Year.	£
1957-58	135,069
1958-59	125,387
1959-60	124,811
1960-61	135,549
1961-62	157,005

(2) It is estimated that the percentage usage was:—

(a) 30 per cent.

(b) 30 per cent.

RAILWAYS: ANNUAL LEAVE

Cost of Extra Week

19. Mr. BRADY asked the Minister for Railways:

(1) What would be the approximate cost of providing an extra week's leave to railway employees?

(2) Is it a fact that this is the only State with a two weeks' annual leave provision?

Mr. COURT replied:

(1) Additional staff would be required at an approximate cost of £206,000 per annum.

(2) No. Wages employees of other railway systems excepting New South Wales and Commonwealth have a basic grant of two weeks' annual leave with provision for additional leave not exceeding three weeks after a stipulated period of service.

In all systems, including Western Australia, "shift workers" are granted three weeks' annual leave.

FORESTS DEPARTMENT

Number of Officers and Honorary Inspectors

20. Mr. GRAHAM asked the Minister for Forests:

(1) What is the number of persons appointed officers of the Forests Department under the Forests Act?

(2) What is the number of honorary inspectors appointed under section 11A of the Forests Act?

Mr. CRAIG (for Mr. Bovell) replied:

(1) 142.

(2) Apparently the honourable member refers to section 11A of the Native Flora Protection Act, 1935-1938.
79 honorary inspectors have been appointed under this section.

PUBLIC SERVICE

Number of Permanent Officers

21. Mr. GRAHAM asked the Premier:

What is the number of officers permanently employed in the Public Service under the Public Service Act?

Mr. BRAND replied:

As at the 30th September, 1962—4,395.

STATE ELECTRICITY COMMISSION

Number of Permanent Officers

22. Mr. GRAHAM asked the Minister for Electricity:

What is the number of officers appointed permanently in the State Electricity Commission under the State Electricity Commission Act?

Mr. NALDER replied:

The number is 2,086, including salaried and wages employees.

MUNICIPAL COUNCILS

Officers Appointed under Act

23. Mr. GRAHAM asked the Minister representing the Minister for Local Government:

(1) How many officers are there appointed under the Local Government Act for a municipality by its council?

Number of Mayors, Presidents, and Councillors

(2) What is the total number of mayors, presidents, and councillors of municipal councils?

Mr. NALDER replied:

(1) This depends entirely on the municipality concerned, which may appoint such officers as it considers necessary. It must, however, appoint a town or shire clerk and if part XV applies, must also appoint a building surveyor.

(2) 20 mayors, 124 presidents, 1162 other councillors—Total 1,306.

EDUCATION DEPARTMENT

Number of Permanent Employees under Act

24. Mr. GRAHAM asked the Minister for Education:

What number of persons are permanently appointed in the Education Department under the Education Act?

Mr. LEWIS replied:

At present, 5,371.

COMMISSIONER OF MAIN ROADS

Number of Officers under Section 10 of Act

25. Mr. GRAHAM asked the Minister for Works:

What is the number of officers of the Commissioner of Main Roads appointed under section 10 of the Main Roads Act?

Mr. WILD replied:

The number of salaried officers is 304, made up as follows:—

Permanent	177
Temporary	109
Engineer Cadets	18
Total	304

POLICE FORCE

Number of Members

26. Mr. GRAHAM asked the Minister for Police:

What is the number of members of the Police Force of Western Australia?

Mr. CRAIG replied:

Approved strength—1,190.
Actual strength—1,189.

FISH FARMS

Establishment on South Coast

27. Mr. HALL asked the Minister for Fisheries:

As there exists a possibility of establishing fish farms on the south coast—namely, at Culham Inlet, Hopetoun, and Stokes Inlet about 40 miles west of Esperance, would he investigate the possibilities of breaching the sand bars and have research carried out respective to the proposition?

Mr. ROSS HUTCHINSON replied:

The opening of sand bars at the mouth of inlets comes under the jurisdiction of the Minister for Works.

Research officers could not be made available at present to investigate the possibility of establishing fish farms as suggested.

TOILET FACILITIES

Provision in City of Perth

28. Mr. BRADY asked the Minister for Health:

As the Railways Department disclaims any liability to provide toilets for patrons, and it is publicly reported that there are inadequate toilets in the City of Perth, is the Health Department taking any action to solve the problems posed?

Mr. ROSS HUTCHINSON replied:

The Railways Department provides toilet facilities at railway stations except where special factors are involved. The Public Health Department is not empowered to direct the Railways Department or any other Government department in these matters. The Commissioner of Public Health is approaching the Perth City Council with a suggestion that additional public conveniences be provided in the city area.

QUESTIONS WITHOUT NOTICE

WITTENOOM GORGE ACCIDENT

Details

1. Mr. BICKERTON asked the Minister for the North-West:

(1) Has he any further information on the accident which occurred at Wittenoom Gorge other than that which appeared in the newspaper?

(2) What action has his Government taken to investigate this matter?

Mr. COURT replied:

(1) and (2) I have not yet received the additional report I have been seeking on this mishap, and therefore I am unable to give the honourable member any more information than that which has appeared in the Press.

Mr. Bickerton: Who is getting that information?

Mr. COURT: My officers are endeavouring to get it from Wittenoom Gorge; and they will, of course, be conferring with the Mines Department on the matter.

VERMIN ACT

Amending Legislation: Government's Intention

2. Mr. GRAHAM asked the Premier:

Is it the intention of the Government to proceed with the amendment to the Vermin Act this session?

Mr. BRAND replied:

That matter is still under consideration.

BILLS (2): INTRODUCTION AND FIRST READING

1. Rights in Water and Irrigation Act Amendment Bill.

Bill introduced, on motion by Mr. Wild (Minister for Water Supplies), and read a first time.

2. Fisheries Act Amendment Bill.

Bill introduced, on motion by Mr. Ross Hutchinson (Minister for Fisheries), and read a first time.

LICENSING ACT AMENDMENT BILL (No. 2)

Receipt and First Reading

Bill received from the Council; and, on motion by Mr. Cornell, read a first time.

MINERAL CLAIMS

Royal Commission on Minister's Actions: Motion

MR. TONKIN (Melville—Deputy Leader of the Opposition) [4.50 p.m.]: I move—

The action of the Minister for Mines in not accepting the recommendations of warden N. J. Malley and in directing that a survey be made of land which was purported to be mineral claim 90, thus giving definition to the boundaries of that claim after the warden had found that the limits of its boundaries could not be defined and as a consequence enabling the firm of Lohrmann, Tindal and Guthrie to obtain for its client by administrative act a result which it failed to

obtain in the warden's court and which may make a difference of £40,000 one way or the other to Hancock Prospecting Pty. Ltd., appears to be so lacking in the principles of law, equity and justice and to be so inconsistent with his action in the case of James Moffat Henderson and Elizabeth Henderson—objection to application by E. J. Pike and J. W. Jeffreys—that in the public interest and for the preservation of public confidence in the impartial administration of the law it is imperative that a Royal Commission be immediately appointed to inquire into the matter and make recommendations to enable Parliament to take such steps, if any, as it considers necessary or desirable to deal with the situation which has arisen.

The House will recall that a motion similar to this appeared on the notice paper a few weeks ago; but as a result of an explanation given by you, Mr. Speaker, it was discharged from the notice paper, because the matter which was the subject of the motion was before a court for adjudication. That matter having been disposed of, it is no longer before any court; and therefore, so far as our Standing Orders are concerned, the motion cannot in any way be regarded as *sub judice*, although the Minister pleases to so regard it.

I endeavoured to ascertain from the Minister what he was trying to do on this matter. He frustrated my attempt by claiming that the matter was *sub judice*. For example, yesterday I asked him some questions, to which he replied. The first question was—

> Does not the recommendation of the warden, N. J. Malley, on the application of Depuch Shipping and Mining Co. Pty. Ltd. for mineral claim 292 specifically exclude the ground previously granted to the claim holder of and comprising prospecting area 284?

The reply of the Minister to this question was "Yes," because that was a question of fact and the decision was well known. The decision of the warden did excise this area. My second question was—

> If the reply is "Yes," in what way does or can the ground comprising Prospecting Area 284 affect the decision of the Minister for Mines in approving or disapproving of the warden's recommendation in respect of mineral claim 292?

It should be perfectly obvious that if the warden has, by decision, excised that part of mineral claim 292 which is comprised in mineral claim 284, then it is no longer part of mineral claim 292 and has no bearing whatever on such decision. The Minister's reply to that question was—

> For reasons already given, this matter is considered to be *sub judice*, and the Minister declines to answer the question.

So a matter becomes *sub judice* because the Minister says it is so; not as a question of fact, but *sub judice* because the Minister says it is. Having said so, that gives him an excuse for evading the question and declining to give an answer. What the Minister realised was this: If he answered the question he would immediately commit himself, which, obviously, he was not desirous of doing until Parliament rose.

This matter has been dragging on for five months, and it is five months since the warden made his recommendation. All the Minister had to do was to accept or reject the recommendation. He has made no decision and he will not answer any questions asked in this House. He pleads the matter is *sub judice* because he has not made his decision. If he continues to plead in that way he can evade any question asked on this matter for as long as he pleases. I do not think that is the kind of conduct which ought to be put up with in a Legislative Assembly; and it is quite obvious the Minister is on a very sticky wicket, as he might well be, because he has taken unto himself powers which he does not possess.

I direct the attention of members to the wording contained in the motion, because I am setting out to prove what it says. The wording of the motion is as follows:—

(Motion, as above, read.)

The assertions in that motion which are made by me, and which I am setting out to prove, are: The Minister for Mines has not accepted the recommendation of Warden Malley; and, instead, he directed a survey to be made of certain land. There is no doubt whatever that the Minister directed the survey to be made, because how otherwise would any officer of the department have gone to Whim Creek to carry out a survey?

A strange thing happened about this survey; because when the surveyor got to Whim Creek he found some metal pegs which looked like aerial bombs, suggesting they had been dropped from the air in an attempt to peg this ground from the air. I have no proof of this; but I am informed that the surveyor took possession of two of these so-called "Hancock bombs," brought them back to Perth, and showed them to the Minister. Whether they are in the office of the Minister or in the Mines Department, I cannot say; but one of these so-called bombs or pegs fell on a rock. It did not penetrate the rock but cracked it. I am told that portion of the rock was also brought back, to illustrate that an attempt had been made to peg this area from the air. That is an astonishing situation, because the Mining Act requires that when an area is applied for it shall be pegged first, and there shall be trenches or cairns of stones alongside the pegs. Obviously that could not be done if the pegs were dropped from the air.

I understand from information given to me from an authoritative source that the surveyor—Surveyor Norman—surveyed an area which was different from the one which Hancock claimed was his claim 90, and where there were no pegs before the surveyor actually put in pegs. The surveyor put in pegs and on those pegs placed a notation that that was claim 90. That is an extraordinary situation: for the Mines Department to go out and peg an area, survey it, put the pegs in, and otherwise comply with the Act on behalf of the person who should have done it originally. But I am told that that is the situation.

I am also told that this area which was pegged and surveyed—the Minister would not answer my question as to whether or not it was surveyed; but of course it was—was not in the area which Hancock said was his original claim, but was some half-mile away from it. So no wonder the Minister is finding some difficulty in making a decision in the way he apparently wants to make it, because of these complications which have arisen.

When we have regard for the fact that this pegging a few weeks ago has taken place in order to define the boundaries of this so-called claim 90, we should have regard to regulation 154 which says—

> Every application for a mining tenement shall be accompanied with or contain a sketch showing the boundaries of the land, which shall be fixed where possible by reference to some existing survey mark, or to some feature on the land, or adjacent thereto, and where it has reference to an underground tenement it shall show the portion of the surface, if any, required by the applicant. If no surface area is applied for or available, the applicant must produce proof to the satisfaction of the Warden that he has sufficient means of access to the land applied for to enable him to work the same.

All the indications are that that was not complied with at all. I have here a letter from the Mines Department on this matter, and it is very interesting. It is signed by H. H. Telfer, Under-Secretary for Mines, and is addressed to Messrs. Lavan and Walsh, dated the 30th October, 1961. It reads as follows:—

> Dear Sirs,
>
> Re mineral claim 90 West Pilbara
>
> I acknowledge receipt of your letter regarding the position of the above mineral claim.
>
> It is a fact that our Government Surveyor was unable to find the pegs of Mineral Claim 90 when he went on the ground to survey the block, although Messrs. Hancock Prospecting Pty. Ltd. were asked to confirm the pegging of the Mineral Claim prior to the surveyor's visit to the area.
>
> A search through our records has disclosed that the only description available is that of an old application for Mineral Lease 56 (later Mineral Lease 242) which is identical with the application for Mineral Claim 90. A copy of the application form for Mineral Lease 56 is enclosed for your information, from which you will see that our information regarding both the position and the length of the boundaries of the mineral claim are very vague. It would appear from the sketch that the sides are in the proportion of 2:1 which would make the distances about 14 chains by 7 chains.
>
> As the Mining Act requires that a mining tenement must be pegged and the pegs maintained, it is suggested that perhaps you could advise the holders that the area should be properly pegged and the pegs maintained in accordance with the requirements of the Mining Act.

That was written in 1961. At that time it was stated by the department that there were no pegs and that the boundaries were vague—their position and length were vague. Yet it was found possible a few weeks ago, following upon the Minister's direction—I contend improperly given—for a surveyor to go up there, locate this ground which had no pegs, survey it, and put pegs in where he believed they ought to go. I say in my motion that that direction of the Minister has resulted in giving definition to boundaries which according to the warden could not be defined, as I shall show a little later on by reading from the warden's judgment.

The important thing to remember here is that Hancock has an indenture between himself and the Depuch Mining Company under which, if certain conditions are complied with and Depuch desires to purchase, it must purchase claim 90 at a certain figure.

Now Depuch having pegged over this ground, and the warden having found that he could not define the boundaries of claim 90, and therefore having dismissed Hancock's objection to Depuch's application with costs, the situation was that Hancock had nothing to sell because, in fact, claim 90 had no existence. But this action of the Minister in causing his surveyor to survey an area and call it claim 90 now brings claim 90 into legal existence—and it remains to be seen what the subsequent legal proceedings will be if the stage is ever reached where Depuch wants to buy Mons Cupri or claim 90. However, it is not my province to deal with that at the moment.

My motion further asserts that this action of the Minister in not accepting the warden's recommendation is at considerable variance with his action in regard to a similar situation which occurred in connection with the Hendersons—James Moffat Henderson and Elizabeth Henderson.

These persons applied for and were granted an area of ground from which they produced some 30 tons of material. I have here a copy of a form of objection which was lodged with the warden's court on the 12th June, 1961; and it reads as follows:—

> To the Warden of Pilbara Goldfield (or Mineral Field). We the undersigned, hereby give you notice that we object to the application for Mineral Claim No. 626—

That was a claim by Pike and Jeffreys over the ground which the Hendersons had pegged. The grounds for the objection were—

> That the ground applied for encroaches on J. M. Henderson's P.A. 2614 from which Henderson has produced payable ore and on the grounds that we hold Temporary Reserve 1852H for copper surrounding the area containing P.A. 2614, the actual position of which is according to the location of the actual pegs of P.A. 2614 and not as shown on the Mines Department plan.

Now there is a statement from the objecting parties that actual production took place at this prospecting area.

Trouble arose because Henderson, when giving a description of his claim after pegging it, made an error, when relating it to some feature as he was required to do under the regulations. He said it was 10 miles south-south-east of Mt. Edgar homestead when, in fact, it was 10 miles south-south-east of Mt. Edgar. That misdescription caused the position of this prospecting area to be placed on the plan in the Mines Department in a diffierent position from that in which it should have been placed and would have been placed if it had been properly described.

Now there was really no obligation on the Hendersons to mention Mt. Edgar or Mt. Edgar homestead at all, because a feature 10 miles away cannot be regarded as being adjacent thereto; and so, had the Hendersons omitted that in their description of their claim, they would not subsequently have been in trouble.

When it was later found that their description was wrong they sought an opportunity to amend the description and the warden refused the application to amend the description and granted the claim to those persons who had pegged over it; namely, Messrs. Pike and Jeffreys.

When the warden made his recommendation, the Minister did not fool about as he seems to be doing in this case, but he approved of the warden's recommendation. The latter portion of the warden's judgment reads as follows:—

> Although there is no provision in the Act or regulations for amendment to description of claims, it is obvious that such a power must exist to correct errors, particularly of reference points which are frequently likely to prove inaccurate in a sparsely settled area.
>
> However in my opinion before such a power is exercised it must be shown to the satisfaction of the Court that the ground in question has been taken up and can be clearly identified. In the present instance there is no cogent evidence to say that Henderson was, during his period of occupancy of the area on which he was doing sampling work, working the actual ground which he claims to have pegged and which was granted to him.
>
> For these reasons I have come to the conclusion that the application to amend description of prospecting area 2614 should be refused.
>
> The temporary reserve granted to the objecting syndicate was similarly located 10 miles S.S.E. of Mt. Edgar homestead. No effort was made to peg the ground or apply for amendment of location until after the two mineral claims were lodged and in my view the syndicate are bound by the terms of their application.
>
> Under these circumstances I hold that the claims of the objectors fail and I respectfully recommend for the Honourable the Minister's approval, subject to survey, applications for mineral claims 625 and 626.
>
> Having regard to the provisions of regulation 157, I consider that the proper course for me to adopt is to adjourn application for prospecting area 2653 *sine die*, with instructions that it be brought on for hearing when the Honourable the Minister's decision is made known.

Under the Mining Act, when that recommendation goes before the Minister he has two courses open to him, and two only: He can accept the recommendation or reject it. In this case he accepted the warden's recommendation and the Hendersons lost their claim because they had wrongly described its position by saying it was 10 miles south-south-east of Mt. Edgar homestead when, in fact, it was 10 miles south-south-east of Mt. Edgar. Contrast that and the Minister's action in that case with this case of Hancock and Depuch. We have to see what the warden had to say about that. I quote as follows:—

> Application for Mineral Claim
> 292 W.P.
>
> On the 27th day of Februray, 1962, the Depuch Shipping and Mineral Co. Pty. Ltd. applied for a mineral claim No. 292 for copper, silver, zinc and lead in the West Pilbara gold field, the datum point for the description of the ground applied for being referred to a pole on the top of Mons Cupri Hill at Whim Creek. With the

application was a sketch, as required by the regulations, illustrating the position of the claim.

The application was duly advertised and subsequently, after notice had been given, an objection to the granting of the claim was lodged by Hancock Prospecting Pty. Ltd., on the ground that "portion of the lands comprised in the said mineral claim 292 are comprised in mineral claim 90 of which the objector is registered as the holder of 96/96th shares".

The application came on for hearing in the Warden's Court at Marble Bar on the 15th May last in the presence of counsel for the applicant and for the objector.

The objector elected to call no evidence (other than the Mining Registrar to produce office records) and based its objections on two grounds; firstly that it was and had been for over five years the registered holder of mineral claim 90 and secondly that by an indenture dated the 14th day of August, 1959, and entered into by the parties (and others), the applicants were granted the right to mine and work M.C. 90, with an option of purchase and that the applicants were thereby estopped from denying the existence of the claim.

On the 27th July, 1956 the objecting Company had filed an application for M.C. 90 as a mineral claim for copper. The description of the claim given was identical with old M.L. 242 at "Mons Cupri" and there was no accompanying sketch as required by Reg. 154.

That should be noted, because the regulation was not complied with and the warden pointed it out. The judgment continues—

> Notice of the application was duly advertised and a statutory declaration made by Langley George Hancock on behalf of the company was lodged, declaring, among other things, that the land was pegged out by himself in accordance with regulations 147 and 148 of the Mining Act and that notice had been duly posted.
>
> It is common-ground that mining lease 242 has never been surveyed and therefore, in my view, the provisions of regulation 151 are not applicable and it would be necessary for an applicant to comply with the marking off requirements of regulations 147 and 148. 'A statutory declaration of compliance was lodged and in the absence of any evidence to the contrary I must assume the correctness of the contents thereof. The application was subsequently recommended by the Warden and was, on the 15th October, 1956, approved, subject to survey, and to the ground applied for being Crown land.

The Company retained possession of the claim until the signing of the indenture produced and still assumes registry as the holder thereof. It is suggested by the applicant that there had not been a compliance with the labour conditions up to the date of the signing of the indenture and that the claim must be deemed to have been abandoned under provision of regulation 162 (a) but there is no evidence to this effect and this contention cannot be sustained.

The second submission of the objector is that there is in existence a deed entered into by the parties (and others) on the 14th August, 1959; that the recital thereto sets out that Hancock Prospecting Pty. Ltd. is registered as the holder of 96/96th shares of Mineral Claim 90 situated in Whim Creek District West Pilbara Goldfield and being the copper mine known as "Mons Cupri" and that is therefore estopped from denying the existence of the claim. It is submitted on behalf of the applicant that estoppel cannot be pleaded upon a recital in a deed and authority has been quoted in support. If I found it necessary to rule on this matter I would uphold the applicant's submission particularly as this is not an action on the deed but is a collateral matter (see Phipson 9th Ed. p. 705). In the present instance different considerations arise.

Since August, 1959, the applicant has under the deed held an option of purchase with the sole and uncontrolled right to work and mine the said premises (including Mineral Claim 90) and generally exercise the powers, privileges and authorities conferred upon or vested by the registered proprietor of the said premises. Ample opportunity therefore existed for the applicant to ascertain the existence or otherwise of the mineral claim.

Furthermore, in pursuance of its obligations under clause 10 of the indenture, the applicant has on four occasions applied for and been granted long term exemptions from the working conditions for the said claim. By regulations 172 and 174 the applicant is required to post the notice of application and the certificate of exemption on a conspicuous part of the tenement and again I must assume this was carried out, particularly as on at least two occasions the attention of the company was drawn to these requirements by the Mining Registrar.

For these reasons I am of opinion that while the applicant is not estopped from denying the existence of the claim, such a denial is of no avail in the present proceedings. But while

it cannot successfully deny the existence of the claim, it is entitled to aver that the limits of its boundaries cannot be defined and this is, in effect, the substance of the applicant's case.

The action of the applicant in pegging ground on which, according to the witnesses called, there was no evidence of mining activity (other than the datum peg of prospecting area No. 284), places an onus on the objector of establishing that an encroachment upon its mineral claim has taken place as claimed. It is not sufficient to say that M.C. 90 is registered and exists. Positive evidence of its location is required to sustain an objection that the ground now applied for encroaches on an existing claim.

I want to break in at this point, because this is a very important part of the judgment. The warden said it is not sufficient to say that mineral claim 90 is registered and exists. Positive evidence of its location is required to sustain an objection that the ground now applied for encroaches on an existing claim.

The point I wish to make is that at that date positive evidence did not exist. There were no pegs; there were no trenches; there were no cairns of stones; there were no notices. So positive evidence did not exist at the time. But the Minister's action in directing a survey which resulted in Surveyor Norman himself putting up pegs and saying, "That is mineral claim 90," had the effect of producing positive evidence of the existence of claim 90.

What right had the Minister to provide evidence of the existence of claim 90? Under what part of the Mining Act is the Minister expected, on behalf of some party, to provide the evidence of the existence of the claim? Surely that is the responsibility of the applicant for the claim: to put in his pegs, to dig his trenches, to put up his cairns of stones, and to provide the evidence of the existence of the claim for which he applies. That is not the function of the Minister for Mines.

But in this case the Minister for Mines told a surveyor to go out and do it; and his surveyor went out to what he thought was mineral claim 90, and which differed in location from what Hancock said was mineral claim 90; and he, the surveyor, brought into existence what purports to be mineral claim 90. He put in the pegs, and he put a notice on the pegs claiming it was mineral claim 90—in a different position from the area of ground which Hancock claimed was mineral claim 90, and the boundaries of which, according to the warden, could not be defined.

I will proceed with the judgment, which continues as follows:—

> The description of M.C. 90 is merely "identical with old M.L. 242 at Mons Cupri". No sketch is provided as required by Reg. 154 and from office records it appears that the description originally given of M.L. 242 was "identical to the boundaries of old M.L. 56" which was not only unsurveyed, but was in fact refused.
>
> Although the objector complains that "portion of the lands comprised in the said mineral claim 292 are comprised in mineral claim 90" no effort has been made before me to establish the manner and extent of the encroachment alleged.
>
> In certain circumstances the appropriate remedy for such a complaint would be an excision of the ground applied for, shown to overlap an existing claim, but on the evidence submitted in this case it would be impossible for me to determine whether or not this was appropriate.

In that statement the warden emphasises the point I have been trying to establish —that the boundaries of mineral claim 90 could not be defined because it had not been properly pegged, the ground had not been trenched, there were no cairns of stones, and there was no accompanying sketch when the application was made.

Contrast that with Henderson's case, where he put in a description but made an error in it. If he had done the same as Hancock, presumably he would not have lost the claim, because if he had not given a description he could not have made an error. There was no sketch in this case, and the warden emphasises the point by making the statement—

> It would be impossible for me to determine whether or not this was appropriate.

In other words, he explains his inability to excise this portion of ground, which was overlapping the claim made by Depuch, because he did not know where it was, and so he could not take it out; and neither could anybody else.

However, the Minister by his action has shown a piece of ground which could be taken out; but, unfortunately, this ground which has been pegged by the surveyor overlaps P.A. 284, which the warden recommended be taken out of Depuch's application. When I asked the Minister whether P.A. 284 was Crown land, and available for pegging, he did not supply the answer because he said the matter was *sub judice*. Of course, that is an easy way of avoiding a difficult question when one is in the box seat! If one is asked a question and one cannot answer it without putting oneself in a jam, it is very nice to be able to say, "I can't answer that. It's *sub judice*."

How many people would like to be in that position, especially persons under interrogation by the police, and when they know very well that if they give a truthful answer they will be in trouble! It is

very easy to claim that the matter is *sub judice* because then one does not have to answer any questions asked.

Mr. Guthrie: You don't have to give an answer to the police in any event—nothing but your name and address. You know that.

Mr. TONKIN: That may be so; but one has to give it to the court.

Mr. Guthrie: No. You do not have to go and give evidence in the court. The onus is on the opposition to prove the case against you, and you do not have to say anything. That is a basic principle of British law.

Mr. TONKIN: That is an astonishing situation; and I am wondering now what the judges have been about when they have been putting people in gaol for contempt of court.

Mr. Guthrie: What for?

Mr. TONKIN: For refusing to answer questions.

Mr. Guthrie: That is when they have gone into the witness box of their own volition; but they don't have to go into the witness box.

Mr. TONKIN: No; this is when they have been put in there by lawyers.

Mr. Guthrie: They were put there by a party, and not by the lawyers; so don't try to shuffle out of it. You know, as well as I do, that nobody has to answer any questions put to him by the police, which is what you said.

Mr. TONKIN: Fancy the member for Subiaco talking about shuffling out of it after the experience we had last night!

Mr. Hawke: Yes; I'll say!

Mr. Guthrie: What did I shuffle out of last night? Come on! You come clean! You made the innuendo.

Mr. TONKIN: I did not refer to the honourable member, but last night—

The SPEAKER (Mr. Hearman): Do not discuss last night's proceedings.

Point of Order

Mr. GUTHRIE: On a point of order, Mr. Speaker, the Deputy Leader of the Opposition said that the member for Subiaco should talk about shuffling out of it after what we saw last night. The innuendo is that I shuffled out of something last night. I ask for a withdrawal of that remark because I took no part at all in any debate last night.

Mr. Jamieson: Therefore you shuffled out of it.

The SPEAKER (Mr. Hearman): The member for Subiaco has asked for a withdrawal of the remarks of the Deputy Leader of the Opposition. If he did not take any part in the debate last night I think that is fair enough.

Mr. TONKIN: I do not intend to withdraw remarks which do not refer to the member for Subiaco.

Mr. Guthrie: Who is shuffling now?

Mr. TONKIN: The Speaker is to be the judge as to whether or not I am shuffling; and that will be the day when I have to shuffle!

Mr. Ross Hutchinson: You are shuffling pretty successfully now.

Mr. Hawke: The member for Subiaco shuffled last night and on the capital punishment Bill.

Mr. TONKIN: What I was proceeding to explain was that I thought it ill-became a supporter of the Government, who voted with the Government, to talk about shuffling when the Premier and the Minister for Industrial Development last night gave the best example of shuffling that I have ever seen in my life.

Mr. Court: Why don't you do as the Speaker tells you to do?

Mr. TONKIN: I submit to you, Mr. Speaker, that whatever inference the member for Subiaco likes to draw, I made no assertion and made no suggestion that he did in fact shuffle.

The SPEAKER (Mr. Hearman): I interpreted it that way myself. If you say that it did not apply to the member for Subiaco then I think his point is answered.

Mr. TONKIN: Thank you, Mr. Speaker. That was the situation as I intended it.

Debate Resumed on Motion

Mr. TONKIN: To proceed with the judgment—

> I am unable for the foregoing reasons to determine whether an encroachment or over-pegging of the objector's claim has in fact taken place.

Let me interpolate here, that this is a further example of the warden's inability to define the existence of claim 90, and its direct location. That was the position the warden was in; but the Minister by directing a surveyor to go down and peg the claim, and survey the claim, supplied what was lacking when this case was before the warden's court; and I want to know under what Act of Parliament or what regulations the Minister has that power.

Mr. Fletcher: Undue influence.

Mr. Grayden: Show me the regulation which says that he does not have the power!

Mr. TONKIN: The judgment continues—

> It should perhaps be pointed out that the primary responsibility for the present situation is attributable to the failure of the Mines Department to carry out a survey of the ground applied for as required.

In July, 1956, Hancock Prospecting Pty. Ltd. made application for mineral claim 90 in the West Pilbara goldfield and at the time of applying paid the requisite survey fees. On the 15th of October, 1956, the granting of the claim was approved, subject to survey and to the ground applied for being Crown land. The claim was then registered and a certificate issued, but the title acquired by the applicant was provisional only, and at the date of this hearing over five and a half years later, no survey has yet been carried out and the applicant's title is not confirmed.

Once a proper survey had been conducted and the claim plotted, the future determination of its boundaries would have been relatively simple even if the pegs or boundary marks had been in some way destroyed or removed. The present case is not an isolated instance, long delays being common in this area, which is a reflection on the efficiency of the Department. Having received a survey fee it has an obligation to carry out the work without delay and it is in my view unreasonable to expect the claim holder to maintain the boundaries and pegs as laid down by the regulations for such an extended period.

However, in the absence of a properly conducted survey, I am of the opinion that the obligation rests on a claim holder to keep the limits of his tenement adequately defined, not only to facilitate a subsequent survey, but to clearly indicate to others the boundaries of the claim. Indeed provision is made by Reg. 164 for a penalty for a failure to maintain the required marks.

In the circumstances I hold that the objector's case fails. The objection is therefore dismissed with costs to be taxed.

I claim—and perhaps the member for Subiaco can direct himself to this aspect—that the Minister has no prerogative to interfere with that decision.

Mr. Guthrie: I will deal with that when I speak.

Mr. TONKIN: The warden dismissed the objector's claim with costs to be taxed; and I claim that is the end of that, and the Minister cannot revive it. To continue with the judgment—

The ground applied for apparently encroaches on P.A. No. 284.

No objection has been lodged by the holder and it is contended on behalf of the applicant (though I suspect without much force) that, in the absence of an objection, the company is entitled to the area affected.

To uphold the applicant's contention would result in the continuity of a miner's title being dependent on an assiduous reading of all newspapers circulating in the area and I am unable to agree with it.

The evidence of the witnesses for the applicant indicate that the datum peg for the prospecting area was clearly visible and that the application papers were still affixed thereto. No boundary pegs were seen, but no attempt was made to measure out the ground as set out on the notice and there is therefore no definite evidence that the other markings did not in fact exist. In this instance there is an adequate datum point with a description of the situation and boundaries of the claim affixed thereto and in my opinion any encroachment upon P.A.284 should be excised from the ground applied for.

I therefore respectfully recommend for the Honourable the Minister's approval, subject to survey and the excision therefrom of P.A.284, application for mineral claim No. 292. W.P.

I contend that all the Minister had power to do on that recommendation was to accept it or reject it. He could say, "So far as this application by Depuch for 292, which has been recommended with the excision of P.A. 284, is concerned, I approve." Then Depuch would have got the application. Or he could have said, "I do not approve," in which case Depuch would have failed in its application. But what did the Minister do? He instructed a surveyor to go to Whim Creek to survey 292, and to survey mineral claim 90, and this surveyor went and surveyed ground which purported to be mineral claim 90, but which Hancock said was not mineral claim 90 but was some half a mile in the wrong position.

I am told Hancock got in his plane and flew off in high dudgeon when the surveyor surveyed what he said was claim 90, but which was different ground from what the applicant said was claim 90. The point is that where previous to this survey the warden expressed an opinion that he did not know where claim 90 was—it could not be defined, and he could not excise it from the application for 292, even if he wanted to do so—the action of the Minister brought into existence what purported to be claim 90. That is my complaint about this matter.

I am wondering why he was encouraged to take this action, in view of what he did in the Henderson case; because surely Hancock's objection with regard to claim 292 did not have nearly the amount of merit that the Hendersons had with their case. Yet the Minister turned down the Hendersons' objection, and he accepted the warden's recommendation that the Hendersons' claim go to Pike and Jeffreys.

The main reason for this was the misdescription of its position. But with regard to claim 90, we have the statement by the warden that he did not know where the claim was. It could not be defined.

So he could not excise it from the application even if he wanted to; because he did not know what the ground was, or where it was. But the Minister's action immediately changed the situation; and, of course, it makes a very substantial difference to the position as it exists. There is no doubt about that. When the solicitor for Depuch knew the Minister had taken steps to order a survey, he lodged an objection to this course of action in the warden's court.

You will recall, Mr. Speaker, that it was this impending action which caused you to take the step you did in drawing the attention of the House to the fact that this matter was *sub judice*, and therefore it should be dropped from the notice paper. That action has been decided; but before it was decided the firm of Lohrmann, Tindal & Guthrie decided to communicate with the warden; and the letter which was sent, was sent over the signature of H. Guthrie, for the firm.

You will remember, Mr. Speaker, that I sought to ask some questions about this letter, but you would not allow them to be asked. I propose to read this letter, because I think it was highly improper. I could be wrong; but that is what I think about it.

Mr. Guthrie: Did the warden think it was highly improper? Did he raise any complaint?

Mr. TONKIN: I am merely telling the House my opinion. In my opinion it was improper. However, the letter in question was dated the 13th August, 1962, and was addressed to N. J. Malley, Esq., Warden West Pilbara Goldfield, Marble Bar. It reads as follows:—

> Re: Hancock Prospecting Pty. Ltd. & Depuch Shipping and Mining Co. Pty. Ltd.
>
> We have been served with the Notice of Objection to certain surveys in this matter and have been informed that it will be listed for hearing before you on the 21st instant.
>
> The procedure adopted by the Objector's Solicitor appears a little unusual and we think you will agree that Part VIII of the Mining Regulations was not designed to deal with the matters of the nature arising in this case.
>
> However, so that there may be a record of our contentions in regard to the procedure adopted we are forwarding to the Mining Registrar an Answer to the Objection and are serving same on the Objector's Solicitor. As he sent a copy of the Objection to the Principal Registrar of Mines we are also supplying that official with a copy of our Answer.
>
> In his covering letter to us with the Notice of Objection, the Objector's Solicitor inquired whether our client would be present at the hearing, thereby indicating that he considered it possible for our client to be so represented. Whether or not we will attend at Marble Bar on the 21st inst. and seek your approval to submit argument and (if need be) evidence in support of our client's Answer is yet to be determined. In fact we are not even certain that we have that right. As this decision may not be made until it is too late to contact you by mail we thought it well to write this letter.
>
> We could suggest (with the utmost respect) that before you even permit the Notice of Objection to be called on in open court, you must first determine whether it is a process which can be legally recognised. If, however, you do decide to permit the matter to be argued, we must make it clear that our client would deny your legal right to do so and would contend in any other proceedings or on any other occasion that any decision made by you on the Notice of Objection (other than order dismissing it or striking it out), even though favourable to our client, had no legal effect.

Mr. Hawke: Really arrogant in parts.

Mr. TONKIN: To continue—

> It also occurs that the correct method of our client dealing with this matter may be to institute proceedings in the Supreme Court with the object of preventing the Objector proceeding with its Notice of Objection. Time has not been sufficient since the receipt of the Notice of Objection to enable us to consider all aspects of the matter to enable us to tender advice to our client as to the proper course for it to adopt. We would mention that we propose consulting Counsel in the matter and therefore must be guided very largely by the advice we receive. We also intend asking the Objector's Solicitor to consider the desirability of applying for an adjournment to the September court to enable both parties to consider the situation fully.
>
> However, by reason of the uncertainty of mails to and from the North-West, we felt that we could not safely delay the despatch of this letter beyond tonight's mail. You can rest assured that we will at least telegraph the Mining Registrar conveying our definite intentions in the matter in sufficient time to reach him well before the 21st instant.

Please accept our assurance that this letter is not intended in any disrespectful manner, but we think you will appreciate that our client is entitled to make submissions of this nature when it wonders, as it does at this moment, whether the correct process of law has been adopted.

Might we point out to you, with respect, that the Notice of Objection does not appear to be a process issued out of the Warden's Court (which of course is a Court of Record) but rather a request to the Warden as an individual, to exercise a function given him in the nature of an arbitration. Such arbitration would be to settle a dispute which might arise between the applicant for a mining tenement and a surveyor surveying the same, and the only parties which could come before you properly would be the applicant and the surveyor. We would doubt whether, when acting in such a capacity, you had any power to declare "null and void" any acts of a Minister of the Crown, particularly as the Minister could not be heard. Whether or not the Warden's Court has any such power simply does not arise as the court has been invoked.

Yours faithfully,
Lohrmann, Tindal & Guthrie.
per: H. Guthrie.

If I should not have been allowed to proceed with my motion because this impending action made the matter *sub judice*, what on earth was this firm doing writing to the magistrate?

Mr. Hawke: Real Liberal Party intimidation stuff.

Mr. Court: Who else should it write to?

Mr. TONKIN: The firm had the right to go to court and put its case in court, where it could be answered by opposing counsel.

Mr. Guthrie: That really amazes me.

Mr. Court: Who did copies of that letter go to?

Mr. TONKIN: To the warden.

Mr. Guthrie: How do you know that?

Mr. TONKIN: Because it is addressed to the warden.

Mr. Guthrie: Ah, but you did not see the envelope! It was not sent to the warden.

Mr. Hawke: Now he is doing a mighty shuffle.

Mr. TONKIN: And that opens up a mighty question. Surely the letter which bore the address of the warden was intended for the warden! Now the suggestion is that it was intended, but indirectly.

Mr. Guthrie: You are guessing again, and you always guess wrong. You should not put your neck out; it gets chopped off too many times.

The SPEAKER (Mr. Hearman): Order!

Mr. TONKIN: I understand the warden got the letter. Whether he was intended to get it or not, the member for Subiaco knows.

Mr. Guthrie: I will deal with that when I speak.

The SPEAKER (Mr. Hearman): Order!

Mr. TONKIN: To me that appears to be straight-out intimidation.

Mr. Guthrie: It was the duty of the warden to do something about it, but he did not.

Mr. TONKIN: After all is said and done he is just a mere warden, not a Minister.

Mr. Guthrie: You have been guessing.

The SPEAKER (Mr. Hearman): Order! The member for Subiaco must stop interjecting.

Mr. TONKIN: I am trying to visualise the situation in which the warden found himself, when he received a letter signed "H. Guthrie," a supporter of the Government which supplied the Minister for Mines. The warden gets a letter telling him in effect what his duty is. The purport of the letter is to tell the warden what the firm of Lohrmann, Tindal & Guthrie believe to be the warden's duty in this question.

To me that seems to be highly improper. I would regard it as a far more dangerous procedure so far as the course of justice is concerned, than any discussion of mine in this House prior to this action coming up in the court. Yet my motion was struck from the notice paper, because this action was pending in the court. The legal firm to which I have referred, however, on behalf of a client, apparently thinks it is all right to address a letter to the warden—we are in some doubt now whether it was intended for him, direct or not; and I have my opinion about that—before the case in question came on.

I suggest one would need to be a man of very great strength if one found oneself in the situation in which Warden Malley found himself, before he was called upon to determine what he should do about this objection. I will be interested to hear the excuse of the member for Subiaco.

Mr. Grayden: It will not be an excuse; he will give you the reason.

Mr. TONKIN: I know the reason; I do not have to be told that. The reason was that the firm wanted a decision in a certain direction. That was the reason. We do not have to look far for that. It would be idle for the member for Subiaco, or anybody else, to try to prove that the Minister did not give a direction to carry out a survey. The Minister would not admit that. When I asked questions as to whether he had ordered a survey to be taken, he did not answer that. But it cannot be denied, because the documents show that he did.

This is the contention in the Notice of Objection which was put up by the firm of Lohrmann, Tindal and Guthrie and in connection with which the letter I have just read was collateral. It reads as follows:—

> The Mining Act, 1904-1957.
> Regulation 251.
>
> In the matter of Mineral Claims 90 and 292 in the West Pilbara Goldfields
> — and —
> in the matter of an objection by Depuch Shipping and Mining Company Pty. Ltd. to certain surveys thereof made by Surveyor Leslie M. Norman on the 31st day of July, 1962, and the 1st day of August, 1962.
>
> Answer to Notice of Objection.
>
> In answer to the Notice of Objection dated the 6th day of August, 1962, filed herein by Depuch Shipping and Mining Co. Pty. Ltd. (hereinafter referred to as "the Objector") against the surveys referred to above, Hancock Prospecting Pty. Ltd. (hereinafter referred to as "Hancock") says:—
>
> 1. It will contend as a matter of law that the Warden has no jurisdiction to deal with the Objection for the following reasons:—
>
> (a) The surveys undertaken in this matter are not surveys to which Part VIII of the Regulations under the Mining Act, 1904-1957, apply.
>
> (b) The said surveys were undertaken pursuant to a direction of the Minister for Mines as an administrative act.

Anybody who sets out to disprove the statement that the Minister for Mines directed the survey has certainly got a job in front of him.

Mr. Grayden: The Minister would have been remiss in his duty if he had not done that.

Mr. TONKIN: That is another question. It depends on the interpretation of "duty". At the moment I am dealing with the question of whether it is a fact or not. That is: Did, in fact, the Minister for Mines, after he received the warden's recommendation, direct that a survey of mineral claim 90 be carried out? The Minister declined to answer that question, but the firm of Lohrmann, Tindal and Guthrie, on behalf of Hancock, in their notice of objection objected on certain grounds; and one of their contentions was that the surveys were undertaken pursuant to a direction of the Minister for Mines as an administrative act. I do not think we need waste much time in arguing whether the Minister directed the survey to be taken or not in view of that. Continuing to quote—

> (c) The Minister for Mines is required by law to deal with the recommendation of the Warden referred to in paragraph 8 of the Notice of Objection and for such purpose may lawfully make such enquiries and direct such investigations as he thinks fit.

Nobody is arguing his right to make inquiries or direct investigations; but I challenge his right to order the survey at that stage or to ask the warden to carry out a survey, because if the warden is going to carry out a survey he has to do it before he makes his recommendation—not after.

I can find no provision in the law or regulations which enabled the Minister to direct a survey after the case had been heard in the Warden's Court. I should think that if the Minister wanted a survey it was for him to say to the warden, "Before this case is decided and you make your recommendation, what about carrying out a survey?"

Mr. Guthrie: That would indeed be improper.

Mr. TONKIN: That would be?

Mr. Guthrie: Of course it would be!

Mr. TONKIN: That is the only time it could be done; and if that is improper—

Mr. Guthrie: You wait until I speak!

Mr. TONKIN: —it is certainly unlawful for the Minister to order the survey afterwards.

Mr. Grayden: Regulation 55 gives him power.

Mr. TONKIN: No; it does not give him any of the power at all. I think we had better nail that one before we go any further.

Mr. Grayden: Paragraph (7).

Mr. TONKIN: From regulation 55 I will start reading at paragraph (6), because it deals with the position where there is no objection. It reads as follows:—

> Should no objection be lodged within the time specified, the Warden or Inspecting Surveyor may issue to a mining surveyor instructions to survey the claim without delay and to furnish an accurate plan and tracing thereof, together with a report and such other particulars as the Warden or Inspecting Surveyor may require.
>
> Should any objection be lodged,—

and that was the case here—

> —instructions for survey shall not be issued until after the Minister's approval, as hereinafter provided for, is notified, but the Warden may order the survey to be made before reporting on the application to the Minister.

There was an objection in this case, so this is what applies—"instructions for survey shall not be issued until after the Minister's approval." That passage cannot apply because the Minister has not approved.

Mr. Grayden: Go on!

Mr. TONKIN: It continues—

> —as hereinafter provided for, is notified, but the Warden may order the survey to be made before reporting on the application to the Minister.

Not after.

Mr. Grayden: Now read clause (7).

Mr. TONKIN: He did not order the survey to be made before he reported, so neither of those two instances has any application.

Mr. Grayden: Now read (7).

Mr. TONKIN: No. (7) reads—

> Prior to the hearing before the Warden,—

How on earth can that apply?

Mr. Grayden: Go on!

Mr. TONKIN: Continuing—

> —a report shall be obtained from the Government Geologist or other professional officer. The application and objections (if any) shall be heard in open Court by the Warden, who shall as soon as convenient submit the application and report, together with his recommendation thereon, for the consideration of the Minister, and the Minister may, notwithstanding anything contained in this Regulation, refuse the application or approve the application for the whole or any portion of the area applied for, and may impose such conditions as to him may seem fit.

There is not a single word in that regulation which gives the Minister power to act in the way he acted—not a single word.

Mr. Grayden: The last line, "and may impose such conditions as to him may seem fit" is all embracing.

Mr. TONKIN: Rubbish! It has no application to the situation at all. The regulation is specific as to who shall carry out or order the survey to be carried out, and in what circumstances; and there is not a regulation and there is nothing in the Act which enables the Minister, after he has a recommendation from the warden, to order that a survey be taken before he makes up his mind whether he is going to approve or reject the recommendation.

Mr. Grayden: That gives him the power.

Mr. TONKIN: He has no power at all. If we look at the motion again, I think any fair-minded person must agree that the contentions I have made have been substantiated. Those contentions are that the action of the Minister for Mines in not accepting the recommendations of warden N. J. Malley and in directing that a survey be made of land which was purported to be mineral claim 90, thus giving definition to the boundaries of that claim after the warden had found that the limits of its boundaries could not be defined and as a consequence enabling the firm of Lohrmann, Tindal and Guthrie to obtain for its client by administrative act a result which it failed to obtain in the warden's court and which may make a difference of £40,000 one way or the other to Hancock Prospecting Pty. Ltd., appears to be so lacking in the principles of law, equity and justice and to be so inconsistent with his action in the case of James Moffat Henderson and Elizabeth Henderson—objection to application by E. J. Pike and J. W. Jeffreys—that in the public interest and for the preservation of public confidence in the impartial administration of the law it is imperative that a Royal Commission be immediately appointed to inquire into the matter and make recommendations to enable Parliament to take such steps, if any, as it considers necessary or desirable to deal with the situation which has arisen.

Now the situation with which we are confronted is that Parliament will rise in three weeks. It seems obvious to me—I could be doing the Minister an injustice; I hope I am not—that the Minister will not decide this matter until after Parliament rises. It has already been on his plate—or on someone's plate—for five months without a decision having been made. In the meantime the Minister will not answer any questions regarding the situation, claiming—quite wrongly in my view—that the matter is *sub judice*.

It is a very regrettable situation in view of what has transpired, because big money is at stake in this proposal. It means far more to Hancock than to the Hendersons, although it meant plenty to them because there was a company interested in what they were doing. On the form of objection was the following:—

> After prolonged negotiations with Sumitomo Shoji Kaisha Ltd., the Chief Mining Engineer has arrived in Perth and in company with Mr. Eddy, the Syndicate's representative, are to inspect the various areas and in due course report on same to his Company. If favourable the areas will be thoroughly tested.

So the Hendersons had very bright prospects that the Japanese company would be interested in the metals from that area. But the Hendersons lost the area because in their description they made an error.

The Minister accepted the warden's recommendation on that, and it meant a loss to the Hendersons. We now get this case of Hancock where at least £40,000 is involved, and maybe £80,000. It is a decision in which a lot of people have a vital interest and the Minister took action which in my view he had no right to take. He holds up the final decision and he declines to answer any questions about it in Parliament.

The decision has to be made some day. He cannot put it off forever. It will be unfortunate if it is made during the parliamentary recess when no action can be taken in connection with it. Therefore I think the time is appropriate that the matter should be inquired into so that we can ascertain the real reason for the course this has followed.

MR. GUTHRIE (Subiaco) [6.14 p.m.]: I think before I go on with the details that I should deal with the letter which the Deputy Leader of the Opposition accuses me of having written to the warden. I do not deny that I signed that letter. I did not address that letter to the warden at all. The letter that came from the solicitor for the Depuch Mining Co. stated that the matter was being very probably heard on the 21st August, 1962, some eight days later. The letter which was addressed to the warden was sent to the Mining Registrar with a request that if the matter came on on the 13th August and we were not present, the letter should be placed before the warden.

In actual fact both the solicitor for Depuch and myself discovered between the 17th August and the 21st August that the Mining Registrar had not even listed the matter for hearing on the 21st August. It was not even mentioned. He listed it of his volition before the next court in September. So if the warden read it, he did so of his own volition. But the matter did not come before the court and the necessity we foresaw of that situation arising—that it would be impossible for Mr. Hancock to be represented—did not, in fact, eventuate.

Sitting suspended from 6.15 to 7.30 p.m.

Mr. GUTHRIE: Prior to the tea suspension I was dealing with the question of the letter which was written to the warden. I pointed out that the letter was written on the assumption which had been advised my firm by the solicitor for the Depuch company that the hearing was on the 21st August. In actual fact it did not take place until a month later, the 20th September.

I will explain, for the benefit of the House, that the warden's court at Marble Bar sits only once a month. There is a regular sitting day, the commencement of the sitting being the third Tuesday of each month. The sitting may continue over to the Wednesday or the Thursday if there is sufficient business; but usually the business can be completed in one day. Therefore, if a case is not listed for one month, it has to wait over until the next.

In consequence, there was plenty of time for stock to be taken of the situation. An opinion was taken from a lawyer who, I think, without mentioning any name, would be generally regarded as the State's leading mining lawyer. Opinion was also taken from a leading Queen's Counsel who has appeared for members of the Labor Party on more than one occasion.

They were as emphatic as I was that the warden had no power to deal with this matter and that the process which had been issued by the Depuch solicitor was a process not known to the law. I would explain that the particular part of the regulations deals with surveys which take place after a mining tenement has been approved; and where the applicant has pegged out a piece of ground and the surveyor produces a map which the applicant does not think agrees with what he imagines he pegged out, then the applicant can lodge an objection with the warden. The warden summonses the surveyor before him and determines whether or not the surveyor has pegged out the piece of ground correctly.

But this was not a case where an application had been granted. In fact, I think it is common ground in this House that the application for mineral claim 292 is still ungranted at this point of time. So the particular part of the mining regulations had no relevancy at all, and the particular part of the regulations did not permit anybody to require the warden to make any declaration whatsoever in regard to the decision of the Minister for Mines.

In fact, as I think can well be imagined, validity or otherwise of an action of the Minister for Mines can only be called in question in a court of law where the Minister himself is made a party. It is a basic principle of our justice that we do not make declarations or orders, or give judgments against people without first serving notice on them and requiring them to either attend before the court on such-and-such a day or to file a notice of defence by such-and-such a time.

None of that was done in this instance. It was of his own volition that the solicitor for the Depuch company saw fit to send a copy of this objection—for which, I say, there was no legal basis whatsoever—to the Principal Registrar of Mines who put it on the file, as one would expect him to do. In any event, in accordance with the undertaking that was given to the warden in the previous letter, a telegram was duly despatched to the mining registrar requesting him to inform the warden that the Hancock company would not be represented at the hearing as it had been advised that it had no right or status there.

Information which has been ascertained by my office by telephone to the mining registrar at Marble Bar is to the effect that when the matter was called on, the warden told the solicitor for the Depuch company that he required him to satisfy him, the warden, that the warden had such authority to deal with the matter; and the warden, having heard such a submission,

gave consideration to it and ultimately gave his decision that he, the warden, had no jurisdiction whatsoever to deal with the matter and, accordingly, he dismissed the objection.

It might be wondered why the matter was not, as indicated in the letter, taken to the Supreme Court. The sole reason was that the Queen's Counsel whose opinion was taken pointed out that as the Minister for Mines was not a party to the proceedings, and as Hancock Prospecting Proprietary Company Limited was not a party to the proceedings—even though the solicitor for the other side made out that they were; and it is not his privilege to write the laws of the land—they had no *locus standi* at all in the matter and they were quite entitled to ignore any decision which was made. Also, they had no right to go to the Supreme Court for any type of writ prohibiting the proceedings and restraining the warden.

The opinion expressed by the Queen's Counsel was that there was one person, and only one person, who had the right to apply to the Supreme Court—and that was the surveyor, Norman; and if he had seen fit to issue a process out of the Supreme Court he would have been entitled to be heard by the Supreme Court. Surveyor Norman had nothing to do with the Hancock company, and nothing was done in that regard.

Touching a little further on this matter, I think it is important for the House to understand the distinction between the warden as an individual and the warden's court. There is, under the Mining Act, a warden's court established which is a court of record presided over by the warden. It hears complaints which are initiated in that court in the ordinary way by processes which are served on the other side requiring them to attend, or warning them, in the lack of their attendance, that the matter might be dealt with in their absence.

Those are ordinary proceedings of law within the sections of the Mining Act giving jurisdiction to the warden's court; and the warden, sitting in the warden's court, can give judgments. But his judgments, with certain exceptions provided for in the Act, are subject to appeal to the Supreme Court; and, accordingly, to the High Court and, if need be, to the Privy Council.

But there are also applications which are dealt with by the warden as an individual and not in the warden's court. The processes are not intituled as being in the warden's court. They are plain, straight applications which are heard by the warden; and if one cares to read through the mining regulations he will see that many times there is a direction to the warden that he must hear evidence on these cases, and must hear that evidence in open court. In other cases he is purely an administrative official.

In some cases he has power to make recommendation only to the Minister, and the executive decision is the decision of the Minister. In other cases he has power to make a decision himself and the Minister cannot interfere with it. With regard to this particular matter, the application for mineral claim 292 was one of those matters in which the warden had power to hear the evidence, make a report, and place his recommendation before the Minister; and the final decision rested with the Minister.

I mention that because it is important to note in connection with this survey that this was an instance where the warden was acting only as an official; and it is quite proper for anybody to warn any official that he has been asked to do something which is beyond his legal powers. It was only fair and just that he should be warned of the fact; namely, that he was asked to do something which the law did not permit him to do; which is the same as if the Under-Secretary for Water Supplies, or the Under-Secretary for Mines, or the Under-Secretary for Lands were being asked to act in an administrative capacity and it was considered by a person likely to be affected by his decision that he was acting unlawfully; and it would be quite proper to warn him that he was being asked to do something unlawful and it could be called in question in the courts. It would have been quite proper for the warden not to have listened to the submissions, and quite open to the Minister completely to have ignored the warden's decision if the warden had listened to the submissions of the solicitors of the Depuch company on the last application.

The Deputy Leader of the Opposition, in attempting to attack me, made a much more serious attack on a man who is not here to defend himself—a man who presides over our courts. The Deputy Leader of the Opposition insinuated that because he received a letter from my office, signed by a member of this House, the magistrate, who is concerned to do justice in this country, would be intimidated by it. It is a very shocking thing when the Deputy Leader of the Opposition will take the opportunity of saying that. If he said it outside he could be dealt with for contempt of court.

To suggest that the magistrate could be intimidated when the cold hard facts of the matter are that my office was represented before the warden on the first application, and the warden had no hesitation in giving a decision against my office's client, is a shocking state of affairs. I was not there personally; but to suggest that the magistrate was so lacking in his sense of propriety and his sense of justice that he could be intimidated by anybody, is a most dreadful thing for a person holding such a responsible position as the Deputy Leader of the Opposition to say.

This is a man who has been Deputy Premier of this State, and hopes once again to be Deputy Premier of this State.

Mr. Rowberry: He can always try to.

Mr. GUTHRIE: The honourable member seems to have missed the point, as he always does. The insinuation by the Deputy Leader of the Opposition is a nasty slur on the magistrate.

Mr. Rowberry: The slur is against the writer of the letter.

Mr. Bickerton: I hope you are not going to base your argument on that.

Mr. GUTHRIE: I am not. I will deal with each point that the Deputy Leader of the Opposition brought forward, and I will explain how each one of them is entirely without substance.

In his motion the Deputy Leader of the Opposition has made some reference to a previous case which was before the Minister and before the warden's court at Marble Bar. He refers to the case of James Moffat Henderson and Elizabeth Henderson with reference to an application by E. J. Pike and J. W. Jeffreys. The Deputy Leader of the Opposition has suggested—and in fact he has said it in this Chamber—that the facts or the principles of the two cases were identical, and that the Minister reached one decision in that case and looks likely to reach another decision in this case.

I knew nothing of that previous case at all—in fact, I had nothing to do with it—until the Deputy Leader of the Opposition obligingly asked that the papers be tabled in this House. When the papers were tabled I was given an opportunity to read the file and learn something about the case for the very first time. Permit me to say, as I will demonstrate in a moment, that the facts are totally dissimilar; and there is no inconsistency in what the Minister did in that case compared with what the Deputy Leader of the Opposition imagines he is likely to do in this case.

First of all, the two mining tenements in that case—or, in fact, there was really only one mining tenement as I remember, as the file is not here—comprised a prospecting area and a temporary reserve. We must bear in mind that in this case one is a mineral claim and the other is an application for a mineral claim, and there is a very wide difference in the legal effect of the two.

A prospecting area is granted under regulation 9 of the Mining Regulations, and I think it is important to read what regulation 9 states. It reads—

> All rights vested in the holder of a Prospecting Area shall remain in force for a period of 12 months from date of registration: Provided that during such period he holds a Miner's Right and forthwith notifies any renewal thereof during the term to the Mining Registrar. The holder may, before the expiration of the 12 months for which his rights remain in force, subject to the approval of the Warden and on payment of the prescribed fee, have the period extended for a further six months, but no longer.

The file that was tabled in this House discloses that the over-pegging application, which over-pegged this particular prospecting area, was filed in the Mining Registrar's Office at Marble Bar on either the 6th or the 7th—I have actually forgotten which day it was—of June, 1961. It matters little which day it was, but I will say it was early in June, 1961.

The file also discloses that the prospecting area was due to expire, and in fact did expire, on the 13th June, 1961. The file does not disclose whether there was any six months' extension of that prospecting area, or whether there was any application for an extension; but an inquiry I made of the Under-Secretary for Mines, following on the tabling of the file, elicited the information that there was no record in the office of its ever having been extended beyond the 13th June, 1961. This is how the matter came before the warden on some date in July, if my memory serves me correctly, in the year 1961.

By that time the prospecting area was no longer in existence—it had gone. The Minister dealt with the recommendation of the warden some months later; and, similarly, when the Minister dealt with the matter the prospecting area was no longer in existence. Neither the warden nor the Minister was faced with the situation of having two competing claims for the same piece of ground, which is what they have in this matter. I will come back to the legalities of the situation later.

As I said earlier, there was also a reference to a temporary reserve for some portion of this ground, and the file that was tabled in this House was not particularly clear as to what piece of ground the temporary reserve covered or what period it had to run. A temporary reserve is granted under sections 275 and 276 of the Mining Act—not the regulations—and section 275 reads—

> The Governor may, by notice in the *Government Gazette*, declare any reserve to be open for mining, and thereupon, and until such notice is revoked such reserve shall be deemed Crown land within the meaning of this Act.

Section 276 reads—

> The Minister and, pending a recommendation to the Minister, a warden, may temporarily reserve any Crown land from occupation; and the Minister may at any time cancel such reservation: Provided that if such reservation is not confirmed by the Governor within twelve months, the land shall cease to be reserved.

It then goes on—

> The Minister may, with the approval of the Governor, authorise any person to temporarily occupy any such reserve on such terms as he may think fit, but subject to the provisions of section two hundred and seventy-seven.

I could not glean from the file what the score was on that temporary reserve, but there was one remark at the end of it, and that was a recommendation that that temporary reserve be not renewed. So in any event, apparently, the temporary reserve in the meantime—and I can only say "apparently" because I could not make sure of it from the file—had come to an end; and when the Minister dealt with it he was not faced with any legal difficulty.

He had a temporary reserve over a particular piece of ground which was being sought by the applicant for this claim; and consequently when the Minister dealt with the matter he was free to do what he wished. He had a piece of land over which nobody had any prior claim legally —no effective legal claim—and consequently he could do what he liked with it.

I mention that case to show that the two instances are not identical, and it has nothing whatever to do with this present matter. The circumstances of the two cases, as I will demonstrate as I go through the history of this particular case, are totally different.

First of all, I think it is essential to get this Mons Cupri mine in its correct and proper context. The Mons Cupri mine is located some two miles from the Whim Well Mine, about which there is an extraordinary feature. This mine has a freehold title and the Mining Act does not apply to it in any way. It is a piece of ground on which all minerals other than gold and silver belong to the owner of the freehold. The reason for that is that it was alienated Crown land prior to 1899 when our first mining laws came into operation. Prior to that year the minerals belonged to the owner of the freehold. From memory, I think it is known as North Location No. 71, and it is a 100-acre block.

The Whim Well Mine has been a freehold mine for many years and it represents a valuable asset in this particular field. Many years ago, the owners of the Whim Well Mine had applied for and worked the Mons Cupri mine under license from the Crown as a proper mining tenement. The only place where the ownership of the Whim Well Mine can be ascertained is at the Land Titles Office, and if the Deputy Leader of the Opposition cares to make a search there he will find that the title is in the name of a Mr. and Mrs. Walters as executors of the will of another Mr. Walters.

But that title will not tell him who owns the mine because the mine does not belong to those person's but to a syndicate which is interested in both areas. Therefore, any thought the Deputy Leader of the Opposition or anybody may have had that it would be possible to deal with the Mons Cupri lease separate from the Whim Well may be forgotten, because the ownership is more or less the same. In any event, Mr. Hancock, being interested in the Whim Well syndicate, and believing that something could be done with the Whim Well Mine, decided that for the proper development of that mine it was essential also to have the Mons Cupri lease which had been worked. I understand that there are signs of work having been done on the ground.

In 1956 Mr. Hancock went to the Mines Department in Perth and asked if the department could show him, on departmental maps, the piece of ground covered by the Mons Cupri mine. He was not only shown on a survey map where that mine was, but also a piece of tracing paper was used to trace the boundaries of that mine. For the benefit of the Leader of the Opposition and of the members of the House generally I would point out I still possess that piece of tracing paper. It will be a most valuable exhibit when the case comes before the Supreme Court, to which court it will ultimately go. The officers of the Mines Department traced the boundaries of the Mons Cupri mine which was formerly mineral claim No. 240.

Mr. Hancock took the advice of the Mines Department; he did not go out and peg this ground. It has never been suggested that he put four pegs in the ground, as the Deputy Leader of the Opposition has assumed. He did not apply under regulation 147. In a few moments I will cut the ground from under the feet of the Deputy Leader of the Opposition in regard to the regulation, because I am quite sure he will raise that question too.

Regulations 147 and 148 provide the conditions when an applicant pegs out a lease of ground. The Deputy Leader of the Opposition has quoted these regulations, so I will not bother to quote them again, because that honourable member reads quite well. Another reason why I do not propose to read them again is that Mr. Hancock did not avail himself of regulation 147 or 148.

On the advice of the Mines Department his application was submitted and granted under regulation 151, which is as follows:—

> It shall not be necessary to mark off ground which is identical with any forfeited, abandoned, or surrendered mining tenement which has been already surveyed, but the prescribed

notice shall be affixed to one of the existing survey posts, and all other provisions shall be complied with.

Having been told by the Mines Department that it was surveyed, Mr. Hancock, in compliance with regulation 151, submitted to the mining registrar at Marble Bar a declaration of his compliance with that regulation. However, the mining registrar was not satisfied with that because he thought he knew better. On the 20th July, 1956, the mining registrar at Marble Bar wrote a letter to The Director, Hancock Prospecting Pty. Ltd., Harvest Terrace, Perth, as follows:—

> Dear Sir,
> Re Application Mineral Claim 90, West Pilbara.
> With reference to the declaration of Marking off submitted by Mr. L. G. Hancock for the above application. I regret it is unsuitable and I have drafted a further form to be completed by Mr. Hancock, and the original returned to this office.

The mining registrar made a draft setting out his views on the position in referring to regulations 147 and 148, and Mr. Hancock signed it. When the subject was previously debated in this House the Deputy Leader of the Opposition asserted it was obviously a false declaration; but it was not.

The question of intent is all important in our law. There was no intention on the part of Mr. Hancock to send to the Mines Department a false document. He merely signed what he was asked to sign. He has never said anywhere in evidence that he put in four pegs prior to the application being made to the warden. However, when the application was granted he put the four pegs in. It has never been suggested that the putting in of the four pegs had anything to do with the groundwork that led up to the granting of this mineral claim.

In due course Mr. Hancock was issued, by the Mines Department, in 1956, with a mineral claim for lease No. 90. This is a claim that holds good until such time as it is cancelled within the provisions of the Mining Act. However, to date no one has taken any steps to have it forfeited. So the Minister for Mines finds himself in the situation that his department has already issued a certificate bearing witness to the fact that Hancock Prospecting Proprietary Limited is the owner of 96 shares of mineral claim No. 90 situated in the Whim Creek district, West Pilbara Goldfield, and being a copper mine known as the Mons Cupri. That is the situation in which the Minister now finds himself.

His department did, in good faith—because it undoubtedly believed that this mineral claim had been surveyed since it appeared on the departmental maps—represent that the area had been surveyed.

Mr. H. May: The department should know.

Mr. GUTHRIE: The honourable member's Government was in office at the time it was issued. It was issued during the regime of the Hawke Government and it bears the signature of the proper authorities, under the Mining Act, that a claim has been issued, and it still appears on the register of the West Pilbara Goldfield as a perfectly valid claim.

In the earlier debate on this matter comment was also made on the failure of Mr. Hancock to attend on the ground in 1961 when he was supposed to be required to attend for the purpose of enabling the survey to be carried out. It is interesting to read the letter which was sent to Mr. Hancock at that time. Mr. Hancock did not flagrantly disregard the Mines Department. This is the letter that was sent by the Chief Draftsman, Mines Department, Perth. It bears the date of Perth, the 8th August, 1961, and is addressed to the Secretary, Hancock Prospecting Pty. Ltd., 609 Wellington Street, Perth—

> With reference to M.C. 90 W.P. at Mons Cupri, would you please confirm in writing that the ground applied for is as shown on the attached sketch with the dimensions being approximately 14 ch. x 7 ch. and that the pegs and trenches have been maintained in good condition as per Regulation 164.
>
> The surveyor will be in this area within the next month and the above information is required in order that he may carry out the survey.

You will observe, Mr. Speaker, that there was no request that Mr. Hancock should attend. There was no notification of when the surveyor would be there, except that he would be in the area within the next month. Was Hancock to be expected to sit there for the next month? It is also worth noting that the Mines Department was able to send Hancock a sketch of the particular tenement, because the department asked him to confirm in writing that the sketch was correct.

It has been suggested tonight that there was no sketch. If that is so, I do not know where the department got the idea from. It was surely not a figment of its imagination. So there we see the situation. Mr. Hancock has been wrongly accused of flagrantly disregarding the Mines Department. He did not do so. On being asked, he sent his comments back with the sketch. He was not asked to attend, and he did not attend.

To continue the history of this case it is necessary to outline the agreement entered into by Hancock Prospecting Pty. Ltd. and the other parties concerned with

the Depuch Mining and Shipping Company. A recital of that agreement reads as follows:—

> Whereas Hancock Prospecting Pty. Ltd. is registered as the holder of 96/96ths shares of Mineral Claim 90 situate in Whim Creek district West Pilbara Goldfield and being—

I would like to emphasise these words—

> —and being the copper mine known as "Mons Cupri."

There was no doubt whatever that the parties were not interested in mineral claim 90 as a vacant bit of land on the South Australian border, or as being halfway out in the Indian Ocean. They were only interested if it were the well-known copper mine of Mons Cupri, of which they had seen the workings. All parties worked on the basis that the Mons Cupri claim was in fact the copper mine which, incidentally, has been surveyed.

I have in my hand the official survey map of the Mons Cupri copper mine, and that is taken from the northern aerial geophysical survey of Australia, and it states it is a plan of Mons Cupri copper mine. All the workings can be seen there. Everybody knew that that was what they were dealing with—that and nothing else. It would be farcical to suggest that Mr. Hancock would not know where that was. Of course he knew where it was. He had no illusions that that was the piece of land for which he was applying; and the Depuch Shipping and Mining Company had no illusions that that was the piece of land on which they were getting the option.

Mr. Hancock relied entirely on the information gleaned from the maps of the Mines Department; and who would not assume that as the Mines Department had it marked on its survey maps of the area it was in fact surveyed? As it turned out, the area was not surveyed. How it got there I know not. That will have to be investigated. If this matter finishes up in litigation it will no doubt have to be discovered and the Mines Department will have to furnish records, etc.

There was no doubt in the parties' mind that they were taking over the Mons Cupri copper mine. It was not until the 23rd February, 1962, that the Depuch Shipping and Mining Company raised any objection to it. They did not then get in touch with Hancock and say, "We think you might have pegged the wrong bit of ground"; or, "There may be some doubt as to its validity." They rushed in in a purely claim-jumping tactic to peg the ground all around it, and applied to the mining warden for a mining tenement.

At that stage they had not notified Hancock that they had done so. It was not until the case was listed in the court, and the time was due for hearing that the solicitor saw fit to write to Hancock Prospecting Pty. Ltd. a letter drawing its attention to the fact that the matter was coming before the court. The first letter in this matter was written on the 12th April, 1962, or around that time.

Then, and only then, did Hancock know the claim was being jumped. It would have been a simple thing, if the Depuch company were an honourable company to give notice to Hancock that there was some doubt about his mining tenement. It would have been simple for Hancock to repeg the Mons Cupri mine, and lodge with the Mines Department a surrender of mineral claim 90, for what it was worth, to be accepted against the granting of the area.

So it is useless for the Depuch company to say it was forced to take this action, because it was not. If, in the long run, it pays dearly for the action it has taken, it has nobody to blame but itself. It did not adopt the honourable course, and it imagined it could exercise the option on Whim Well separately from Mons Cupri; and that it could deal with separate owners. But the company learnt to its chagrin that it could not.

It was not suggested by Hancock that he contracted to give Depuch anything but the Mons Cupri lease. It was also mentioned by the warden in his judgment that many applications were made for an exemption of mineral claim 90; and in those applications reference was made to the fact that it was the Mons Cupri mine. It was always called the Mons Cupri mine until the company found it had a chance of slipping out of its obligations.

Now we come to the warden's decision in this matter. The matter came before the warden, and you must bear in mind, Mr. Speaker, that it is only a recommendation to the Minister—the executive decision rests with the Minister. The Minister faces the difficult problem of having a claim issued by his department which might compete with another claim; and he has not only to do the right thing but he also has to justify his action, because if the department is wrong then a writ will be issued out of the Supreme Court against it. That is the legal right of Hancock Prospecting Pty. Ltd.

So the Minister must be very careful as to what he does. He must be very sure he does not grant a second title over the same piece of ground—if a title has already been granted. He did not have that difficulty in the other case, because the areas had disappeared. The application came on before the warden; and he recognised this, because in dealing with the prospecting area 284 he said—

> This is about prospecting area 284.
>
> The ground applied for apparently encroaches on P.A. No. 284.

> No objection has been lodged by the holder and it is contended on behalf of the applicant (though I suspect without much force) that, in the absence of an objection, the company is entitled to the area affected.
>
> To uphold the applicant's contention would result in the continuity of a miner's title being dependent on an assiduous reading of all newspapers circulating in the area and I am unable to agree with it.

If the warden had similar evidence before him as to where mineral claim 90 was he would, undoubtedly, have said exactly the same thing in regard to that claim. He decided, because there was no evidence where this claim was, that he could not do much about the matter; but he did not think far enough and did not appreciate the difficulty—which is the real difficulty in the matter—that mineral claim 90 has to be identified. The Minister dare not grant mineral claim 292 until he is absolutely certain that no part of it is covered also by mineral claim 90. He has to be absolutely certain that mineral claim 90 is completely outside of mineral claim 292, before he has the legal power to grant mineral claim 292. It is for that very obvious reason that the Minister directed a survey to be made.

The Deputy Leader of the Opposition has chided the Minister for doing an unlawful act in directing a survey to be made. It is not a matter of the Minister having to quote to the Deputy Leader of the Opposition, or to anybody else, any statutory provision or any regulation under the Mining Act to give him that authority. First of all, it is based on commonsense, because the Minister has to protect himself against a claim made in a higher court than the warden's court. Secondly, it is based on common law, which provides that any person who owns a piece of ground can do what he wishes with it. I might point out that I can have my block of land at Subiaco surveyed as often as I like; and similarly the Government of the day can have the Crown lands of this State surveyed as often as it wishes, for any purpose, without giving any reason whatsoever.

The only point which comes into the question is when there is a wrongful expenditure of public funds; but that does not go to the legality of the matter. In this instance it was obvious the Minister was faced with a very difficult situation, in that he did not know whether he would be asked to grant, for the second time, the same piece of land. So the only thing he could do to protect himself was to direct a survey to be granted. I do not know—and I do not think the Deputy Leader of the Opposition knows—what instructions were given to the surveyor, and what the surveyor was required to do. I certainly do not know—and I do not think the Deputy Leader of the Opposition knows—what was his report. What the surveyor was told I know not, but I can well imagine what the Minister wanted, and what he needed to know, because, with due respect to the warden, that was a part of the matter which seemed to escape his notice.

I shall be quite frank in saying that counsel for Hancock Prospecting Pty. Ltd. appearing before the warden did not stress that point, nor did he draw it to the attention of the warden. It is fair to say that perhaps the warden was a little misled under those circumstances. I put this to the House: Quite frankly this was all the Minister could do. If he grants mineral claim 292 without being sure that it in no way over-pegged mineral claim 90, there is always a doubt as to the efficacy of the title. If he grants the area to Depuch, less mineral claim 90, he will be perfectly safe; and if he has any doubt he can reject the application by Depuch completely. Nobody can quarrel with any of those decisions, except the first; and nobody can say that the Minister has done anything wrong.

Up to this point of time the Minister has yet to make his decision. If the Minister has exceeded his legal powers he can be brought before the courts of the land for redress. That is the proper place where action can be taken. I do not think the Minister has exceeded his legal powers to this point of time. As I see it, the Minister for Lands has a perfect right to order a survey of pastoral lands, and the Minister for Mines similarly has a perfect right to order a survey of mining lands for any purpose. If the Minister does this capriciously and wastes public funds in the course of this action he can be criticised only, but the legality of his action cannot be questioned at all.

In case the matter is dragged up in this debate, I will refer to the debate on the previous motion when regulation 162a was referred to. I referred this regulation to the two counsel advising on the case and they agreed it had no bearing whatsoever. Regulation 162a reads thus—

> No holder of a mining tenement other than a lease shall abandon same without executing and lodging for registration, within 14 days of such abandonment, at the Warden's office in the goldfield in which such mining tenement is situate, a surrender in the form No. 15 in the Schedule.
>
> Penalty ten pounds.

In other words, it is a regulation introduced to cover the situation of a person who abandons his tenement and does not do the right thing; that is, to tell the registrar that he has abondoned the tenement, so that the registrar can make it known that the tenement is open for repegging. For such failure to notify the penalty of £10 is imposed. It is what is

commonly known as a penal provision that cannot produce any legal effect on the title.

It is true the latter part of regulation 162a has become a little bit obscure, bearing in mind that that part does not have any executive effect at all. It is purely a definition. The latter part is as follows:—

> In this regulation "abandonment" means non-compliance with the labour conditions imposed by the Act and these regulations, for a period of fourteen consecutive days, excluding, however, any period during which exemption is granted.

This is about the most stupid provision in the whole of the mining regulations, and I am thankful it is never applied. It means this: If someone does not work his claim for 14 days he can be prosecuted and fined £10 for not notifying he has legally abandoned it. That is as far as it goes. It certainly does not produce an abandonment of the claim.

There is only one way to remove a claim: It can be forfeited for non-payment of rent or for non-compliance with the conditions. In some cases this is done by instituting proceedings in a warden's court for an order to be made recommending the tenement be forfeited.

It is stated in the motion that as a consequence the firm of Lohrmann, Tindal and Guthrie was able to obtain for its client by administrative act a result which it failed to obtain in the warden's court. I would point out that up to this point of time nobody has obtained anything, because no decision has been made. Is there anything wrong with a firm of solicitors acting for a client putting up submissions to a court and to the Minister as to what the firm thinks is fit and proper? Up to the time when notice of the first motion appeared on the notice paper of this House, after which the motion was moved by the Deputy Leader of the Opposition, I had nothing to do with the matter, and I knew nothing about it. Because of the implication of my name I did concern myself to some extent, after that.

I did not make any approaches to the Minister either then or now; nor did I make any suggestions as to what he should do. My office has since written a letter to the Under-Secretary for Mines pointing out the legal position which I have described to the House. I have not been to see the Minister, nor have I asked him to do anything about the matter. After the case was over Mr. Hancock asked me if the Minister would allow him to appear before the Minister. I said I did not know, but would ask the Under-Secretary for Mines. I telephoned the under-secretary and he informed me that a certain action was likely to be taken by the Minister which made it unnecessary for Mr. Hancock to see the Minister at that point of time. Subsequently it was known that the Minister had decided to have a survey made. In consequence, that request was not pursued any further.

Now let us turn to the real import of this matter. This is, as I think the House can discern, a dispute between two companies—Hancock Prospecting Pty. Ltd. and Depuch Shipping & Mining Co. Pty. Ltd.; and both companies have sufficient means to fight it in the courts where the matter should be fought—and there is plenty of opportunity for them to litigate these arguments in the courts of the land. That is the proper place; it is not the function of this House to debate disputes between private people. The only justification there could be for bringing such a matter before this House is where it could be shown that the Minister had done something improper.

I have already demonstrated to the House that the Minister was not inconsistent in the two matters; and I have already demonstrated to the House that the Minister had perfect legal power to—in fact; in essence, commonsense required he should—direct the survey.

Now let us look at the people who are trying to use this House to air their private disputes to try to obtain through political pressures on this House something apparently they are not game to bring before the courts of the land. First of all, we have on the one side Hancock Prospecting Pty. Ltd., and I think it is important that the House should know who the shareholders of this company are as on the 31st March 1962, being the date of the last return filed under the Companies Act. We find they consist of four people: Hope Margaret Hancock, of 150 Victoria Avenue, Dalkeith, who holds 3,069 shares; Georgine Hope Hancock, who holds 49 shares; George Hancock, who holds one share; and Langley George Hancock, who also holds one share.

They are the people who own it. They are members of a very well-known family who have been in the north-west for a very long time. In fact, they descend from Mary Withnell, who was well known as the mother of the north-west. They have been there all the time and they have developed this country.

I listened with great interest last night when the Deputy Leader of the Opposition read from Mr. Blake Pelly's address quoting his references to the Rio Tinto Company. I would point out that it was Langley George Hancock who established the Wittenoom Blue Asbestos mine and brought the Colonial Sugar Refining Company into that area. He also got the interest here of the great American company of Union Carbide, which is still interested to some extent. He also got the great company of Rio Tinto into this country; and Rio Tinto in its turn has brought in

the Kaiser Steel Corporation. Let us look at the other people in this dispute. It makes interesting reading.

Mr. Oldfield: Did Hancock do this for the country or for himself?

Mr. GUTHRIE: I am not interested in the honourable member's interjection; I am interested in telling the House the position. Mr. Hancock has certainly not made any money out of his mining ventures—he has made none at all. In fact, his sheep stations are maintaining the losses—and heavy losses—he has sustained. The member for Maylands should go and have a look at the Ragged Hills mine and the Nunyerry mine. Mr. Hancock sank money in each and also into Pilbara Exploration. He had invested thousands of pounds in money towards the development of this country, and it is only someone like the member for Maylands who would make such a stupid interjection to the effect that this man has taken out more than he has put in. If the honourable member examines the accounts he will find it is in reverse.

Mr. Oldfield: He has a good firm of solicitors at the back of him.

Mr. GUTHRIE: Now we will have a look at the shareholders of the Depuch Shipping & Mining Company Pty. Ltd. The first is the Dowa Mining Co. Ltd., Tekko Bldg., Tokyo, Japan, which holds 8,440 shares. The next is the Rasa Trading Co. Ltd., Kayabacho, 1/12, Tokyo, Japan, which holds 1,200 shares. I would observe at this time that the total shares issued by the company are 11,250; so these two concerns between them hold 9,640 out of that 11,250 shares—and they are residents of Tokyo, Japan. There are people in this country who would slit the throat of the Deputy Leader of the Opposition for fighting the cause of Japan against Australians, and a man who is the cousin of the Commander-in-Chief of the Australian Air Force at this moment.

Now we come to the other shareholders. There is Jomozo Alai, of Tokyo, who holds one share; Minoru Hiradka, of Tokyo, Japan, one share; Ken Odagiri, who has one share—they are all of Tokyo, Japan —Benzo Inose, one share; Haruo Ito, one share; Hidesaburo Kurushima, one share; Menzo Matsuzawa, one share; Mibori Matsuyama, one share; Isama Mita, one share; Isamu Mita, one share; Takashi Nishida, one share; Hiroshi Naganio, one share; Eizo Ogawa, one share; Yasutake Okubo, one share, and Hiroshi Shiraishi, one share.

Then there is Ronald Henry Sewell, of 110 Gardner St., Como, 112 shares; R. H. and J. A. Sewell, c/o J. A. West, Raffles Hotel, Canning Bridge, one share; Alexander Gerrard Swan, 17 Holmesdale Rd., West Midland, 761 shares; James Alexander West, c/o Raffles Hotel, Canning Bridge, 112 shares; and Harry William Woodfield, Araisuka 1/2370 Omori, Tokyo, Japan, who holds 610 shares. My information is that he is the English-born husband of the daughter of one of the senior directors of the Dowa Mining Company Ltd. So the real ownership rests with Dowa; and this company is prepared to come here and indulge in what is commonly known as claim-jumping to achieve its ends.

Here we see the situation of the Deputy Leader of the Opposition in this Parliament—a member of the Australian Labor Party—taking up the cause of a wealthy foreign Japanese mining combine against a pioneer Western Australian family. Is that what the Labor Party stands for? It takes me back to the days when the Deputy Leader of the Opposition fought for a concern which wanted to shirk its obligations under the Money Lenders Act and when he fought for that great bunch of philanthropists, the S.P. bookmakers. Is that what the Labor Party is coming to—fighting the cause of a foreign combine that will not go into a court of law; that has done nothing to carry out its legal obligations?

This is an attempt on behalf of that company to intimidate this House and to attack the Minister for Mines. It is somewhat interesting to realise who is the solicitor for that company. If the late Phillip Collier and the late Alexander McCallum could come back to earth today and find that the Australian Labor Party was fighting the cause of Mr. T. J. Hughes they would be horrified. If ever there was an occasion when a resolution ought to be contemptuously thrown out, this is it.

It has been insinuated previously that I may have some interest in it. I have no interest whatever in the company. When it is all said and done, it is of no consequence to me personally whether the company loses, wins, or draws this case. My firm gets paid legal fees for the time spent on a matter, irrespective of the result. In matters of this nature the result has no bearing whatever on the amount paid except that the longer it goes on the more fees we receive. That is the only thing I can say.

MR. BOVELL (Vasse—Minister for Lands) [8.31 p.m.]: I regret that owing to a ministerial commitment entered into before the Deputy Leader of the Opposition gave notice of his motion I was not present when he delivered his speech on the motion this time. However, I have studied the two motions, and, generally speaking, they are the same except that the words "grave public disquiet having resulted from the actions of the Hon. Minister, it is imperative in the public interest" which appeared in the first motion have been omitted from the second motion. However the purpose of both motions is identical.

I am not going to repeat what I said on the previous occasion. I dealt with the matter then, and at that time I said no decision had been made; and now the position is the same—no decision has been made. I said on the first occasion that there was no inconsistency in the actions of the Minister for Mines. He acted in accordance with the authority he has under the Mining Act, and he acted in accordance with the principles of former Ministers for Mines during the regime of the Labor Government.

I explained when the previous motion was being debated—which was prior to the Bunbury by-election—that there was no public disquiet with reference to this matter, and evidently I convinced the Deputy Leader of the Opposition that that is so.

The matter has progressed a little. The Minister, as I have said, had ordered a survey. In the limited time available to me this evening, I discussed the matter with the Minister for Mines and he said that as far as he was concerned there was nothing more he could add to what I had said in replying to the previous motion moved by the Deputy Leader of the Opposition. However, he said that the position now is that his department has been able to collate all the information, and the report of the Under-Secretary for Mines has been received by him. But he does not feel disposed, because of the continued sniping of the Deputy Leader of the Opposition, to be cajoled into the position of giving his decision as it suits the Deputy Leader of the Opposition.

Mr. Hawke: In other words, he has made a decision but will not tell us what it is.

Mr. BOVELL: He will, in his own good time, arrive at a decision and will then announce it.

Mr. Hawke: That is a wonderful way to treat the parties involved!

Mr. BOVELL: Although I did not hear the remark with my own ears, I understand that the Deputy Leader of the Opposition referred to the fact that he did not wish to do the Minister for Mines an injustice, but he thought the Minister may be withholding the announcement of his decision until after this session had concluded. Might I ask the Deputy Leader of the Opposition if that is what he said?

Mr. Rowberry: He said he could be.

Mr. BOVELL: If that was what he said during the course of his remarks, it is an example of the sniping—if I might put it that way, it being the Minister's own word—to which the Minister for Mines has been subjected by the Deputy Leader of the Opposition. That statement reflects on the integrity of the Minister for Mines, and I feel the position is that it is not a case of whether the session will end now or later. The fact is that the Minister for Mines, having proceeded in the normal course in accordance with his authority, will arrive at his considered decision at the appropiate time to suit himself and not the Deputy Leader of the Opposition.

I am going to ask members of this House to oppose the motion which is similar to the previous one moved by the Deputy Leader of the Opposition.

MR. GRAYDEN (South Perth) [8.38 p.m.]: I would like to say that I agree with most of the remarks of the two previous speakers. However, I do differ in one respect with the remarks of the member for Subiaco who, towards the end of his speech, made reference to the Japanese people involved in this particular mining claim. He read out some information which was given by the Minister for the North-West earlier in the session in response to a question I asked.

The member for Subiaco made a statement to the effect that these Japanese were involved in some sort of claim-jumping in the north-west. I do not think we should make a statement of that kind against Japanese interests. I agree entirely with the statement that there has been claim-jumping, but I am quite certain that the people concerned are the Australian principals of that company. In those circumstances I think it unwise and very unfair to make statements of that kind about people in Japan.

I am rather pleased that we have had the opportunity at last to debate this matter. It was raised at the beginning of the session by the Deputy Leader of the Opposition. He moved to suspend Standing Orders during the debate on the Address-in-Reply; and, of course, at that time he failed in his objective. However, when he was not able to proceed he tried to give the impression that this Government had something to hide in connection with this matter. He definitely tried to give that impression. Consistently he came back to the subject, moved other motions, and did various things which were ruled out of order as being *sub judice*. All the time he tried to create the impression that the Government had something to hide.

Eventually he was successful in moving a motion. In that motion he made the statement that mineral claim 90 at Mons Cupri was a mythical one; that it was something which had never been pegged and therefore Hancock was not entitled to it. As a consequence of that statement, a question was asked in this House, and it was disclosed that mineral claim 90 —notwithstanding that the Deputy Leader of the Opposition had said it was a mythical claim—had been granted; that the lease had been granted way back in 1956. I think the reply to the question was to the effect that mineral claim 90 was granted to Hancock Prospecting Pty.

Ltd. by The Hon. W. Hegney during the absence of the then Minister for Mines, The Hon. L. F. Kelly, who was in America.

We therefore have a situation where the Deputy Leader of the Opposition is maintaining that something was mythical; that this Government had no right in trying to establish whether, in fact, it existed—when the Deputy Leader of the Opposition's own Government had actually granted this claim in 1956.

The Deputy Leader of the Opposition cannot have it both ways. He cannot say it does not exist if, in fact, it was actually granted. If he does maintain that it was a mythical claim and that it still is a mythical claim, then surely that is a reflection on his own Minister; and inference of impropriety on the part of the Acting Minister of the day, The Hon. W. Hegney, who was acting for the Minister for Mines, The Hon. L. F. Kelly, who was then in America. If it is not an instance of impropriety on the part of the then Acting Minister, it is, at least, an indication of the inefficiency of the Government of the day in granting the lease when, in actual fact, it had no right to do so.

I do not want to use any terms which are unparliamentary in respect of an individual member. However, I do say that a motion which reflects on the integrity of a Minister when, in actual fact, the Minister has done nothing whatsoever to deserve censure, is a despicable one. In this case a Minister has not done something for which he should be censured. We have the Deputy Leader of the Opposition alleging that a Minister did something when, in actual fact, he did nothing at all. The Deputy Leader of the Opposition moved his original motion in the following terms:—

Mr. Rowberry: There is the sin of omission as well as the sin of commission.

Mr. GRAYDEN: The Deputy Leader of the Opposition moved the following:—

> That the action of the Hon. Minister for Mines in refusing to accept the decision of Warden N. J. Malley that the objection by Hancock Prospecting Pty. Ltd., to the granting of Mineral Claim No. 292 was dismissed with costs to be taxed and in rejecting his recommendation that Mineral Claim No. 292 W.P. subject to survey and to the excision therefrom of P.A. 284 be granted to the Depuch Shipping and Mineral Co. Pty. Ltd. . . .

And so on. In that motion he says—

> That the action of the Hon. Minister for Mines in refusing to accept the decision of Warden N. J. Malley—

The Minister for Mines had, on no occasion—or he had not at that time—refused to accept the recommendation of the warden, and he still has not. Yet we have the Deputy Leader of the Opposition putting up a motion to the effect that the Minister had done that; and he then proceeded to criticise the Minister for actually doing it.

That is an extraordinary state of affairs. We have the Deputy Leader of the Opposition putting up an Aunt Sally for the purpose of knocking it over; and, in the process, placing the Minister for Mines under censure. The public is given a completely wrong impression about the matter. There have been many instances of this kind on the part of members of the Opposition. Even during the Bunbury by-election we had the Leader of the Opposition going about the country saying that he could get a Speaker, firstly, from the Country Party, and then from the Liberal Party.

Mr. Hawke: I never said anything about the Liberal Party.

Mr. GRAYDEN: He was putting up an Aunt Sally. Of course, he could not do that. The members of the Liberal Party signed statements—

Mr. Oldfield: Are you telling us that you would not accept the Speakership?

Mr. GRAYDEN: And I understand that members of the Country Party did something similar. We have an instance of the Leader of the Opposition putting up an Aunt Sally with the object of knocking it over.

Mr. Bickerton: You'd have made a good Speaker!

Mr. GRAYDEN: We have had an instance of the Deputy Leader of the Opposition putting forward a motion which alleged that the Minister had done something for which he should be censured when, in actual fact, the Minister had done no such thing; and, strangely enough, still has not.

Mr. Hawke: The Minister is sulky.

Mr. GRAYDEN: We could regard the motion of the Deputy Leader of the Opposition as a great compliment to the Government. We have to bear in mind that this motion was introduced at the very beginning of the session. At that time there was a by-election pending. At that time we heard all kinds of talk in the lobbies and elsewhere about the big bombshell which was going to be introduced by the members of the Opposition. This motion was that bombshell; and what a bombshell it was!

As I have said, it is really a great compliment to the Government. When it was introduced in those circumstances the Opposition had looked around at all the administrative acts of the Government. It had searched for something on which to base some criticism; and it could not find anything. So we had a leading member of the Opposition having to invent something. That is a strange state of affairs.

If this Government is so far above criticism that the Opposition has to invent something, and then criticises the Government on the basis of that allegation—

Mr. Rowberry: Who is raising an Aunt Sally now?

Mr. GRAYDEN: —in order to bolster up its side and to place a better image of itself before the public, it shows to what depths the Opposition has sunk; and it indicates how efficient this Government really has been in the years it has been in office.

Mr. Hawke: You are making us blush.

Mr. GRAYDEN: That is the serious aspect about all this. The member for Subiaco and the Minister demonstrated very clearly there was nothing in the Deputy Leader of the Opposition's speech; that there was no point on which he could legitimately criticise the Government. Yet because of the way he introduced his motion—he had to be prevented from moving the motion during the Address-in-Reply debate—and because of the various other approaches which he has made an impression has been left with the public that this Government has done something wrong; that the Minister for Mines has done something wrong.

This impression has come about because up until tonight no member on the Government side has had an opportunity of replying to some of the statements made by the Deputy Leader of the Opposition in respect of this particular motion.

Mr. Hawke: The Minister for Lands replied on a previous occasion.

Mr. GRAYDEN: The action of the member for Melville is an extremely serious one; because if what he was advocating in this case were to be put in general practice in Western Australia, it would mean that we could virtually throw away all the existing provisions of the Mining Act. It would mean, virtually, that every little prospector in Western Australia would be thrown to the wolves. We have heard a great deal about monopolies during the session from members of the Opposition. We have heard how undesirable they are. But here is an instance where an Act is specifically phrased to protect the small man. Yet the Deputy Leader of the Opposition would have us throw that away in the interests of large companies of the kind with which we are dealing tonight.

The Mining Act of Western Australia is held in the highest regard throughout the world. It is the pattern on which the mining legislation of many countries of the world is based; and one of the greatest attributes of our Mining Act is that it has been framed specifically to protect the small man—to give him British justice even if he is not very familiar with the legal procedure associated with the lodging of claims.

One of the principles in the Act which enables that particular result to be accomplished provides for a warden in a warden's court to make recommendations to the Minister in respect of any claims which are applied for, and it gives the Minister wide powers to obtain any other information he may require before he passes judgment on those recommendations. I refer to subregulation (7) of regulation 55 made under the Mining Act which reads—

> Prior to the hearing before the warden, a report shall be obtained from the Government Geologist or other professional officer. The application and objections (if any) shall be heard in open court by the warden, who shall as soon as convenient submit the application and report, together with his recommendation thereon, for the consideration of the Minister, and the Minister may, notwithstanding anything contained in this regulation, refuse the application or approve the application for the whole or any portion of the area applied for, and may impose such conditions as to him may seem fit.

So members can see from that subregulation that if somebody applies to register a mineral claim, a mineral lease, or a dredging claim, he simply makes application on the prescribed form and does one or two other things associated with pegging, etc.

Then the warden sits in Marble Bar, or wherever it may be, hears evidence, and makes a recommendation in respect of the claim. He does not grant it on the spot because he realises that he is miles away from civilisation; he is not a legal expert; and he does not know what is ultimately going to come up in a legal sense, which could cut across what he decides upon. The warden is not a legal man and he simply makes a recommendation on all the facts which are before him. That recommendation goes to the Minister, and after that this part of the regulations comes into force—

> . . . and the Minister may, notwithstanding anything contained in this regulation, refuse the application or approve the application for the whole or any portion of the area applied for, and may impose such conditions as to him may seem fit.

Mr. Bickerton: We have just heard you read that.

Mr. GRAYDEN: That is an additional safeguard. It means that after the hearing in the warden's court the application goes before the Minister and he makes a final decision on the claim. He has weeks in which to look around to make certain that he is doing the right thing and is giving the right decision. That is an additional safeguard for all these little prospectors who are involved in such

claims. That is the whole purpose of the regulation, and that is the reason why the Minister is given such wide powers.

Yet the whole basis of the Deputy Leader of the Opposition's claim that the action of the Minister was wrong has been based on the fact that the Minister should not exercise that power, and that he should automatically approve of the recommendation made by the warden in the warden's court. There is a provision in the Act which specifically gives the Minister power to obtain other information before he approves or rejects the recommendation of the warden in order that justice can be done. Yet the Deputy Leader of the Opposition objects to that procedure.

Now let us see how that applies in real life. In the particular case which is in dispute there was an Australian, Mr. Hancock, who applied for a lease way back in 1956. After getting all the relevant information from the Mines Department he applied for the lease and it was granted to him. When he applied for it he had to pay certain fees, and even though the lease had not been surveyed he still had to pay certain fees when he lodged the initial application. At that time Mr. Hancock was only a prospector even though his family had pastoral interests in the north.

He paid the fees in 1956 and each year he went on paying the fees as they became due. This claim was granted by a Labor Government, and later on he handed over the claim to the Depuch Shipping and Mining Company. He held the lease for a while but could not do anything with it, and when this other company became interested in it he gave it an option of purchase, and the company undertook to continue to pay the fees which became due each year.

When the company took the lease over it was quite satisfied that that was the lease; and the company knew the boundaries of it, obviously; otherwise it would not have continued to pay the annual fees. The company also had other duties to perform such as the fixing of papers on the datum peg, and so on. The company was bound by law to do that; and, I understand, it claimed to have done so. How then can the company say that the lease never existed? The company was working on the ground; and it took over from Hancock, paid the annual fees, and complied with the regulations, because that was part of the condition of the handing over.

The company complied with the Mining Act, and the conditions associated with the lease. Then at this late stage the company pegs another lease which embraces lease 90 and tries to prove that, in fact, lease 90 was never lawfully pegged. That is claim-jumping, as has been stated by the member for Subiaco, and nobody can deny it; and I am extremely surprised, to say the least, to see the Deputy Leader of the Opposition lending his support to a company which would attempt to put that across.

As I said, I think it is unfair to reflect on any Japanese principals or interests who may be affected by this particular lease. We simply cannot do that, because anybody who has a mining lease in the north these days, and who wants to develop it, tries to raise capital in Japan; and the poor old Japanese are probably unaware of what the true position is, and they trust their Australian principals. There is no doubt that in this case we should place the blame fairly and squarely on the Australian principals involved; and it is a clear-cut example of claim-jumping. It is really extraordinary that the Deputy Leader of the Opposition should lend himself to such a thing; because it means that if he is successful in what he argues, then claims, dredging leases, and mineral leases held by propectors in the north are in jeopardy.

When one pegs a lease in the north one just does not simply go along and work the claim, as has been suggested by the member for Melville. It may be that one has a good copper deposit, but if there is no demand for that particular grade of copper how can one work the claim? Therefore, in those circumstances, one simply applies for an exemption. Hancock applied for an exemption; and, later, when he handed the claim over to Depuch, that company was supposed to apply for an exemption.

The position is that simply because one pegs a lease in the north that does not mean to say that one immediately starts to work it. I could point to 2,000 or 3,000, or possibly 5,000 leases in the north which are not being worked now; with many of them the owners have not claimed exemptions. The reason for that is that they sometimes peg a lease but cannot see any possibility of economically working it for years.

If a man holds only one tiny lease in the north and no-one is interested in it because the mineral on the lease is not in demand at that time, the holder of the lease, nevertheless, does not approach the Mining Registrar continually to renew the exemption on that lease. However, if someone shows an interest in that piece of ground he can apply to have the matter heard before the warden's court. Such person adopts the attitude that the existing holder of the lease has not complied with the provisions of the Act and therefore the lease should be forfeited.

However, when the case is heard before the warden's court the person holding the lease is generally fined only £10 or so and is not asked to forfeit the lease. I can cite many instances where leases have been held by B.H.P. for 20 years or more, and yet that company has not attempted to

work them because the mineral in question is not in demand and it would not be an economic proposition to work the leases.

For those reasons this Act has been designed specifically to ensure that the small miner or prospector receives justice. In many instances a prospector is trying to eke out an existence doing odd jobs in order to earn enough money to go out in the bush at week-ends to carry out prospecting activities for a certain period.

That prospector must have the protection specifically granted to him under this Act. The Mining Act was not introduced and passed last year; it was introduced when mining first commenced in Western Australia many years ago. Since then, in the light of all the experience that has been gained in mining, this Act has been amended where necessary to mete out British justice to the small miner or prospector.

We hear a great deal about British justice in this House. Yet, in 1962, the Deputy Leader of the Opposition, who obviously knows nothing about mining, judging from some of the remarks he has made, would have us cut completely across that Act. The section which I have referred to gives the Minister for Mines power to make his own investigations and to decide whether the warden's recommendation should be approved.

One of the statements made by the Leader of the Opposition which indicates that he knows nothing about the Act—

Mr. Hawke: The Leader of the Opposition said nothing.

Mr. GRAYDEN: I am sorry; I meant the Deputy Leader of the Opposition. He made some reference to Mr. Hancock being present on the lease when the Government surveyors went to survey the ground. All Mr. Hancock probably had was a couple of days' notice that he should be present on the lease when the survey was made. How absurd that is! Mr. Hancock could have been in Perth or in the Eastern States. In those circumstances does a man suddenly have to drop whatever he is doing and fly hundreds, or possibly thousands, of miles to be present on a lease whilst a survey is carried out?

In this instance it was a lease that had previously been in existence. The Government had never bothered to survey it irrespective of the survey fee having been paid. These leases, however, have not been surveyed, because there is no necessity to survey them. The Government, although it accepts the initial survey fee and the pegging fee, does not rush to survey leases. If the holder of a lease suddenly decides to start mining and finds that the mine is an economic proposition, the Mines Department will soon take steps to survey the lease. But it did not do so in these circumstances, because it was waiting for the man concerned to do something with it.

Earlier, I mentioned that regulation No. 55 under the Mining Act made it quite clear that the Minister had unlimited power to take action subsequent to receiving a recommendation from the warden. I referred to the relevant paragraph of regulation No. 55 only because the Deputy Leader of the Opposition repeatedly asked: Where in the Act does that power exist? The latter part of subregulation (7) of regulation 55 reads as follows:—

> . . . . and the Minister may, notwithstanding anything contained in this regulation, refuse the application or approve the application for the whole or any portion of the area applied for, and may impose such conditions as to him may seem fit.

That gives the Minister any power that he desires in the matter. Obviously, one has no need to point to that regulation. I did so only because the Deputy Leader of the Opposition asked where it was provided in the Mining Act that the Minister had that power.

We are dealing with Crown land. If one owns land one can have it surveyed at any time until one sells it. The Minister can survey Crown land not once but 500 times after the warden makes his recommendation, when the Minister can either approve or reject it. There is nothing in the Act which specifically states that the Minister cannot do that. However, if the Deputy Leader of the Opposition is seeking something in the Act which would give the Minister that power, I point out that section 55 is the relevant section.

The member for Melville, being a member for a metropolitan electorate, knows nothing about mining. He says that regulation No. 55 makes it perfectly clear that when an objection is lodged against an application the Minister cannot order a survey. Let us analyse that statement because the member for Melville read the relevant regulation to the House. Subregulation (6) of regulation No. 55 reads as follows:—

> Should no objection be lodged within the time specified, the Warden or Inspecting Surveyor may issue to a mining surveyor instructions to survey the claim without delay and to furnish an accurate plan and tracing thereof, together with a report and such other particulars as the Warden or Inspecting Surveyor may require.

The final part of that subregulation No. 55, which the member for Melville says is relevant, is as follows:—

> Should any objection be lodged, instructions for survey shall not be issued until after the Minister's approval, as hereinafter provided for, is notified.

but the Warden may order the survey to be made before reporting on the application to the Minister.

I point out to the Deputy Leader of the Opposition that this is a regulation which pertains to a normal application for a mineral lease or dredging claim.

If an objection is lodged, it is provided that no survey shall be carried out until after the Minister has given his approval. What is the use of the Government going to all that expense if the Minister, a few days later, is going to reject the application? On the other hand it goes out of its way to indicate that if the warden, for his own information, wants to order a survey to be carried out, to know where he stands in respect of the objection, he has the power to do so. That is all it says.

Yet the Deputy Leader of the Opposition is taking that provision and saying it applies to the Minister. Of course there is no reference at all to the Minister. On the contrary, the next paragraph makes it clear and says, "The Minister may impose such conditions as to him may seem fit." I will not read the whole regulation.

Mr. Hawke: Oh, go on, read it!

Mr. GRAYDEN: As I have pointed out, the Minister does not need that power, because this is Crown land, and if he wants to survey the lease 500 times between the time when the warden makes a recommendation and the time the Minister approves or disapproves of that recommendation, he has the privilege to do so. If he wishes he can survey the lease 500 or 1,000 times. Will the Deputy Leader of the Opposition dispute that? I take it from his silence that he does not. If he does dispute it, I would like to hear from him so that I might have an opportunity to refute anything he says. The whole thing is absolutely clear-cut, and there can be no dispute about it.

In moving this motion the Deputy Leader of the Opposition is trying to do something which would cut completely across the Mining Act—that is, if he were successful —and it would throw every little prospector to the wolves. The most significant feature about this debate is that up to date the Deputy Leader of the Opposition has had no support whatever from members of his own party. We all know there are men on the Opposition side who are familiar with mining.

Mr. Hawke: The Minister on your side is telling you to shut up.

Mr. GRAYDEN: I have not seen the member for Boulder-Eyre rise in his place to support the Deputy Leader of the Opposition, and that to me is quite remarkable. Here we have the Deputy Leader of the Opposition talking about something since the session first began, and yet not on one occasion has he had any support from his own ex-Minister for Mines. One does not have to stop at the ex-Minister for Mines on the Opposition side. We have the member for Pilbara, who has conveniently left the Chamber.

Mr. W. Hegney: And little wonder.

Mr. GRAYDEN: He is one of the men who is most involved; because there are dozens of little prospectors in the Pilbara district, and he knows only too well what would happen to every one of those small prospectors if Rafferty's rules were to obtain in the mining industry, and the Minister did not have the right to approve or disapprove of the warden's recommendation. That is why the member for Pilbara has not said a word in this debate; that is why he has left the Chamber—to avoid embarrassment.

There are quite a number of members on the Opposition side who represent the mining areas of Western Australia. We have, for example, the member for Kalgoorlie. Where is he tonight? This is a matter which vitally affects prospectors throughout Western Australia. Quite apart from that, there is based in Kalgoorlie an organisation known, I think, as the Prospectors' Association of Western Australia. This matter is very close to the hearts of the little prospectors in Kalgoorlie, and the member for that district should have something to say about it.

Let us go a little further and ask: Where is the member for Kimberley? There is a considerable amount of mining done in the area he represents. But is the member for Kimberley in his seat? Of course not! Like the others he knows that the little prospectors of Western Australia are being let down by a member of his own party. One can go further and point to the member for Gascoyne. There is a great deal of mining done in his electorate, and yet he is not in the Chamber.

Mr. Graham: You have driven thousands out of the Chamber!

Mr. W. Hegney: In fact, you have emptied the Chamber.

Mr. GRAYDEN: These members have good reason to leave the Chamber, because the Deputy Leader of the Opposition has placed them in a most embarrassing position. At various times we have heard the Deputy Leader of the Opposition rail against monopolies.

The SPEAKER (Mr. Hearman): The honourable member has another five minutes.

Mr. GRAYDEN: The Leader of the Opposition has also spoken against monopolies. Yet here we have the Deputy Leader of the Opposition doing something that would cut right across the Mining Act and throw the small prospectors to the wolves. What sort of organisation is he trying to help? It is one of the large combines against which he and his supporters have so often spoken.

The member for Subiaco has already read out the names of the people who comprise the Depuch Shipping & Mining Company, so I will not repeat them—they have already appeared in *Hansard*. We find, however, that most of them are Japanese. These are the people whom the Deputy Leader of the Opposition is defending by his motion, when they are actually engaged in claim-jumping—apparently at the instigation of their Australian principals.

I hope the Minister will be able to clear this matter up, and that it will not have an adverse effect on encouraging capital from Japan; because if the Japanese are to be approached by people from Western Australia with a view to encouraging capital from that country, and if they are to be involved in deals of this kind, I feel sure they will not appreciate it. It could result in a lessening of the Japanese capital that enters Western Australia. That is one of the serious aspects of this motion moved by the Deputy Leader of the Opposition.

In conclusion I want to say that had the Minister not adopted the course he did, in calling for a survey, or for more information on the claims involved, before agreeing to the recommendation of the warden—in view of the fact that the warden in coming to that decision made it clear that the only reason he gave the decision was because Hancock had not bothered to give the evidence he should have—and had he not gone to some trouble to get that information, he would have been remiss in his duty. Accordingly the Minister is to be commended on the action he has taken.

In the circumstances I have outlined, I believe the motion that has been moved is a despicable one. The Deputy Leader of the Opposition accused the Minister of doing something he has not done. He then criticised the Minister for what he alleged he had done. That is a despicable way to act. The whole thing, of course, was introduced in the first place merely because the Bunbury by-election was pending; and, it having been introduced, the Deputy Leader of the Opposition had no option but to go on with it.

MR. TONKIN (Melville—Deputy Leader of the Opposition) [9.20 p.m.]: It seems to be difficult, if not impossible, for members of the Government to deal with an argument on its merits. Almost invariably when I introduce a controversial matter, those who are opposed to me get down to personalities in order to disparage my efforts and to descredit me. If that is their method of fighting they can have it. It is not my method.

Mr. Guthrie: You were not out to discredit me or the Minister at all!

Mr. TONKIN: I dealt with the situation as I saw it and backed up my case with information. I did not attempt to impute motives or anything of that kind. The member for Subiaco deliberately set out to create the impression that I was fighting the battle of the Japanese; whereas he was fighting the battle of the Australians. That is dirty tactics.

Mr. Guthrie: You talk of dirt! I must bring up some of the pamphlets you put out in the last election.

Mr. TONKIN: If the honourable member wants to adopt that method he can do so, and I can take it.

Mr. Guthrie: What about some of the things you said in the Bunbury by-election?

Mr. TONKIN: I do not indulge in that sort of method. I simply say this: I can understand a lawyer who is paid a fee for taking a case in court; he is representing that party and is being paid for his work. In this case I am not representing anybody; I represent only justice. I want to see the law observed. Apparently, that is not a strong point with the Government.

I can quote several instances of the failure of the Government to observe the law. The first was in respect of the Electoral Districts Act when the Government was forced by the courts to obey the law. The second was the case against the Totalisator Agency Board when it was forced by the courts to obey the law; and no doubt it will be forced to do so again. In the case under discussion there is a further instance where the Minister has gone beyond his legal power.

I say quite definitely that I am not representing the case on behalf of anybody, other than myself and my desire to see that the Government and its Ministers observe the law. As long as I am in this House representing the people of Western Australia I shall continue to do that without fear or favour. What is wrong with the Japanese? Did the Premier not entertain them at dinner recently?

Mr. Guthrie: I did not say that; but the morals of the company in question are not very bright.

Mr. Hawke: What about your own political morals? They are well down in the gutter.

Mr. TONKIN: I thought we were trying to encourage the Japanese to become customers for our iron ore. As far as I can ascertain we are not likely to get customers from anywhere but Japan. If we do not sell our iron ore to Japan we will not be able to sell it at all; so instead of trying to discourage them we should encourage them. We will not encourage them by saying, "You are Japanese, and it does not matter how we administer the law so far as you are concerned." That is not the way to encourage customers. I say there is a responsibility upon us.

irrespective of who is concerned, to see that the right and the lawful thing is done. That is all I am asking.

The member for Subiaco tried to make light of a declaration made by Mr. Hancock. I shall read it to ascertain whether or not he was telling the truth. His declaration is as follows:—

> I, Langley George Hancock, of 150 Victoria Avenue, Dalkeith, W.A., do solemnly and sincerely declare—
>
> (1) That I am the Managing Director of the Hancock Prospecting Pty. Ltd. whose registered office is situated at 11 Harvest Terrace, Perth.
>
> (2) That the company is the applicant for Mineral Claim 90 situated at Mons Cupri containing 10 acres.
>
> (3) That the company is the holder of a miner's right No. 13675 dated at 19/6/56.

Mr. Guthrie: That was a declaration which the Mines Department wrote out for him. He signed what the department sent him.

Mr. TONKIN: The declaration made by Mr. Hancock states —

> (4) That the ground applied for is Crown lands and was pegged out by myself in accordance with Regulations 147 and 148 of the Mining Act, 1904, at the time and date mentioned in the application.

Is the member for Subiaco suggesting that Mr. Hancock made a solemn declaration about something which was untrue because the Mines Department suggested he should do that?

Mr. Guthrie: That department supplied him with the declaration.

Mr. TONKIN: The fifth paragraph of the same declaration is as follows:—

> (5) That all notices have been posted in accordance with the said regulations.

Mr. Guthrie: That is not in the declaration.

Mr. TONKIN: Yes it is.

Mr. Guthrie: That refers to notices.

Mr. TONKIN: The final portion of his declaration is as follows:—

> and I make this solemn declaration by virtue of Section 106 of the Evidence Act, 1906.
>
> Declared at Wittenoom this 28th day of July, 1956, before me:
>
> Postmaster, Wittenoom.

This copy of the declaration is certified by the Mining Registrar to be a true and correct copy of the statutory declaration lodged in respect of application for mineral claim 90. So much for the statement of the member for Subiaco that there was nothing in the declaration.

Mr. Hawke: The member for Subiaco has suddenly gone silent.

Mr. TONKIN: He said there was no similarity between the two cases of Henderson and Hancock. He gave the reason why the application of Henderson was dismissed and said it was because the prospecting area had not been renewed and had run out by the effluxion of time. What a strange thing the warden did not reject the application on that ground! He did not mention that in his judgment.

Mr. Guthrie: Nevertheless it is factual.

Mr. TONKIN: This was what the warden threw out the application on—the very matter that is in dispute with Hancock. His judgment states—

> I am satisfied on the evidence before me and from the Inspector of Mines report that no real attempt had been made by Henderson to peg Prospecting Area 2614 at the time of making the application as required by the regulations. The provisions relating to marking off are very clear and are designed to protect the holder of a tenement, and to indicate to others the boundaries of the ground held.
>
> In the present circumstances I am convinced that no more than nominal pegging had been carried out. There had been no trenching or clearing of the boundaries, and it is doubtful whether pegs were fixed at the other corners.

That is the very thing which is in dispute in connection with mineral claim 90 made by Hancock—that the ground was not properly pegged, was not properly trenched, and had no cairns of stones placed near the pegs. The two cases are absolutely identical. To say there is no similarity is a lawyer's trick.

Mr. Guthrie: That is the greatest rubbish you have ever spoken.

Mr. TONKIN: This declaration of Hancock referred to having pegged the ground in accordance with regulations 147 and 148; and I think it is as well we should know what is in those regulations because they contain exactly what Hancock declared under oath. Regulation 147 is as follows:—

> Regulation 147. Every mining tenement not previously surveyed shall be taken possession of and marked off by fixing firmly in the ground at each corner or angle thereof (or as near as practicable thereto) a substantial post or cairn of stones projecting not less than three feet above the surface and set in the angle of two trenches, not less than four feet in length and six inches deep, and cut in the general direction of the boundary lines. When the nature of the ground will not permit trenches being cut, rows

of stones of similar length shall be substituted. The boundary lines shall also be cleared from post to post.

Regulation 148 is as follows:—

Regulation 148. One of the corner posts or cairns shall be the datum post, and thereon or in proximity thereto shall be firmly fixed, at the time of marking off, a notice in the form No. 22 in the Schedule, setting out the particulars therein prescribed.

And Langley Hancock solemnly and sincerely declared he had personally done that.

Mr. Guthrie: How do you know he knew what was in the regulations when he signed that declaration? How many people know the regulations off by heart?

Mr. TONKIN: I thought it was elementary in the law that ignorance of the law was no excuse.

Mr. Guthrie: That is not the case here. That is another of the great misstatements of law which you are fond of making.

Mr. Graham: You would be a great authority.

Mr. Hawke: Fancy being on a murder charge and having the member for Subiaco to defend you!

The SPEAKER (Mr. Hearman): Order!

Mr. TONKIN: We were told by the member for Subiaco that Mr. Langley Hancock did not have enough notice about going up to point out where his pegs were, so he did not go.

Mr. Guthrie: I did not say that at all.

Mr. TONKIN: What did you say?

Mr. Guthrie: I said that he was not given notice at any time. He was merely informed that the survey would be made within the next month.

Mr. TONKIN: All right. On the 16th April, a letter was despatched to Lohrmann, Tindal & Guthrie.

Mr. Guthrie: I was referring to the survey in August of the previous year.

Mr. TONKIN: The letter reads as follows:—

The receipt is acknowledged of copy of an objection lodged by Hancock Prospecting Pty. Ltd. to the application of Depuch Shipping & Mining Company Pty. Ltd. for Mineral Claim 292.

In order that my client may consider the aforesaid objection and prepare any answer he wishes to make to it will you be good enough to furnish me with the following particulars:—

(a) The positions of the corner posts fixed when Mineral Claim 90 was taken possession of and marked out.

(b) Which of the aforesaid posts was the datum peg.

(c) The feature specified.

(d) Alternatively the positions of the survey posts if any that delineated the area taken possession of.

(e) The position of the survey posts to which the prescribed notices were affixed.

(f) The names and addresses of each of the persons who worked on Mineral Claim 90 on each of the days in the period commencing on the 15th of January, 1957 and finishing on the 4th November, 1959.

(g) Details of the work performed by each of such aforesaid persons.

An early reply to this communication will be appreciated so that the case in answer to the objection if any may be adequately prepared and presented to the Warden at the hearing in the May sittings of the Warden's Court at Marble Bar.

That was on the 16th April.

Mr. O'Connor: What year?

Mr. TONKIN: It was 1962. On the 8th May a further letter was sent to Lohrmann, Tindal & Guthrie as follows:—

Dear Sirs,

Re: Depuch Shipping and Mining Company Pty. Ltd.—in re Hancock Prospecting Pty. Ltd.—Application for Mineral Claim 292 and Objection.

On the 16th ult. a communication was forwarded to you requesting certain particulars in the matter of the objection lodged by the Hancock Prospecting Pty. Ltd. to the application of Depuch Shipping and Mineral Co. Pty. Ltd. for Mineral Claim 292 but no reply has been received thereto.

If your client does not intend to furnish the particulars requested it will be appreciated if you will be good enough to acknowledge receipt of the aforesaid communication of the 16th ult. requesting the same.

Enclosed herewith is a copy of a request made under Regulation 166 of the regulations under the Mining Act, 1904 to 1957, which has been delivered direct to Hancock Prospecting Pty. Ltd.

There was also this letter on the same date—

Please take notice that Depuch Shipping and Mineral Co. Pty. Ltd. requires Hancock Prospecting Pty. Ltd. to point out to the aforesaid Depuch Shipping and Mineral Co. Pty. Ltd. the corner posts and boundary lines of Mineral Claim 90 in the West Pilbara Goldfields, of which Hancock Prospecting Pty. Ltd. claimed to be the holder.

This request is made pursuant to Regulation 166 of the Regulations under the Mining Act 1904 to 1957.

> It is desired by Depuch Shipping and Mineral Co. Pty. Ltd. that the aforesaid corner posts and boundary lines shall be pointed out to the representative of Depuch Shipping and Mineral Co. Pty. Ltd., Mr. Alexander Gerard Swan and or his nominee at Whim Creek on either Friday or Saturday next the 11th and 12th inst.
>
> It will be appreciated if the aforesaid Mr. Alexander Gerard Swan can be informed by telephone call or telegram to Whim Creek at what time he can expect the representative of Hancock Prospecting Pty. Ltd.

That brought forward this answer from Lohrmann, Tindal & Guthrie dated the 9th May—

> Dear Sir.
>
> Re: Hancock Prospecting Pty. Ltd.
>
> We received your letters of the 16th April and the 8th May. We take the view that your requests in your letter of the 16th April are irrelevant.
>
> As regards your request made pursuant to Regulation 166 of the Mining Act we seriously doubt whether in view of the shortness of the notice our client will be able to have anybody on the site at the times requested.

That was a case of "Thank you for nothing." The position of the survey posts and the datum posts was irrelevant in the opinion of Lohrmann, Tindal & Guthrie. When the warden was dealing with this application for Mineral Claim 292, which is the main subject of this motion, he had this to say with regard to the pegging—

> On the 27th July, 1956 the objecting Company had filed an application for M.C.90 as a mineral claim for copper. The description of the claim given was identical with old M.L. 242 at "Mons Cupri" and there was no accompanying sketch as required by Reg. 154.

The member for Subiaco made some play about a sketch which was in his possession and which apparently had some bearing on this. Why it was not produced to the warden I do not know; but the warden said that with this application there was no accompanying sketch as required by regulation 154. I am not saying that—that is what the warden said. I quote further—

> Notice of the application was duly advertised and a statutory declaration made by Langley George Hancock on behalf of the company was lodged, declaring, among other things, that the land was pegged out by himself in accordance with regulations 147 and 148 of the Mining Act and that notice had been duly posted.

Anybody could see that the warden accepted as evidence—as of course he was bound to do—the existence of that statutory declaration made by Hancock to the effect that he had personally pegged out this ground in accordance wih regulations 147 and 148. The warden went on to say—

> It is common ground that mining lease 242 has never been surveyed, and therefore, in my view, the provisions of regulation 151 are not applicable and it would be necessary for an applicant to comply with the marking off requirements of regulations 147 and 148. A statutory declaration of compliance was lodged and in the absence of any evidence to the contrary I must assume the correctness of the contents thereof.

And the fact is that the contents thereof were untrue.

Mr. Hawke: Talk your way out of that one, Mr. Subiaco!

Mr. TONKIN: That is the situation upon which the Minister for Mines is dilly-dallying. The mineral claim 90 was obtained on the basis of a false declaration.

Mr. Graham: Laugh that one off!

Mr. Guthrie: That declaration was supplied by the Mining Registrar who rejected the declaration which contained the true facts.

Mr. TONKIN: The application was subsequently recommended by the warden and was, on the 15th October, 1956, approved subject to survey and to the ground applied for being Crown land. Surely the Labor Government and Labor Minister for Mines at the time cannot be blamed if the warden accepted the truth of the statutory declaration and on the basis of that made a recommendation to the Minister!

Mr. Grayden: This is an unwarranted attack on the then Labor Minister!

Mr. Hawke: The member for South Perth, Q.C.—queer customer.

Mr. TONKIN: So there is the situation to that stage. The Minister accepted the warden's recommendation with regard to Henderson, and I make no comment on the merit of it or otherwise. The warden made a recommendation after hearing the evidence. He said that no proper attempt had been made to peg the ground, and therefore he dismissed the application of the Hendersons to amend their description.

He did not throw it out because the P.A. had expired or because the mining right had expired. He said he refused the application to amend the description because in his opinion no proper attempt had been made to peg the ground.

The temporary reserve was involved because the position of the temporary reserve depended on the position of the P.A., and if the P.A. through a misdescription was wrongly placed, then the temporary reserve which was related to the

P.A. had also to be wrongly placed, and the warden threw it out on that ground. This is what he said—

> The temporary reserve granted to the objecting syndicate was similarly located ten miles S.S.E. of Mt. Edgar homestead.

I would like to interpolate here to state that it should have been located ten miles south-south-east of Mt. Edgar, but because of the misdescription, the temporary reserve was also wrongly located. To continue—

> No effort was made to peg the ground or apply for amendment of location until after the two mineral claims were lodged and in my view the syndicate are bound by the terms of their application.
>
> Under these circumstances I hold that the claims of the objectors fail and I respectfully recommend for the Honourable the Minister's approval, subject to survey, applications for Mineral Claims 625 and 626.

It is as clear as day that the decision was made on the grounds of the location and the description of the pegging, and those are the issues involved in claim 90.

Mr. Guthrie: The warden does not make the decision.

Mr. TONKIN: Where is claim 90? Can the boundaries be defined? Was it ever properly pegged? Those are the issues; so the cases are exactly similar. In the first instance, without any argument at all, the Minister accepted the warden's recommendation. In the second case he does not accept the warden's recommendation; but instead—in my view, beyond his authority—he orders a survey to be taken.

I could not follow the argument of the member for Subiaco that the Crown can do what it likes because the Crown owns the land. Let me tell the member for Subiaco, lawyer as he is, and layman as I am, that according to the Bill of Rights the Crown must observe the law.

Mr. Guthrie: Have you ever heard the principle that the Queen can do no wrong—the cornerstone of our law?

Mr. TONKIN: The member for Subiaco should read Windeyer on Constitutional Law and he would find out that the Crown must obey the law.

Mr. Oldfield: They found that out in the boundary issue.

Mr. TONKIN: They cannot put themselves above the law, although I admit that this Government has tried to do so.

Mr. Oldfield: On the advice of the member for Subiaco.

Mr. Guthrie: That is again a typical statement which comes from such an irresponsible Opposition.

Mr. W. Hegney: You would be well advised to agree to a Royal Commission, in your own interests.

Mr. Brand: Your thoughtfulness is touching!

Mr. TONKIN: We have been told more than once by the Minister representing the Minister for Mines that no decision has been made; and then, having said that, he stated that the Minister made a decision to have the land surveyed. That is the decision to which I refer—the decision to have the land surveyed. In my view, that was a wrong decision, and it was beyond the power of the Minister to make it. He cannot, under the Act which he administers, give himself power which Parliament does not give him. Because he represents the Crown he cannot do that. He is bound by what Parliament says he can do with regard to the department under his administration. If he could please himself, why enumerate in the various sections in the Act what the Minister can do and what he cannot do? Leave it out altogether so that he can do what he pleases when he pleases! Of course that argument is just stupid.

Mr. Hawke: Where is the member for South Perth?

Mr. W. Hegney: Gone to find out about Key West!

Mr. TONKIN: What is wrong with this is not that the Minister will not make a decision because I am sniping him, but that he will not make a decision because he does not want to give me an opportunity of attacking it if it is the wrong decision.

Mr. W. Hegney: That's it!

Mr. TONKIN: If he makes a right decision according to law, does the Minister for Lands, or any other Minister, think I will be foolish enough to attack it? But I will certainly attack it if it is the wrong decision according to law—make no mistake about that!

Mr. Bovell: I am quite sure he will make a decision according to law.

Mr. TONKIN: Then why does he not make it instead of blaming me for holding the situation up?

Mr. Bovell: I told you why he has not made it.

Mr. TONKIN: If he is not in a position to make it, it is a sign of weakness to blame me for the delay.

Mr. Hawke: The Minister for Lands told us in fact that he had gone all sulky on the issue.

Mr. Bovell: I never said any such thing!

Mr. Hawke: Yes you did!

The SPEAKER (Mr. Hearman): Order!

Mr. Bovell: I never said that. I said he could not be cajoled.

The SPEAKER (Mr. Hearman): Order!

Mr. TONKIN: I am not trying to cajole anyone. I am saying this: The Minister should have made the decision long ago; and that was either to accept the warden's

recommendation or reject it. Those are the only courses open to him. He has no authority whatever to adjudicate on the decision of the warden who dismissed Hancock's objection with costs. The only place that can be challenged, as the member for Subiaco said, is in another court. So that is out so far as the Minister is concerned. But he would not answer any question about it—because of *sub judice*, he said.

With regard to the granting of application 292 the warden has recommended it, subject to the excision of P.A. 284. Now this is the question before the Minister for Mines: Whether he is going to approve of that recommendation for the granting of 292 with the excision of 284, or whether he is not. What has the surveying of claim 90 got to do with that? In surveying claim 90 the Minister has given definition to boundaries which the warden said did not previously exist.

That is the decision about which I complain; where the warden said one could not define these boundaries. He did not know where claim 90 was; because, he said, if he were disposed to take the action, which he could take in certain circumstances, of excising the area comprised in claim 90 from the application for claim 292, he would do that; but he could not. He said it was impossible, because claim 90 could not be defined.

But the Minister has fixed that. By his decision he has given definition to what purports to be claim 90—which is a different area of ground from that which Hancock claims to have been claim 90 when he made his application for it. We did not hear a syllable from the member for Subiaco about Hancock's bombs which were dropped from the air.

Mr. Guthrie: I would not know anything about that; neither do you. That is a stupid assertion.

Mr. TONKIN: The member for Subiaco should make a few inquiries and should ask the Minister to show him one, because he knows where one is.

Mr. Guthrie: I will have a look at it one of these days. I do not make assertions on something about which I know nothing. Were you there? Did you see them?

Mr. TONKIN: One does not have to be in a place to know what is there, you know, if one keeps awake. In connection with this matter, and for the enlightment of the member for Subiaco, I propose to quote from a letter to the Principal Registrar of the Mines Department.

Mr. Guthrie: Who wrote that letter?

Mr. TONKIN: It was written by T. J. Hughes.

Mr. Guthrie: Was he there?

Mr. TONKIN: Be a little patient and see what the letter says.

Mr. Guthrie: I want to know the facts before you start.

Mr. TONKIN: We will see what the letter says. I am not claiming facts. I am simply quoting what is in this letter.

Mr. Guthrie: They are allegations, in other words.

Mr. TONKIN: The letter reads as follows:—

> Re: Depuch Shipping and Mining Company Pty. Ltd.—in re Hancock Prospecting Pty. Ltd.—Application for Mineral Claim 292.
>
> On the 14th instant a certified copy of portion of Mines Department Plan L79 A-20 was obtained by me for use in proceedings in the Warden's Court.
>
> Amongst other information the plan concerned sets out the relative positions of Mineral Claim 292 Prospecting Area 284 Mineral Claim 90 and WS2.
>
> On the 16th and 17th instant the plan was taken to the ground specified therein whereupon there was discovered four survey posts marking out the land that has now been allocated as Mineral Claim 90 and four survey posts marking out the land that was Prospecting Area 284 which has now expired by effluxion of time.
>
> The ground now allocated as Mineral Claim 90 and the ground that was Prospecting Area 284 is all contained within the boundaries of the land applied for as Mineral Claim 292.
>
> The positions of Mineral Claim 292 and Prospecting Area 284 are incorrectly shown on Plan L79 A-20.
>
> Whilst inspecting the ground concerned an old survey post still erected in the ground was found upon which was discernible the letter "S". This post is situated about thirty (30) yards north-east of the datum peg of the Prospecting Area 284 from which it may be that the ground now allocated and surveyed as Mineral Claim 90 is not identical with the old M.L. 56.
>
> There is now clear evidence that the land claimed to have been marked out and taken possession of by Hancock Prospecting Pty. Ltd. is a different parcel of land to that now allocated as Mineral Claim 90 the former being at least half a mile distant from the latter although the datum post and other corner posts known locally as Hancock's Bombs have been removed from the ground claimed to have been marked out by the Applicant as Mineral Claim 90.
>
> It seems indisputable that never at any time did the Hancock Prospecting Pty. Ltd. perform any labour conditions on the land that has now been allocated as Mineral Claim 90 for the very simple reason that it neither marked out nor took possession thereof

nor ever thought that it was either obliged or entitled to perform labour conditions upon it.

If the Hancock Prospecting Pty. Ltd. ever performed labour conditions it was done on ground half a mile away from the land now allocated as Mineral Claim 90 and on ground within the confines of the area marked out by Hancock's Bombs.

It seems clear that if the land that has been allocated as Mineral Claim 90 is in fact Mineral Claim 90 then long before the application for Mineral Claim 292 it reverted to the Crown under Regulation 162 (a) by abandonment in consequence of non-compliance with the labour conditions.

This view is reinforced by the fact that the greater portion of the land now allocated as Mineral Claim 90 was included in the ground granted as Prospecting Area 284.

In the circumstances surely it is your duty to verify whether the ground concerned reverted to the Crown by abandonment and if so when.

Now, Sir, you have no doubt heard reference to Hancock's bombs in that letter, and I am informed that two of those bombs were taken possession of by an officer of the Mines Department and brought to Perth and shown to the Minister. They were designed to drop straight from the air and to dig in as posts. Well, of course, it is a new method of complying with the Mining Act—to peg a mining claim from the air. But the man responsible is entitled to some marks, I think, for initiative, even though he should not be allowed to get away with it legally. It shows some imagination, anyhow; and possibly with a friendly Government, it is worth trying—

Mr. Grayden: Whatever he did, it has nothing to do with this motion.

Mr. W. Hegney: You had your "Hancock's half hour."

Mr. TONKIN: —seeing that the gentleman who dropped these bombs is the one who is likely to benefit to the extent of £40,000.

Mr. Guthrie: You are asserting it as a fact that he dropped them; that you know it as a fact that he dropped them.

Mr. TONKIN: No. Now that the member for Subiaco points it out, I do not assert it as a fact. I previously said I was informed. That should have covered my statement. So that there shall be no misunderstanding I say again that I understand, from information conveyed to me secondhand from persons who were present—

Mr. Guthrie: Secondhand!

Mr. TONKIN: —that these bombs were previously dropped from the air, because they could not have landed in the position they did, and with the results which they obtained, unless they had been dropped.

Mr. Rowberry: They may have grown there.

Mr. TONKIN: And, of course, as Mr. Hancock flies an aeroplane it is a reasonable deduction that he made this attempt to peg the ground because it was the ground he claimed—the ground that was delineated by these metal pegs which had been dropped by somebody. So the area which Hancock claimed as claim 90—

Mr. Guthrie: You will appreciate, I suppose, that the Department of Civil Aviation could tell you whether Hancock was in the air at any time in that area.

The SPEAKER (Mr. Hearman): Order! The honourable member has another five minutes.

Mr. TONKIN: That is an interesting pursuit which might engage my time a little later.

Mr. Guthrie: I suggest that before you make these assertions you check these things.

Mr. TONKIN: I am not making an assertion, but I am telling the honourable member that I was informed secondhand, through somebody who was actually present, that this was so; and, of course, it can easily be proved.

If the Minister will, upon request, show his colleague whether those pegs have in fact been brought to Perth, and whether the man who brought them has made a report about them, then I have no doubt it can be cleared up very easily. But it is very interesting all the same.

If one reads the motion I have on the notice paper one must concede that the very points which have been made in the motion have been established by me during the time I have been speaking.

Mr. Grayden: Absolute nonsense!

Mr. TONKIN: Of course, that is easy enough to say but far beyond the honourable member's capacity to prove. Because of the difference in the two decisions; the inconsistencies to which I referred, and which require some explanation; the fact that it is well-known, or should be well-known to the Minister that this declaration was an untrue one—and as a matter of fact a process should be served on Hancock for making a false statutory declaration—

Mr. Grayden: What about the previous Minister who granted it?

Mr. TONKIN:—it is clear that this ground was never pegged by Hancock in the way he said it was pegged. So his declaration was false, and the member for Subiaco explains it by blaming the Mines Department official!

Mr. Hawke: Wonderful!

Mr. TONKIN: He said Hancock was told to sign on the dotted line.

Mr. Guthrie: I read you the letter they sent to him.

Mr. TONKIN: So that is how he made a false declaration. Would the member for Subiaco make a false declaration under the same circumstances?

Mr. Guthrie: I happen to know the law but a man who did not could do so.

Mr. Oldfield: You think you do.

Mr. TONKIN: I certainly would not.

Mr. Rowberry: The member for Subiaco is Hancock's legal adviser, is he not?

Mr. TONKIN: To make a false declaration on the excuse that I was asked to do it by somebody would be ridiculous; and I would like to know how far one would get if one put that up as a defence in the courts.

Mr. Guthrie: You would be surprised how far you would get.

Mr. Hawke: You would get as far as Fremantle.

Mr. Guthrie: I suggest you could prove that by laying a complaint.

Mr. TONKIN: So it seems to me that as there is an obvious inconsistency in the two decisions; as Hancock obtained mineral claim 90 by a false declaration; as the warden has declared it was impossible to define its boundaries, and he therefore dismissed Hancock's objection with costs, if the Minister is consistent, and acts in accordance with the law, he will at this late hour acknowledge the fact that he had no legal right to order a survey, and he will himself cancel that survey and make a decision on the warden's recommendation one way or the other.

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

	Ayes—22	
Mr. Bickerton		Mr. Kelly
Mr. Brady		Mr. D. G. May
Mr. Curran		Mr. Moir
Mr. Davies		Mr. Norton
Mr. Evans		Mr. Oldfield
Mr. Graham		Mr. Rhatigan
Mr. Hall		Mr. Rowberry
Mr. Hawke		Mr. Sewell
Mr. Heal		Mr. Toms
Mr. W. Hegney		Mr. Tonkin
Mr. Jamieson		Mr. H. May
		(Teller)
	Noes—23	
Mr. Bovell		Mr. Lewis
Mr. Brand		Mr. I. W. Manning
Mr. Cornell		Mr. W. A. Manning
Mr. Court		Mr. Mitchell
Mr. Crommelin		Mr. Nalder
Mr. Dunn		Mr. Nimmo
Mr. Gayfer		Mr. O'Connor
Mr. Grayden		Mr. Runciman
Mr. Guthrie		Mr. Wild
Mr. Hart		Mr. Williams
Dr. Henn		Mr. O'Neil
Mr. Hutchinson		*(Teller)*

Pairs	
Ayes	Noes
Mr. Fletcher	Mr. Burt
Mr. J. Hegney	Mr. Craig

Majority against—1.

Question thus negatived.

House adjourned at 10.10 p.m.

Legislative Assembly

Thursday, the 25th October, 1962.

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