

gested. Tenders called by the Railways and Tramways Department for the construction of bodies for the new trolley buses had already closed, and a decision would be made by the department in good time to commence the construction on arrival of the chassis.

Then the following resolution was passed—

This board requests the Transport Board to state its reasons for refusing to grant a temporary license for the buses to pick up and set down passengers along the routes pending the inauguration and proper running of the trolley buses.

Those people are still suffering that same inconvenience. Members have been told that there is no money to provide certain necessary facilities. Some of us are under the impression that the £80,000 which is going to be spent on trolley buses could have been used for much better purposes in other parts of the State, particularly in view of the lack of water supplies and educational facilities in outback areas. When the Education Department is approached, they say that they would like to do this and that, but that they have no money. That, however, is by the way. I have quoted the position of the Nedlands and Claremont people to show that the disabilities to which I have referred apply equally to the metropolitan area and to the country districts, and that people here, as well as in the country, are denied the right of appealing against the decisions of the board. It is of no use appealing to the Minister for Railways, because the Minister for Railways cannot override the decisions of the Transport Board. It is therefore essential that the right of appeal should be inserted in the Bill. In view of the experience of the Claremont Municipality and the Nedlands Road Board, I hope this House will agree to the retention of the clause in the Bill, which states—

A road board or municipality whose district is affected by any decision mentioned in the preceding paragraph may, on being petitioned in that behalf by at least 20 ratepayers, exercise in respect of such decision the same right of appeal as is given to an owner under the preceding paragraph.

The rest of the clauses deal with the right of appeal, and I do not propose to labour that question any further. Clause 4 of the Bill proposes to amend paragraph 3 of the First Schedule to the principal Act by inserting after the word "wheat" the words "or wool." I hope that the House will agree to the insertion of those words. I cannot understand why wool producers should be debarred the

right to cart on their own trucks to any market, their own wool which they have produced on their farms. That seems to me to be a fair and reasonable thing to ask. I move—

That the Bill be now read a second time.

On motion by Chief Secretary, debate adjourned.

House adjourned at 8.12 p.m.

Legislative Assembly.

Wednesday, 13th October, 1937.

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

QUESTION—LICENSING ACT.

Applications by Members of Parliament.

Mr. MARSHALL asked the Premier: 1, Can he give the House an assurance that the Government will exercise the powers conferred under Section 47 of the Licensing Act and refuse to grant the petition where it appears that the applicant is a member of any Parliament within the Commonwealth? 2, In order to prevent any possibility of fraud in this regard can he assure the House that in future all applicants for licenses under Section 47 of the Licensing

Act will be obliged to sign a statutory declaration to the effect that their application is not in any way associated with nor are they acting for any member of any Parliament within the Commonwealth?

The PREMIER replied: 1, This aspect has not yet been considered by the Government. 2, Answered by No. 1.

QUESTION—EDUCATION, CLAREMONT SCHOOL.

Mr. NORTH asked the Minister for Education: 1, Is he favourable to the proposal of the Claremont Parents and Citizens' Association to erect entrance gates and seats for the children in the Claremont school grounds? 2, Is it his intention to have the school grounds put in order preparatory to such improvements being effected?

The MINISTER FOR EDUCATION replied: 1, Yes, provided these conform to the requirements of the Public Works Department. 2, Except for a few minor repairs which have been referred to the Public Works Department for attention, it is understood the grounds are in a satisfactory condition.

BILLS (5)—FIRST READING.

- 1, Income Tax Assessment.
Introduced by the Premier.
- 2, Judges Retirement.
Introduced by the Minister for Justice.
- 3, Bush Fires.
Introduced by the Premier (for the Minister for Lands).
- 4, Legal Practitioners Act Amendment (No. 2).
Introduced by Mr. Sleeman.
- 5, Hawkers and Pedlars Act (1892) Amendment.
Introduced by Mr. Marshall.

BILL—AIR NAVIGATION.

Third Reading.

THE MINISTER FOR WORKS (Hon. H. Millington—Mt. Hawthorn) [4.40]: I move—

That the Bill be now read a third time.

MR. MARSHALL (Murchison) [4.41]: I wish to draw the attention of the House to the importance of this measure and to warn members not to give it a smooth passage.

During the second reading and in the Committee stage I overlooked the fact that once the Bill passed the second reading and went through Committee we would not have an opportunity to deal with the regulations attached to it. I believed when we finished the Bill we would have an opportunity to deal with the regulations accompanying it. The Minister for Works gave us an assurance that we would not be handing to the Federal Government any authority to deal with any form of transport as it applied to air navigation. I am sorry to be obliged sharply to differ from him. By passing the Bill we have absorbed all the regulations which are now presented with it, and have to take the consequence of allowing the Federal Government to make further regulations to which we will have no opportunity to subscribe before they take effect.

Mr. Warner: That is where the danger lies.

Mr. MARSHALL: I would particularly draw attention to Regulation 79 which states that aircraft shall not be used by any person in the operation of a regular public transport service except under the authority of and in accordance with the license issued to that person by the board. I know that paragraph has been quoted before. Very foolishly I was under the impression that we would have an opportunity to discuss it in Committee. I failed to observe that, when we passed the Bill, we also passed the regulations.

Hon. C. G. Latham: They are not even put up as a schedule to the Bill.

Mr. MARSHALL: I did not notice that until too late. I take this opportunity again to voice my disapproval of granting this power to any particular board, more especially when that board is to be formed and operated by the Federal Government. The Minister was emphatic in his argument that this power would not interfere with our transport arrangements. I cannot see by any stretch of the imagination that anyone can say we are not giving away that power under Regulation 79. Could anything be more explicit than the words "any public transport service"? The regulations will take effect and cover the whole business. How can the Minister argue that we are not giving the Federal authorities power to interfere with our transport, so far as it concerns air navigation? I rose only to voice these sentiments and oppose the third reading. Every member will surely agree that we should not

hand over an authority that will give the Federal Government the right to make regulations to control our transport services. Notwithstanding that, we are absorbing all these particular regulations. Number 79 expressly deals with public transport services. On the face of it, we resemble the proverbial ostrich—burying our heads in the sand and imagining that no one can see us because we can see no one. It is obvious that we are giving the Federal authorities power to handle our transport services in the air.

Mr. Warner: Definitely so.

Mr. MARSHALL: No other construction can be put upon the regulations. It is of little use the Minister saying that that particular regulation does not do this. It is embodied in the Bill and we have accepted it, giving the Federal Government power to control our air transport. If in the future any anomalies arise or circumstances occur which will interfere with the rights and privileges of this State to control its own transport services, I shall feel that I have no responsibility for the powers that are given away under the Bill.

THE MINISTER FOR WORKS (Hon. H. Millington—Mt. Hawthorn—in reply) [4.44]: I wish to ensure that there shall be no misapprehension on the score that this regulation has been put through surreptitiously, and does not mean what it says it means. All through I have said, particularly in respect to aircraft used for regular public transport purposes, that it was obviously necessary in the interests of the public that such aircraft should be licensed. This has been done right through. There is nothing new about it. The Transport Board would not know whether the aircraft was airworthy or not. That does not happen to be the board's business. It is their business to license the service, and they will have the power to do that. It is in respect to the airworthiness of the aircraft, therefore, that the licensing by the Federal authority will take place. The applicant will have to furnish such information in relation to the proposed service as the board require. Then it is set out that if the members of the board are satisfied regarding the safety of the proposed service they will issue a license. The Transport Board would not agree to issuing any license to a transport company unless they were satisfied that the aircraft were airworthy, that the pilots had passed the necessary examination, and that everything

in respect of the safety of the fleet had been satisfactorily complied with.

Hon. C. G. Latham: You know what use has been made of that type of legislation. There is, for instance, the Alien Immigration Restriction Act.

The MINISTER FOR WORKS: I know what has been done so far. This will deal with the airworthiness of aircraft. That is their province and that is what they have been attending to. They will have nothing whatever to do with the granting of permits with regard to air services.

Hon. W. D. Johnson: The only thing is that they will control it.

Mr. Marshall: That is all.

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

Ayes	24
Noes	17

Majority for ..	7
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AYES.

Mr. Collier	Mr. Needham
Mr. Coverley	Mr. North
Mr. Cross	Mr. Nulsen
Mr. Doust	Mr. Sampson
Mr. Fox	Mr. F. C. L. Smith
Mr. Hawke	Mr. J. M. Smith
Mr. Hegney	Mr. Tonkin
Miss Homan	Mr. Troy
Mr. McDonald	Mr. Welsh
Mr. McLarty	Mr. Wilcock
Mr. Millington	Mr. Withers
Mr. Muncie	Mr. Wilson

(Teller.)

NOES.

Mrs. Cardell-Oliver	Mr. Rodoreda
Mr. Hill	Mr. Shearn
Mr. Hughes	Mr. Sleeman
Mr. Johnson	Mr. Styants
Mr. Latham	Mr. Thorn
Mr. Mason	Mr. Warner
Mr. Marshall	Mr. Watts
Mr. Patrick	Mr. Doney
Mr. Raphael	

(Teller.)

PAIR.

AYES.	NOES.
Mr. Wise	Mr. Stubbs

Question thus passed.

Bill read a third time and transmitted to the Council.

BILL—NURSES REGISTRATION ACT AMENDMENT.

Report of Committee adopted.

MOTION—LIVING STANDARD RECTIFICATION.

Release of Unsaleable Surpluses.

MR. NORTH (Claremont) [4.50:] I move—

That this House, while accepting the fact that full-time employment is impracticable,

urges the Government to meet the living problem of those dependent on part-time relief work, pensions or sustenance by—

- (1) a partial remission of taxation to any firm able and willing to release its unsaleable surpluses to such persons, and
- (2) by collecting the amount thus lost to the Government from the relief worker, pensioner or sustenance recipient.

This House further records its conviction that by this method the living standard of those on depressed incomes could be raised without any loss to the community, or to any individual.

My motion is really based upon the fact that in the report of the Federal Royal Commission on Banking we have the following statement:—

The general objective of an economic system for Australia should be to achieve the best use of our productive resources, both present and future. This means the fullest possible employment of people and resources under conditions that will provide the highest standard of living.

That is the idea underlying our system of economics. It is that we should use our resources for the best purposes, and that applies to people and resources generally. They should be so utilised that the best results may be obtained. Then again in the report of the Federal Royal Commission there is this statement:—

Nobody denies that at all times there is some shortage of purchasing power so far as particular individuals are concerned . . . It is quite clear also that in times of depression the total purchasing power is less than in times of prosperity.

I also draw the attention of hon. members to the fact as stated in this report that there are always some people who have not enough money to buy what is necessary to enjoy a reasonable standard. Since the objective of the system is to use all our resources to the best advantage and since there are people without sufficient money to enable them to achieve that end, we must ask ourselves how we are placed regarding full-time employment. We have been told that it is impossible of achievement under our present conditions. It is demanded by the public, but we know it is impossible of attainment. We have the assurances of the Government, the Loan Council and others concerned in our present economic system, and we accept their assurances as we accept the report of the Commonwealth Commission, and we admit that full-time employment is impossible. But, nevertheless, we have before us the objective outlined by the Royal Commis-

sion, which is that we should avail ourselves of our wealth and resources to the fullest extent. The idea underlying the motion is that since we are unable to attain full-time employment, at least our existing resources shall be utilised to the best advantage. It seems to me that the first question we have to ask ourselves is whether we treat the part-time relief worker, sustenance recipient or pensioner as an undesirable, or whether we treat him as a victim of the mechanisation of industry. All through the depression we had to face that problem. At the moment we are discussing the question of the part-time relief workers, and we are apt to speak of them as if they were weaklings, sluggards or burdens to be carried. That is quite a different attitude from what we would adopt if we were to admit that those 6,000 odd people are actually the victims of our system of mechanisation. We may admit frankly, after experience extending over six or seven years, that mechanisation of industry is the cause of part-time relief work that has become necessary. We all agree that under our present system, which we uphold in this State, we cannot provide full-time work, so therefore we must ask ourselves if there are means that can be adopted whereby we may be able to improve the income of those people who are without it, seeing that they are in our particular care; and we must ask ourselves whether we can do that from our existing resources. To do that, in my humble opinion, means that we must treat the part-time relief worker as if he were outside the existing economic system altogether. At present we have those who are in receipt of the ordinary basic wage or over, and also those who, under the existing system, are not in receipt of that amount. Those in receipt of the basic wage or over assist in buying the goods of others who have to sell so that they may pay for the goods in the first place, make provision for taxation, etc., and carry on their operations. We have to recognise, however, that under the motion we have to deal with the section of the community that is unable to function fully under the existing system. Those who are at present in receipt of part-time work live under depressed conditions and, as a corollary to them, may be classed as the unused capacity of our industrial system. No one will deny that. I shall give three or four examples of our unused capa-

city, and urge that our resources in that respect should be utilised for the benefit of the persons whose condition we are discussing. In the first place, I would point out that as time goes on phrases change. Years ago we heard politicians discussing our "vast potentialities." That term was heard on all our public platforms. In due course it passed; in fact, it was really a political phrase. It was displaced by another term that suggested the engineering point of view, and so "unused capacity" was the nice sounding phrase that was heard so frequently. That phrase also passed in turn and I use one more in keeping with commercial parlance, namely, "our unsaleable surplus." Certainly that term smacks of the businessman in his office. Those businessmen are not so very interested in it, but one question that does interest them is the matter of taxation. I have never yet discovered anyone in favour of taxation.

Mr. Hegney: And the business people are not the only ones to be worried in that respect.

Mr. NORTH: That may be so. If we discuss the problem of utilising our unused surpluses, one may admit that it is not a very interesting one, but if there is any talk about reducing taxation, the topic proves of interest to a great proportion of the people. From that standpoint, we could do a lot on behalf of the section of the community that is not functioning under the present economic system. That is my suggestion this afternoon. My motion first refers to the railways. If one were to take the opportunity to study the railway system in the metropolitan area alone, one would note an estimated £15,000 worth of railway seats that are empty annually on the metropolitan routes. Anyone who chooses to stand on the platform during slack periods, such as from 9 a.m. to 4 p.m., will not fail to observe that our large trains, while fully equipped with guards, drivers and so on, are functioning quite well as railways, but, in other respects, are practically empty. That used to be regarded as part and parcel of what was termed our "vast potentialities." Some talked of the "unused capacity" of the railways, but I propose to designate it as the "unsaleable surplus." It seems to me that it is more appropriate and to have more meaning in it. Business men appreciate that term. Our railways have this enormous un-

saleable surplus even in the metropolitan area. I believe the member for Canning (Mr. Cross) holds that our trams also show an enormous unsaleable surplus. This unsaleable surplus is one of the things that is causing much concern in Alberta and other countries, and is there creating a lot of stress. Here we do not like stress; we prefer to reason and appoint Royal Commissions and be polite to each other, but nevertheless this unsaleable surplus is causing just as much trouble in Western Australia as it does in Alberta. In the picture palaces of this city and of Fremantle, we have every week in the mornings thousands of seats not occupied—or so I am informed—for the very good reason that those persons who do function under our economic system are mostly at work. But those relief and sustenance workers and pensioners are not so functioning. A proportion are always standing down.

Mr. Cross: Why not let them travel free on our railways?

Mr. NORTH: I congratulate the hon. member on his suggestion. This unsaleable surplus also applies to picture interests. Some £15,000 a year is the figure suggested to me on those unused seats in the mornings in Perth and Fremantle. They constitute part of the unused capacity which in other forms is causing so much distress in Alberta and other countries. The third factor is that we have a lot of unused capacity in our perishables. For instance a great deal of milk, so I am informed, is poured into the ground, but a great deal more milk is not even supplied because the system does not permit of the growers supplying the milk. Therefore a great deal of milk is going to waste in the same way as are all those railway seats and those picture palace seats that I have referred to. I am not going to delay members by getting beyond those particular subjects, because I wish to particularise them. If we could find someone or other who would be able to function for us on these railways and in those picture seats, so giving a semblance of prosperity, what harm would that do to anyone? Those seats are quite useless empty, and in regard to milk I have it on the definite authority of people in the business who approached me in regard to this motion, that much is being wasted. One person said he was giving the milk away now to necessitous cases, but that he could not get any reduction of taxa-

tion. The proposal is that a reduction to the vendor and the relief workers, the sustenance workers and the pensioners, would pay the difference and thus effect a reduction in taxation from which we would be releasing the various interests concerned, starting with the railways. True we do not tax the railways, but we could assume for the sake of argument that all those clergymen and widows and orphans, those persons who draw interest in London on our railways, could really be treated as taxgatherers for this argument. And in addition to those classes there are big interests who find money for us in London and they also could be considered in a sense as persons to whom the railways pay taxes. If we could find a small sum of money from all those on relief, it would be of assistance to the railways in meeting that taxation. Let us assume that the railways make payments equalling a million a year to the bondholders, payments which the railways cannot quite meet with their returns. If we could find in the metropolitan area 6,000 persons on relief or sustenance to put by a sum of money, perhaps 2d. per head per month, they would be able thus to offer the railways £600 a year, or £12 per week, which the railway system does not now get. Would the railways here be sufficiently interested for the return of that £12 per week to make available a large proportion of those empty seats on those large trains? I think they would. It would be good business, for £600 a year, although not a large sum, is a sum of money to be considered, and that is what 2d. per month deducted from the relief workers would achieve. In regard to the picture palaces, it would work in exactly the same way. If those 6,000 persons concerned could speak, say, through the Minister for Industries and urge that they would be prepared to pay another £12 per week to the picture interests, they would be able to use the seats, or very many of them, at the morning sessions of the pictures when the people engaged in the city are all at work. In regard to the milk, the same workers would be approached, and it would be suggested to them that in return for such a small sum as 4d. per month they might be prepared to add another 8d., which would make a total of 1s. per month, and which would give £2,400 per annum on top of the money I have already referred to. That money would be sufficient to go quite a long way towards buying milk for necessitous cases.

The £2,400 thus collected would, in that case, be offered to the milk producers on the same lines of reduction of taxation. By offering £600 a year to the picture interests we would be offering that number of twopences for so many unsaleable tickets, and in that way it would be equal to a reduction of taxation. The same thing applies in regard to milk, and in the same way, reducing by that much the taxation by leaving that much in the pockets of the vendors concerned. We would be receiving £5,000 worth of milk for £2,500. The whole issue is the unsaleable surplus. It is an issue before the world as well as before this State. If we were able in this small matter to help those unable to pay their way in this community, it would be a slight contribution locally. If I had found in the report of the Royal Commission that the Commissioners argued that a low standard of living for these part-time relief workers was inevitable, I would not have brought forward this motion, or at all events not in conformity with the report of the Royal Commission. But this report shows that the Commissioners respect and stress, not only the fullest use of our people, but also of their resources. And a great deal of the unsaleable surplus constitutes resources. If we are going to raise the standard of living, as is urged now from every housetop, as is urged at Geneva and at all the various national councils, we must make a start, and certainly we cannot raise the standard of living from the existing profitable production; we can only bring relief in that way by using the unsaleable surplus, as in the case of railways and of picture palaces and of milk. No one will deny that in Western Australia there is this unsaleable surplus. I have been credibly informed, too, that in Geraldton and elsewhere vegetables and fruit are left ungathered and fish are thrown into the sea, there being no reason to distribute them. If we were prepared to tackle the question on a bigger scale, and investigate the people's taxation, and obtain knowledge of the cases where there is the surplus, we could come to an arrangement with the producers and say, "We know that your surplus means nothing to you, but we will make it worth your while to distribute that surplus; we cannot pay you current rates, but we will reduce your taxation and will recoup ourselves from our customers." That would be inciting the producer to distribute on a

larger scale than he does to-day. We have exactly the same situation in regard to export. If we could consider our own relief workers and sustenance workers as we now consider the export countries, we would be able to realise the position much more clearly. We are pleased to send our butter to Great Britain and there sell it for 6d. or 8d. a lb., whereas here in Perth it is sold at 1s. 6d. per lb. That is regarded as good business. Cannot we treat all those relief workers and sustenance workers for trading purposes as being people of another country? Let us export these goods below cost to countries overseas by all means, but where there is a surplus of goods of the kind that will vanish almost in 24 hours, and also goods such as fruit and vegetables, let us "export" them locally amongst those very persons to whom I am referring, if by so doing we are able to achieve the suggestion of the Royal Commission, namely, to use our resources to the fullest degree. By that we shall be doing something very valuable. It will not raise the cost of living, but will actually reduce it in certain cases. It will improve the standard of living for those persons who get the benefits. It will not be incurring taxation; on the contrary it will reduce taxation for those who come into the scheme. It will attack no vested interests. It does not attack rents, interest, or business management of any kind, for it does not affect their interests one iota. I would ask members to try to fault my proposal. I am not as confident of its soundness as I should like to be. It is certainly something new. At the same time, I find nobody who wants taxation increased. Everybody wants it reduced; that is the general idea. In fact, nobody likes taxation. I would stress also that I am not asking something for nothing. Heaven forbid that I should do that! Only the other day a large picture theatre was opened in Perth called the "Plaza," and it was a pleasure to see the people who went there. My wife enjoyed the hospitality of the management, but I could not help being impressed at the way in which the wealthy people of Perth flocked to that theatre to do homage to the new institution. I do not believe they were shocked at getting something for nothing. I would not suggest anything of the kind for the poor. Let them pay, but pay keenly on a business basis. Let them take advantage, if possible, of the great business principles that

we are all trying to uphold. Therefore I urge the House to consider the ideas I have presented and agree to trying them out first on the railways. What objection could anyone have to seeing those magnificent trains of ours looking busy, and the Commissioner of Railways receiving £600 a year in return for the incentive given to people to travel?

Hon. C. G. Latham: Six hundred pounds a year!

Mr. NORTH: Yes, £12 a week.

Hon. C. G. Latham: Who would get that?

Mr. NORTH: The Commissioner of Railways.

Hon. C. G. Latham: But he gets £2,000 a year.

Mr. NORTH: Not from the relief workers. The Leader of the Opposition is not like the member for Canning, who saw the point in advance, on which I congratulate him. I have spoken to a number of relief workers and have been assured that they are all of opinion that this idea of using the trains would be useful in aiding them to get jobs. Many of those men wish to get off relief work, so why not let them have the use of this service during slack times when trains are being run empty? It might result in their finding jobs and getting off relief. For their womenfolk, who are included in the idea, it would be a good thing, because they would be able to use the trains to travel to the seaside or do some shopping. Whatever might be said of the Banking and Monetary Commission, and whatever Federal politics might give us in the shape of monetary improvements, we are certainly in the position of a man on his block who wants an improved water service but is using buckets, jugs and other utensils full of holes that cannot possibly contain the water. There, as I have pointed out, in certain instances we have £30,000 worth of unused space at present going to waste annually. Let us use it.

On motion by Mr. Cross, debate adjourned.

RETURN—RELIEF WORKERS.

MRS. CARDELL-OLIVER (Subiaco)
[5.20]: I move—

That a return be laid on the Table of the House showing—

(1) The approximate number of men now on relief work.

(2) How many of the men receive margins over the basic wage.

(3) The total cost of wages paid to relief workers.

(4) The extra cost if all workers were paid the basic wage without margins.

(5) How many relief workers are being paid at the 42s. rate.

(6) How many relief workers are being paid at the 49s. rate.

(7) The extra cost to the Government in employing these two classes on full-time employment.

(8) Whether the Government are paying relief workers under the present basic wage award.

(9) If not, why not.

I do not intend to speak to the motion beyond saying that my only object is to obtain information. The second last question might seem a little ambiguous, but I have asked it because many relief workers have informed me that they have not been receiving the basic wage, and I would like that point cleared up by the Minister.

THE MINISTER FOR EMPLOYMENT

(Hon. A. R. G. Hawke—Northam) [5.22]: I have no objection to the motion. At first I had no intention to say anything regarding it, but the member for Subiaco said that some relief workers had informed her that they had been paid at less than the basic wage for the work on which they had been employed. I desire to take this immediate opportunity to make it quite clear that all relief workers, while employed, are paid at least the basic wage for the work they do.

Question put and passed.

BILL—EMPLOYMENT OF COUNSEL (REGULATION).

In Committee.

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

MOTION—RAILWAY SERVICE, SUPERANNUATION.

To Inquire by Select Committee.

Debate resumed from the 8th September on the following motion by Mr. Needham (Perth):—

That a select committee be appointed to inquire into the liability of the Government under the provisions of the Superannuation Act, 1871, to pay superannuation to persons employed in the railway services of this State as from the 8th August, 1871, to the 17th April, 1905.

MR. SAMPSON (Swan) [5.26]: This question has been discussed over a long period of years and is one to which I think consideration should be given. There certainly appears to be much misunderstanding about it. Many people are of opinion that the Government are under an obligation to those concerned, while other people claim that an obligation does not exist. In all the circumstances the matter should be considered, and the request for a select committee to inquire into the liability of the Government should be approved. Having attended a meeting of the men concerned, I know that very great anxiety exists and the least we can do is to appoint a committee of inquiry. I do not profess to understand the intricacies of the claim, but there is a sincere belief on the part of railwaymen that the Government are under an obligation to them. If an inquiry were granted, those concerned could give evidence, and this vexed question could be determined. I hope that the motion will be passed.

HON. W. D. JOHNSON (Guildford-Midland) [5.28]: This matter is one of great concern to a number of residents of my constituency.

Mr. Doney: And mine, too.

Hon. W. D. JOHNSON: My constituency, I suppose, has a greater number of railwaymen than has any other constituency in the State. It is subject to railway influences, and therefore I am in the position of coming into direct contact with a large section of employees interested in the motion. The object of the motion is to give to those railway employees who have been retired from the Government service and those who are approaching the retiring age an opportunity to submit their convictions to a select committee that they have unjustly been denied the right of superannuation, commonly called a pension. For a number of years I have represented that constituency; and not until a recent period did I have any difficulty, provided I knew the position held by my questioner, in expressing a definite opinion as to his right to obtain a pension on his retirement, or the likelihood of his obtaining one. That was so because I had had a long connection with Parliament, had been a Minister of the Crown, and knew exactly the point of view adopted by successive Administrations in regard to what was really meant by the words "established capacity." Over the

years it was generally contended that "established capacity" had a very limited definition and application. In this Chamber I have raised more than once a protest against the limited nature of that definition. I have known men to be retired after working through the Government service up to high and important posts, and then refused pensions, although they never had any break in their service, for the mere reason that they had been paid from loan funds. Governments always followed the definition given many years ago in regard to what would entitle a man to a pension, and what would cause a pension to be denied or ruled inadmissible. There was no difficulty so far as I was concerned. At times one would be adversely criticised by a man disappointed with one's reply. However, it was generally possible to reason the matter out with him and make him realise that, owing to the definition adopted by successive Governments over the years, it would not be right for him to be singled out for a pension while others had in previous years been denied it. It was possible to reason the matter out with the questioner on the lines of whether he had a right or not. However, the position has been changed. Before the last election a large meeting of railway employees was organised, and various members of Parliament, of different shades of political thought, were invited to the gathering to hear the case presented by those who claimed that the accepted definition of "established capacity" was unjust and that they had been denied their right to a pension. At that meeting I pointed out that it was quite wrong to lead those old men, comparatively, who had been retired, and a number of others who were approaching the retiring age, to believe that they were entitled to pensions. I was then depending upon an accepted formula that had been in operation for a very long time. I did not think it was possible to break down the established definition and the established practice. For that reason I was very pronounced in expressing my opinion. I know that quite a number thought that I was definitely hostile to those present at the meeting. However, as the meeting progressed it was claimed that because of certain legislation passed some little time prior to the election those men had established an increased right. They had obtained from Parliament the right to go before an appeal board in order, as it were, to appeal against

a decision of Executive Council, or the right to apply to some tribunal for a direction to Executive Council in regard to the payment of pensions. I was not greatly influenced by that view, because I realised the significance of any action of Parliament. So things went on until 1935, when it was demonstrated to me that what had been contended at that gathering had actually happened, and that men who I thought would never receive pensions had actually been paid them. In investigating the matter I was astonished to find that pensions had been granted to five men who, in my opinion as to the accepted practice, should never have got pensions under the established definition. That being so, I had to change my opinion. The granting of those five pensions proved that I was wrong, that I was cramped in my judgment, and that I did not fully appreciate the provisions of the Superannuation Act. My constituency naturally looked upon me as one who had not given sufficient study to the matter, or as one who, if he had studied it, was hostile to his constituents' definition. We are now in this position, that five pensions have been granted. The Premier has explained how these five pensions were granted, but I cannot accept his explanation as one that will commend itself to my constituents who are claiming that they are equally entitled to pensions as compared with the five men who have been granted them. I am supporting the motion. I do not like its wording, but I shall not move an amendment, because I assume that the member for Perth (Mr. Needham) has discussed the wording of the motion with those deeply concerned. However, in order that my opinion may be recorded, let me say that in my judgment the motion would be better if it were worded thus—

That a select committee be appointed to inquire into the liability of the Government to pay superannuation to persons employed in the railway services of this State.

I would delete from the motion the words—
under the provisions of the Superannuation Act, 1871, . . . as from the 8th August, 1871, to the 17th April, 1905.

My reason is that I fear the mover will limit the investigation by the inclusion of those words rather than extend it. However, I shall not argue that aspect. I simply say that I want a thorough investigation as to whether there are any other men equally entitled to superannuation payments as com-

pared with the five who have been granted them. There is no way of settling the question otherwise than by an investigation. I assume that in his belief the member for Perth has the support of those who have gone deeply into the matter, and who are deeply concerned. He believes that a select committee will be able to make the investigation and decide as to the liability of the State in regard to payment of pensions. I regret the present position. If one man in the railway service is granted a pension, another man with a similar claim should be granted a pension. However, we have to bear in mind that the revenue of the State would never be able to meet all the liabilities if we were to accept a general application of pension payments. Still, that may be passed over because, after all, the Government have accepted the responsibility of making a new declaration in regard to pensions. Having accepted that, I assume pensions can be paid to all who are equally entitled to them, to all whose claims are comparable with those that have been accepted. It is only reasonable for us to say that those who have been refused pensions shall have the right to appeal against the decision, and shall have available to them some tribunal for the purpose of proving their claims. Therefore I consider that a select committee should be granted to enable the disappointed men to express their convictions with regard to the justice which they say is due to them. Accordingly I support the motion.

MR. BOYLE (Avon) [5.44]: I support the motion. I feel sure that there must be many injustices perpetrated owing to the interpretation of the words to which the previous speaker has referred as being very vague indeed. This matter interests me in several ways. I joined the railway service during the period referred to in the motion. I was on the clerical staff. We on that staff were known as railway officers, and for that high distinction we received about half the wages paid to wages men. But the point is that we were all eligible for pensions; that is, those who joined the service up to 1905. Men who had joined in the eighties on the wages staff were not eligible for pensions. I thought at the time, and think now, that that was an injustice. The injustice has been perpetuated. In my constituency there are over 200 railway men, some of whom are vitally affected by this matter. Therefore, I shall give the motion my vote.

MR. WITHERS (Banbury) [5.45]: The finalisation of this question has been delayed although it was brought down by the member for Perth (Mr. Needham) some time ago, with a view to finality being reached much earlier than this. I have endeavoured to appreciate the position as it actually is from the viewpoint of those who have put up the case, and from the point of view of those who have opposed it on behalf of the Government. The member for Perth certainly put up a very elaborate and well-thought-out case. I was not in the House when the Premier replied, but on reading his remarks I was a little disappointed at the conclusion he reached when he said that he did not think a select committee should be asked to undertake such a futile task seeing that everyone knows the position. But if everyone knows the position why is there a request for a select committee? With the member for Guildford-Midland (Hon. W. D. Johnson) I think that possibly a select committee is not the right body to which the matter should be referred. I would rather see a Royal Commission appointed to inquire into the matter, because a select committee appointed by this House may to a certain extent be prejudiced in favour of the people who are appealing for these pensions. That would place the House in a rather serious position; for if the committee were prejudiced in favour, their report could be anticipated. Were a Royal Commission appointed and it brought in a finding along similar lines to what might be expected from a select committee, such a finding would be more binding on the House than the report of a select committee.

Mr. North: Are the Government favourable to that?

Mr. WITHERS: I do not know. They have not voiced any opinions in that respect. I have read very carefully the speech of the Premier, and I cannot see any indication of that kind. This has been a burning question for a considerable number of years. I am of opinion that it would possibly not have been pressed as much as it has been of late had it not been that men have been made to retire at a certain age. Some men may be old at 65, while others are active and virile and capable of carrying on for some years. A considerable number of men who came under this provision have retired without making an appeal for a pension, but they were men who had been allowed to remain in the service for a long time. The persons who realise that

they are no longer capable of carrying on work may be content to retire. Realising that they are no longer able to carry on and are of no further service to the Government they may not desire to ask for a pension. But when men are retired, as they have been for a considerable numbers of years, without provision being made for them, and they have quite a few years of life in front of them, it is only natural that they should feel their position and clamour for what they contend to be their rights. We have had interpretations or opinions from different legal authorities in connection with this matter for a number of years. The member for Perth and the Premier both mentioned the opinion of Mr. Septimus Burt. I should like to point out that at the time he gave that opinion he was Attorney-General of the State. The opinion given on that occasion was against the men. It was considered that they were not in an established capacity and were not therefore entitled to a pension. There have been other opinions which have been secured by the men concerned from different legal authorities, and those opinions have been favourable to their claim. But when the same men have been asked in this House to back up that opinion it has not been backed up. That has been the trouble with the whole thing. The late Mr. T. A. L. Davy was asked for an opinion and expressed one, but when a Bill was before the House in 1932 a different opinion was expressed, and I remember that this question was debated fairly fully. It was only in connection with the appeal board at that particular time but I recall that the member for Nedlands (Hon. N. Keenan) said that this Act had been brought in in 1871 for the purpose of empowering the Government to give pensions to those who they considered were entitled to them. It did not compel them to give pensions to anybody but gave the right to grant pensions when they thought fit, which was a right they had never had before. As time went on the question arose as to who was entitled to pensions. I was in the railway service during the period to which the member for Avon (Mr. Boyle) referred. I was on the wages staff while he was on the salaried staff. He was one of the cuff and collar crowd, entitled to the pension, and we on the wages staff thought that we were not. Of course we were all quite young then and were not thinking of retiring before 1905.

The Premier: A lot of men did retire between 1902 and 1905 and did not apply for pensions.

MR. WITHERS: That does not back up the claim that they are not entitled to pensions. As time went on men read into the Act things which others had not read into it, and they considered they were entitled to claim for pensions. Reference has been made to the case in which a school teacher was concerned, but there is no analogy between that claim and the present claim. I should have liked to see the Government make some definite endeavour before this motion was brought down, to get information from the Privy Council or some such authority with a view to finality being reached. It would be wrong to expect the men that are putting this claim forward, justly thinking they are entitled to a pension, to state their case before the Privy Council, and that is about the only way whereby we can get a definite opinion other than possibly through this select committee. I hope the select committee will have more power than I am inclined to think it will have, and that it will get to the bottom of this matter. When the men approached me and said there was going to be a motion moved in the House with a view to securing for them their just dues, I promised them that if something definite were brought forward that could compel the Government to give them what they contended they were entitled to, I would support it. But I am afraid that the select committee may not give those men their just dues. I think some other provision should have been made. The Government should have gone into the question instead of leaving it practically till the eleventh hour to see if the men are going to fight for their claim themselves. It would have been an easy matter to have got an opinion direct from the Privy Council. The point raised by the member for Guildford-Midland that the State could not afford to pay the amount claimed, may be a consideration from the Government point of view, but it is not a consideration from the point of view of the men. The amount of money that it will cost the country should not come into the question if these men have a just right to the pension. I intend to support the motion for a select committee.

MR. SHEARN (Maylands) [5.55]: I do not wish to detain the House long. Like previous speakers, I had an opportunity of

attending the meetings that were held some months ago by those concerned, and of hearing them enunciate their case. Like other members, I could not help but be impressed by the case they submitted. The outline of the position which these men are seeking to have clarified was lucidly placed before the House by the member for Perth (Mr. Needham). I have had no personal knowledge of the position, and know nothing of it beyond what I have heard in listening to the case of the men. I also listened attentively to the reply of the Premier. While I admit the Premier put up a case from the viewpoint of his position as Treasurer, he failed to impress me as to the effectiveness of his reply to the men's case. I consider that it is our duty to see that the position with regard to matters such as these which have been a cause of controversy for a period of years, and have been the cause of considerable uncertainty and continual agitation and dissatisfaction, is clarified once and for all. Should we arrive at the stage of establishing definitely the claims of these men, that would be the time to anticipate the financial position which would have to be faced. At the moment, what I am primarily concerned about and what I believe other speakers are concerned about, is that the alleged injustice should be investigated and either established or disproved. For that reason I intend to support the motion and trust that a select committee will be agreed to.

MR. CROSS (Canning) [5.57]: Because of the uncertainty which exists in regard to this matter, and particularly because of the considerable number of men who are concerned there should be some clarification of the situation. That clarification can only be effected by an inquiry. It is true that this position has been brought about by the unsatisfactory working of legislation passed a good many years ago. Realising that the men concerned are men of small capital I believe that Parliament should take up the question with a view to getting the previous intentions of Parliament clarified. There are some questions which Parliament at times tries to dodge. As a matter of fact the general question of superannuation in this State has been dodged for a long time, but I forecast that this State will not be able to dodge it much longer. There are already rumblings from some of the sheltered sections of the community which are demanding a superannuation scheme. Consideration should be

given to a general scheme of superannuation, but this particular case which is before us comes within a different category altogether. In the early days officers who were taken from the Imperial Government were entitled to superannuation, but later the State passed legislation which stopped superannuation. One can easily visualise that at that time the Government could have taken steps to protect the rights and privileges of its servants. In my opinion a select committee will not be vested with sufficient power to make a proper investigation of the question. I consider that a Royal Commission should be appointed, and that it should be given power to collect the fullest possible information to permit of a decision being arrived at. I do not propose to support the motion as I intend to move an amendment so that the investigation may be carried out by a Royal Commission. I move an amendment—

That the words "select committee" be struck out with a view to inserting "Royal Commission."

MR. SPEAKER: It will not be possible for the hon. member to move an amendment in that way. He will have to move to strike out the words "a select committee," with a view to inserting "in the opinion of this House a Royal Commission should." Then the motion, as amended, would read "That in the opinion of this House a Royal Commission should be appointed, etc."

MR. CROSS: I will accept your suggestion, Mr. Speaker, and will alter my amendment to read—

That the words "a select committee" be struck out with a view to inserting "in the opinion of this House a Royal Commission should."

MR. HUGHES (East Perth—on amendment) [6.3]: I support the amendment. Most of us are more or less familiar with the facts. What is really wanted is a definition of the true intention of the Act. It will not be so easy to get that from the Privy Council because if we moved in that direction the cost would be considerable. With all due respect, I submit that if a select committee were appointed, it is doubtful whether such a committee could give an interpretation of the correct meaning of the words in question. The point to be decided is whether the opinion given by the late Septimus Burt many years ago, or whether the opinion of other legal gentlemen given since, is the correct interpreta-

tion. A select committee would not be in a very strong position to determine that question. Such a committee could bring out all the other facts of the case, but we are all fully conversant with them and if we are not, we can easily make ourselves conversant with them. A Royal Commission would be more likely to give an authoritative decision.

MR. NEEDHAM (Perth—on amendment) [6.5]: I do not feel disposed to accept the amendment. One of the reasons why I moved for the appointment of a select committee was that I discovered the Government had taken up a strong attitude against the claims of the men in question. Negotiations have been going on between representatives of the men and the Government for some time, and eventually the Premier met a deputation introduced by myself. The men put their case before him in a concise and effective manner, and after a considerable time had elapsed the Premier, speaking for the Government, replied in the way I indicated when I submitted the motion. Realising then that the Government had no intention of departing from their attitude, I deemed it advisable to bring the matter before the House. The motion I have submitted is definite enough. The question has been raised as to whether a select committee would be as effective as a Royal Commission. There may be something in that contention but I would direct the attention of members to this phase of the amendment. If it is agreed to, the motion will then read "That in the opinion of this House a Royal Commission should be appointed, etc." After all, is that not only a pious expression of opinion? It cannot be construed into a direction to the Government to appoint a Royal Commission. If I thought that the hon. member's proposal could be regarded as an instruction to the Government, and that the Premier would announce that a Royal Commission would be appointed, I might look upon the amendment in a more favourable light. But I have no such guarantee, and the House has none, that if the amendment be agreed to a Royal Commission will be appointed. On the other hand, if the motion be agreed to in the form in which I submitted it, at least a step forward will have been taken, and the inquiry would begin. That would get us somewhere, but the amendment, in my opinion, is a very effective way of shelving the inquiry.

Mr. Cross: Not at all.

Mr. NEEDHAM: I am therefore compelled to choose between the motion I have submitted, with a view to getting an inquiry as soon as possible, so as to reach finality in the matter, or to accept the amendment which may have the effect of relegating the matter to the dim and distant future. I shall oppose the amendment.

HON. C. G. LATHAM (York—on amendment) [6.10]: I hope the House will not agree to the appointment of a Royal Commission. We would not know who would constitute the Commission. It is the responsibility of the House to accept the motion moved by the member for Perth. For a long period there has been some doubt in the minds of those who believe that they are beneficiaries under an old piece of legislation, and we should clear up the position. While I agree that a select committee may not be able to deal with all the technical matters that may be raised, the committee would have every opportunity of getting the best legal advice obtainable in the State, that is, if the House gave the members of the committee the authority to obtain it. Even if they are not given that power, I am satisfied that they will be able to make recommendations which will have the effect of clearing up the position. The House should accept the responsibility of appointing a select committee. Personally I am behind the men who are making the application for superannuation, because I believe the Act is clear and that it was clear enough when it was passed by Parliament, and that it satisfies me the claims of the men are reasonable. Of course there has been a mistake in not making provision to meet claims when those claims were in doubt. And now it will probably become a heavy burden on the Government. I hope the House will not agree to the appointment of a Royal Commission. At the same time the matter cannot be allowed to go on until the youngest of these men passes away. We have a responsibility and we should accept it. A select committee, would be able to make recommendations to the House such as, for instance, submitting a case to the High Court. I would be satisfied to accept the decision of the High Court rather than that of the gentleman who at one time held the position of Attorney General in this State. I oppose the amendment.

Sitting suspended from 6.15 to 7.30 p.m.

HON. W. D. JOHNSON (Guildford-Midland—on amendment) [7.30]: The difficulty of carrying into effect the suggestion of the Leader of the Opposition that we should endeavour to get a decision from the High Court lies in the fact that the High Court can only deal with individual cases. There are different cases which would call for different consideration and different decisions.

Hon. C. G. Latham: They could interpret the words "established capacity."

Hon. W. D. JOHNSON: I do not know that it would be satisfactory to submit just that question.

Hon. C. G. Latham: I do not say it would.

Hon. W. D. JOHNSON: I doubt whether the High Court would adjudicate upon a case of that description. It would have to be an individual application from an individual claimant. The claims vary so much that the decision in one case would not necessarily determine the claim of another individual.

Mr. Marshall: That has been brought about as a matter of policy.

Hon. W. D. JOHNSON: There is a difference between the amendment and the motion. Parliament appoints a select committee. That committee immediately functions and reports to Parliament. Parliament accepts the responsibility of that report. In the case of a Royal Commission, in the first place the Government can decide to accept or reject the motion for the appointment of such a body. It is only an expression of opinion on the part of the House, though I do not say the Government would ignore it. One motion directs the appointment of a select committee, and the other stresses the opinion that a Royal Commission should be appointed. When a Royal Commission is appointed, the Commissioners are selected by the Government, and the Commissioner or Commissioners report to the Government, who accept the responsibility of dealing with the recommendations. Possibly it would be better in a matter of this kind to get the best legal minds to go into it. I have come to the conclusion that, as this has developed, it would be better for the House to reject the amendment, and allow the matter to be investigated by a select committee so that we could get immediate attention to the problem. The select committee could then advise the House as to what was best to be done. I shall support the motion.

Amendment put, and negatived.

MR. McDONALD (West Perth) [7.34]: I do not think the motion will advance the position of the men who are claiming superannuation. The motion is for the appointment of a select committee to inquire into the liability of the Government under the provisions of the Superannuation Act, 1871, to pay superannuation to persons employed in the railway service of the State between certain years. The liability under the Superannuation Act of 1871 can be expressed in other words, as a legal liability. It must be a legal liability, because there can be no other warrant for the Government to pay out the public funds to any person except by virtue of an Act of Parliament, and by virtue of the legal rights that certain people obtained under that Act. By the motion, a select committee would be directed to inquire as to the legal liability of the Government to pay superannuation to certain railway servants. That legal liability has already been determined by successive decisions of the Public Service Appeal Board. That board consists of three members, the chairman being a judge of the Supreme Court. It is idle to suggest that the judgment of the appeal board, in which the judge concurs, carries any less weight than the judgment of the same judge sitting in court. He has sworn to administer the law, and judge according to the law and on the facts before him, and his judgment would be precisely the same, sitting as a member of the appeal board, as it would be if he were sitting in another jurisdiction. In the case of railway servants whose claims are submitted to the Public Service Appeal Board, the proper tribunal, there have been decisions adverse to the claims which the select committee would be asked to consider. Let me consider what the position would be if we acceded to the request of the member for Perth (Mr. Needham). The select committee would consist of five members, none of whom would be a judge.

Hon. C. G. Latham: They would all be judges.

Mr. McDONALD: Not in that sense of the word. Their decision would be arrived at possibly by a majority of three to two. They would be asked, if they are to determine the question of legal liability, to reverse the decision which has been arrived at by the appeal board, presided over by a judge of the Supreme Court. If they are not asked to reverse the decision of the appeal board as to the claim of these railway

servants, it is not much good having a select committee. The answer to what the committee would be asked to inquire into could be given here and now. It would be asked to inquire as to the legal liability of the Government to pay superannuation to these Government servants. The answer of the select committee must be that there is no legal liability. That has been determined by a tribunal appointed by the Government under an Act of Parliament to decide this very question. That tribunal has made this determination on several occasions, and consistently so.

Mr. Sleeman: Did they not declare in favour of the men?

Mr. McDONALD: Not in any case has the decision supported the claim of the railway servants that the wages men are entitled to superannuation. There was the case of Kay, where the circumstances were rather unusual. The Appeal Board found that in those particular circumstances he had served in an established capacity in permanent service for a period exceeding ten years. The answer of the select committee must be that by the decision of the proper tribunal appointed by Parliament to determine this question, there is no legal liability on the part of the Government to pay superannuation to the railway servants who now claim it. We therefore have the answer to the committee's inquiry at once. They need not go into the matter.

Mr. Hughes: All they could do would be to say the decision was wrong.

Mr. McDONALD: The only alternative would be for them to say that the decision was wrong. I invite members to consider the implications of such a course. We appoint a select committee of five members. They will sit as a court of appeal from a tribunal presided over by a judge of the Supreme Court, in this case, the Public Service Appeal Board. That tribunal has already heard and weighed the evidence in each particular case, has applied the law to the facts, and has arrived at a certain decision.

Hon. W. D. Johnson: Would that be a unanimous vote or a majority vote?

Mr. McDONALD: I think it could be a majority vote. We can assume for a certainty that in this case the judge of the Supreme Court would have concurred in the decision given. This is essentially a legal matter, dealing with an interpretation in which the lay members of the Appeal Board

would naturally be guided to a large extent by the views of the judge, who has sat for many years and heard many of these cases. I come now to the implication that we are prepared to appoint a select committee which will sit as a court of appeal from a judge of the Supreme Court, or a tribunal presided over by a judge of the Supreme Court. This is going to be a very great innovation. It is true, as the member for Perth said, the House of Lords in England has a constitutional appellate jurisdiction. Although the Constitution is unwritten, it is just as much a part of the Constitution as the High Court is a part of our Federal Constitution. That appellate jurisdiction of the House of Lords is exercised only by men who have been eminent judges. No other Lords participate in the deliberations of the House of Lords when sitting as an appellate tribunal. The House of Lords is composed of professional expert judges of high standing. They alone deal with the appellate jurisdiction of the House of Lords. We have no appellate jurisdiction. It has never been suggested that we have. In neither Chamber have we judges of long experience and high standing. We have no machinery by which to form ourselves into an appellate jurisdiction. We have no right to do so under our Constitution, which has provided for a Supreme Court, or under the Federal Constitution Act, which has provided for appeals from our Supreme Court to the High Court, or under the general Constitution, which has provided also an alternative appeal to the Privy Council. We propose to set up a select committee, the members of which must either say at once there is no legal liability, because the appropriate tribunal has so decided, or they will inquire whether that decision was right or wrong and expressed an opinion on that point. In other words, the second alternative would be to set up appellate jurisdiction from the Supreme Court. If we admit that principle with regard to railway employees, we must apply the same principle to all other civil servants who, in the last 16 years, have applied to the Public Service Appeal Board for pensions and have been refused. Moreover, there are people, and classes of people, who have obtained decisions from the courts in the ordinary way. They have their right to appeal; but they may prefer to come before a select committee of the House by way of appeal. If we limit it to those tribunals from which there is no

right of appeal—one is the Public Service Appeal Board, another being the Railway Appeal Board, and no doubt there are others—then we may have applications for select committees to sit as courts of appeal from those particular tribunals functioning under Acts of Parliament in this State. We are not, in my opinion, warranted, from any point of view, in following such a course or setting up such a precedent. The railway employees who are moving for the select committee have another course open to them; they can, through the member for Perth (Mr. Needham) or any other member, move to amend the Public Service Appeal Board Act, which states now in respect to this matter that the decisions of the Public Service Appeal Board shall be final, without any appeal. To move to amend that Act by providing for an appeal to the Appeal Court of the Supreme Court or to some other court would be a perfectly legal action, and if Parliament thought fit to amend the Public Service Appeal Board Act to allow civil servants to take their appeals to a higher tribunal, that would be a constitutional procedure.

Hon. W. D. Johnson: Would that include wage earners?

Mr. McDONALD: If Parliament amended the Public Service Appeal Board Act to allow appeals from the decisions of the board, any applicant, in the event of his losing his case, would have the right of appeal, whether he was a wages man working in the railways or in any other Government department. But while it is not now directly before the House, because there is no Bill under discussion to amend the Public Service Appeal Board Act to provide for an appeal from the decisions of the Public Service Appeal Board, I would like to say a word or two about any such amendment. In some ways it would be satisfactory if the men had recourse to a higher tribunal instead of having a single judge to deal with their rights. But if we amended the Public Service Appeal Board Act to allow of such appeals from the decisions of that board, we must in fairness give the same right of appeal to all other public servants who have appealed to the board during the last 16 years and whose appeals have been rejected. There could be no reason for limiting any such appeal to railway servants only. There are many individuals who have been employed on works constructed out of loan funds who have appealed for pensions and whose claims

have been refused. All such men should also be given the right of appeal. Then again it would no doubt be proper to give the Crown the right of appeal because possibly pensions have been granted against the advice of the Crown, and if the Crown were given the right of appeal against such pensions and such appeals were upheld, that might result in disturbing the pensions of men who are in receipt of them to-day. These are implications that Parliament would have to consider.

Hon. W. D. Johnson: Have the board actual power to grant pensions?

Mr. McDONALD: All that the members of the board are empowered to do is to say whether the applicant has served in an established capacity in the permanent civil service and for how long. In other words, they arrive at a decision as to whether the applicant is qualified to be granted a pension. It has been laid down by the Privy Council that, although a man may qualify for a pension, and that the appeal board may find that he is so qualified, the Government are under no obligation to grant him a pension at all. In the words of the Privy Council, under our Superannuation Act the "granting of a pension is an act of bounty, not of right."

Hon. W. D. Johnson: Would you express an opinion as to the relative merits of Kay's case as against those of the other five applicants?

Mr. McDONALD: I think I have detained the House too long, and I do not want to be dragged into that.

Mr. Withers: But this is most interesting.

Hon. W. D. Johnson: And it is important.

Mr. McDONALD: Yes, it is. If members desire I will deal with that question. The railway employees who are pressing for pensions are nearly all men who have served all their period of service as wages men. They have been paid weekly or fortnightly, and have worked under awards. The other class of railway employee is the railway officer who is paid an annual salary and is engaged mostly on clerical work or in some executive position. Some wages men have been appointed to the salaried staff, and from the time of their appointment they ceased to be paid wages fortnightly and to be subject to awards and instead have received a yearly salary. Kay's case was placed before the Appeal Board on this basis: When he was appointed to his salaried position in 1922 he discharged a certain class of work. Being paid an annual salary and having been

specifically appointed, he was from 1922 admittedly holding an established office. It was possible to prove that Kay was discharging the same functions before he was appointed to the salaried staff as he was after his appointment. If, therefore, he held an established office after he was so appointed as a salaried officer, and carried out the same functions as before, he must have held an established office before he was so appointed. Kay's case was somewhat exceptional and the board found that, in the light of the facts of his case, he had served for more than ten years in an established office in the permanent civil service. But I think it was also found that even so his office dated from later than the 7th April, 1905, and therefore in the light of the policy applied to all public servants his pension was not granted. The member for Guildford-Midland (Hon. W. D. Johnson) spoke as though there had been some change or alteration in the policy regarding pensions. I do not think that is so. The same principles have been applied, in the main, consistently right up to the present time. It is true that the circumstances in Kay's case may possibly have thrown fresh light on some other cases and brought about the review of them. But, by and large, the policy that has been pursued was that based upon the opinion of Mr. Septimus Burt and was adopted by successive Governments right up to the present time.

Hon. W. D. Johnson: Including the other five?

Mr. McDONALD: I have not examined their cases particularly. Possibly they had the same features that Kay's case possessed. I want to add a few words because this is a matter that is of importance not only to wages men in the railway service, but it is of general importance too. Under the motion for the appointment of a select committee, the members of that body will have no function except to inquire into one matter. That question will be: Is there, or is there not, a legal liability on the Government to pay pensions to these particular men? I have explained what are the issues that will face the select committee appointed in pursuance of the motion. The committee will not be called upon to inquire into any moral issue. The Government cannot pay pensions on the basis of moral issues. They must be governed in their actions by the Act of Parliament that speci-

cally authorises the payment of pensions. The motion does not call upon those who will be appointed, to consider any question of moral duty. If it had done so, then I would have found it necessary to say a good deal more on this subject. If this House is to consider, through the select committee, whether pensions, apart from legal liability, should be granted to railway employees, then it seems to me that we should be compelled to extend the field of inquiry very much more in justice to other sections of the community. If we are to have an inquiry concerning pensions apart from the strict legal aspect, there are others who can lodge applications for pensions. There are civil servants, railway officers, the police, school teachers—

Mr. Cross: And wages employees.

Mr. McDONALD: That is so; wages employees not only in the railways but in all other Government departments. If we are to deal with the matter from the moral standpoint, we will have to go back and deal with the cases of ex-railway employees and their dependants and of other ex-employees of the State.

Hon. C. G. Latham: So long as they were employed before 1904.

Mr. McDONALD: Yes, so long as they worked for 10 years prior to 1904.

Hon. W. D. Johnson: The investigation will be as to legal liability.

Mr. McDONALD: If that is so—

Hon. W. D. Johnson: It could not be otherwise

Mr. McDONALD: Then I am afraid, although I have every sympathy with people who are claiming what they consider to be their rights, it will not help them. If they want to determine their legal liability their proper course is to apply to Parliament to amend the Act to allow appeals to go from the Appeal Board.

Hon. W. D. Johnson: That would have to be a Government measure.

Mr. McDONALD: I have not considered that aspect of the matter.

Mr. Raphael: What about your taking one of the cases?

Mr. McDONALD: I have already taken some. I accept what the member for Guildford-Midland says, namely, that this is not a question of moral considerations at all, that it is purely a matter of legal liability. If that is so, I am of opinion that this is not the correct procedure for us to follow.

MR. HUGHES (East Perth) [8.1]: What the member for West Perth has said is to a great extent true, namely, that this select committee is going to be a tribunal which will review the decision of a judge. So long as the House understands that, we are quite at liberty to set up a body to review that decision. The member for Perth (Mr. Needham) seemed to get hot and bothered about whether a judge when sitting as chairman of an appeal board was giving a judicial decision. There is no question that it was a judicial decision, but a lot of us do not think it was a judicious decision. I have no shadow of doubt what the decision of this proposed select committee will be, because I have heard people who are going to be on the select committee make public declaration that they are of opinion that the "established capacity" applies to wages men as well as to the salaried staff; and of course there is nothing like being able to support your own judgment. I believe that the Act intended to cover wages men as well as those on annual salaries.

Hon. C. G. Latham: I am satisfied that it did intend that.

Mr. HUGHES: Well, your opinion plus mine should be irrefutable.

Hon. C. G. Latham: Yes, we should both be on that select committee.

Mr. HUGHES: The reason why I have come to that conclusion is that in our Superannuation Act Parliament at the time went out of its way to say that it did not matter whether an employee was paid by the day or by the week. That seems a very clear definition that it was not only to cover the old-time civil servant, who in the Old Country invariably was paid an annual salary, but was definitely to bring in others of the Public Service who were on a weekly or a daily wage. When we look at the Act and take those words into consideration it is made quite clear that the real intention of the Act was not only to cover the old-time civil servant on an annual salary, but was to cover also the new type, the men on a daily or weekly wage. So I think the true construction of that Act is that it applied to all the people in the Public Service, even though they were daily or weekly employees.

The Premier: That was 50 years ago.

Mr. HUGHES: That may be so, but how many people retired during that period? Of course frequently people sleep on their rights, and other people are too timid to

assert their rights. It is just a question whether 30 years ago there was a sufficient degree of confidence that people could associate and demand their rights so as to induce anyone to take up the case. It may have been that when this Act was enacted Parliament was shortsighted in not recognising that in the days to come there would be a considerable liability thrown on the State, and therefore did not make provision for it. But I think the main question is this: If the applicants concerned are legally and justly entitled to be paid their pensions, the State ought not to repudiate that liability on the score of cost. We hear a lot about repudiation, and certainly there is a good deal of repudiation going on these days, but if it is established, and if this House is satisfied that those people are legally entitled to their pensions, the members of this House should not shrink from the responsibility of passing the necessary legislation to provide for those pensions. This is the dangerous position that I think we might get into: We have had a decision from one judge where there was no appeal, and we now propose to establish another tribunal appointed by this Parliament to decide this vexed question of the "established capacity." We are setting up a tribunal to which these men are to be invited to present their claim; they are being invited to submit the facts of their case and whatever legal argument they can reinforce it with. I submit that if we appoint this tribunal the House is definitely committing itself to accepting the decision of that tribunal. Any member who votes for this select committee with the reservation that he is going to please himself whether or not he accepts its decision, is like a man playing pitch and toss with a double-headed penny.

Hon. W. D. Johnson: Then why have a select committee?

Mr. HUGHES: We are going to have a select committee to go into the question and advise this House as to whether or not the Government are legally responsible for the payment of those pensions. If we are not bound to accept the decision of this tribunal we ought not to waste the people's time in presenting their evidence, or alternatively we ought to make it very clear to those who do present their evidence to this committee that although we appointed this committee, if the committee finds in the men's favour Parliament will reserve to itself the right

to reject that decision. I have no doubt that if this committee were to find that the men were not entitled to the pensions the member for Guildford-Midland (Hon. W. D. Johnson) would be the first to say, "You have had a select committee, it has heard your case and has decided against you, and therefore you are bound by that decision."

Hon. W. D. Johnson: The member for Guildford-Midland will make his own declaration without your assistance.

Mr. HUGHES: And he will make it with a degree of skill that I could never hope to have.

Mr. SPEAKER: Order! The hon. member is not in order in discussing the member for Guildford-Midland. The motion is for the appointment of a select committee.

Mr. HUGHES: The position is that if we are going to say to these men, "Present your case to this tribunal, and if you do not convince the tribunal that you are entitled to pensions their decision will be accepted—"

Hon. W. D. Johnson: And if it is the other way?

Mr. HUGHES: "—and if it is in your favour we reserve the right to consider the position."

Hon. W. D. Johnson: That is a rotten statement to make.

Mr. HUGHES: I think it is a rotten position to put those people in.

Hon. W. D. Johnson: We are not putting them in that position.

Mr. HUGHES: The rest of us, if we do that, will not be so clever and so capable in explaining away our somersault as the member for Guildford-Midland was to-night. I know that these men are under the impression that the object of this motion is for Parliament to appoint a tribunal to inquire into their case, so that Parliament may get a decision as to whether or not they are entitled to their pensions.

Mr. Styants: But you say their decision is already arrived at; that you know what it is going to be.

Mr. HUGHES: Yes.

Mr. Styants: Well what is the use of having it?

Mr. HUGHES: Because I believe in the decision that the select committee will arrive at. That is not a judicious statement to make.

Hon. W. D. Johnson: Not a very intelligent one either.

Mr. HUGHES: I believe that on a true construction of the Act the wages men are entitled to the pension. I do not want a select committee in order to make up my mind in that respect; nor would I be a bit influenced if the Crown Solicitor or his assistant went before the committee and gave his opinion to the contrary. I may say that this is not a decision I have come to within the last ten years even. If members will take their memories back to 1925 they will find that I then had a select committee of this House appointed on my motion to inquire into the superannuation rights of the railway men. So my opinion is not one that has been formed since 1925, and I have not seen anything nor heard anything to alter that opinion that I formed 12 years ago. If this select committee is going to make an inquiry, and if its decision is not going to be binding on both parties, I believe the men are being fooled, because they believe that this House is going to appoint a select committee as a judicial tribunal to weigh the facts of their case and make a recommendation to the House.

The Premier: That is a new role.

Mr. HUGHES: Of course it is a new role. If we are not going to accept the decision, we should make that fact plain to the men before we start. We should make it clear that this House in no way considers itself bound by the finding of the select committee. I have heard that the member for Perth (Mr. Needham) made a public declaration that he believed those men were entitled to the pension.

The Premier: He has prejudged it, has he not?

Mr. HUGHES: He is going to be the judge if a select committee be appointed. In view of the declaration of the member for Perth, with which I agree, that the men, on a true construction of the Act, are entitled to the pension, we should naturally expect the decision of the hon. member to be in accordance with that declaration.

The Premier: Without any evidence or anything at all?

Mr. HUGHES: I shall be surprised if that decision is altered because the hon. member has had the facts throughout.

The Premier: Some of them.

Mr. HUGHES: He has also had before him not only the Act, but all the different rulings that have been given. If he pub-

lily declared that he thought the men should have the pension, I believe that the men are entitled to look for a favourable decision from him.

The Premier: Then why have an inquiry?

Mr. HUGHES: Many other members of the House have also expressed themselves in the same way. I was not favourable to the appointment of a select committee, and I said so publicly, because I believe there is a proper way to remedy the weakness in the Act. That way is for Parliament to pass a measure declaring that the true meaning of the Act of 1871 is to cover wages men. To pass such an Act would not be anything unusual; it is quite a common thing. For years when there has been doubt about the interpretation of an Act, Parliament has passed another measure declaring its true interpretation. In my opinion that would have been the correct way to decide the question. There is another way by which it could be decided. If there are members on the Government side who honestly believe that the Premier is refusing to give to workers the rights to which they are justly entitled from the State, those members should say to the Government in no uncertain voice, "If you will not honour the obligations that the State owes to those workers, we are no longer prepared to allow you to occupy the position of Premier."

The Premier: Who is going to decide that?

Mr. HUGHES: Any member on the Government side who wishes to make an issue of it and deliver an ultimatum. Those members should say, "Unless you give those working men their just dues, you cannot continue as Premier." And I would be willing to give what little aid I could.

Mr. Styants: Surely not!

Member: Ratting?

Mr. HUGHES: The greatest ratting that has ever been indulged in has been the act of members on the Government side who have been raised to public positions and given a life of luxury by the subscriptions of those working men whose rights are being denied them to-day.

The Premier: Who but you said they had any rights?

Mr. HUGHES: The member for Perth for one.

The Premier: Does he interpret the law in this State?

Mr. HUGHES: Any number of the Premier's supporters have said that those men have rights.

The Premier: They do not interpret the law. That is the province of judges and legal people.

Mr. HUGHES: The Premier may not have had the opportunity that I have had, but I have heard such members say that the wages men are as much entitled to the pension, legally and morally, as are men on the salaried staff.

The Premier: But they do not decide the law.

Mr. HUGHES: The Premier asks who says those men are entitled to the pension? I reply that a lot of his supporters say so. If he, in answer, replies, "They have no right to say such a thing," that is another question.

The Premier: They have a right to say anything they like, but the decision must rest on the law.

Mr. HUGHES: Then their decision does not count? I disagree with the Premier in that. I say that the decision of every one of those gentlemen as a member of Parliament does count.

The Premier: No.

Mr. HUGHES: And there never was such a ratting on the workers by those who thrive from the workers as there has been in this case.

Mr. SPEAKER: I hope the hon. member will discuss the motion.

Mr. HUGHES: I regret that I have been drawn off the trail by interjections.

Mr. Raphael: You have been bushed for a long time.

Mr. HUGHES: If we are not going to honour the decision of a select committee, we should not appoint it. I am prepared to vote for a select committee because I am prepared to accept its decision. I am prepared to say to the railway men who have asked for a select committee, "If the select committee for which you have asked decides against you, that is final so far as I am concerned." A number of those people are amongst my personal friends and amongst my electors, and I am prepared to tell them that they cannot have it both ways. They are asking for a select committee and have been promised a select committee where they can present their case. I think they would be doing something unreasonable if the select committee found that they were not entitled to the pension and they expressed dissatis-

faction with the decision of the select committee and asked for some other tribunal. That would be a most illogical and unfair attitude to take.

Mr. Styants: They said they would take it to the Privy Council.

Mr. HUGHES: They said that?

Mr. Styants: I heard it and you heard it.

Mr. HUGHES: They said they would if they could.

Mr. Styants: They said they would take it outside the State.

Mr. HUGHES: If they could. The select committee might make a recommendation that the Act be altered to do away with the finality of the appeal board's decision to allow those men to go to the Privy Council. Suppose the select committee made a recommendation to alter the Act and allow the men to go to the Privy Council, would the Government immediately honour that decision?

Hon. C. G. Latham: I do not think that could be done under the terms of the motion.

Mr. HUGHES: Why not?

Hon. C. G. Latham: Because it is only to determine the liability.

Mr. HUGHES: There is nothing to prevent a select committee making a recommendation that the Act be amended. The committee may report that this being primarily a question of legal interpretation, they do not feel disposed to give a decision on the legal aspect. They, therefore, may recommend that steps be taken by amending the law to allow a decision to be made by the highest tribunal in the British Empire. It would be no use doing that unless the Government were prepared to give effect to the decision to amend the law so that these people could go to the Privy Council. I hope we are not going to place these men in a position of expectancy believing that if the committee recommends favourably there will be no question about that recommendation being given effect. I hope members of the committee will make up their minds, and that members of the House will also do so, that if the decision is favourable to the railway men and the other people concerned they will make it their business to see that the decision is carried out. If there is any backsliding in that regard the men will find themselves in a false position. I believe the select committee will bring in a decision that the men are entitled to the pension. If a contrary decision is brought in we can then justly say to the men, "Your case has been decided by

a select committee at your own request, and you are therefore bound by their decision." A grave responsibility rests upon members to vote for the motion. It would be more just to the men if members who are not definitely determined that the Government shall give effect to the decision did not vote for the appointment of a select committee. It would be more just that they should advise the men that there is no guarantee that the decision will be made effective even if it is in their favour, and then see that an amendment to the Act is brought down next session to allow these men to go to a higher tribunal. The men will then know exactly where they stand. If the select committee does give a decision favourable to them, there will be grave disappointment amongst them if it is not immediately given effect. It would be a disappointment if they were told that although the committee had given a decision in their favour, it was not binding upon the Government.

The Premier: It would only be an opinion.

Mr. HUGHES: I thought the committee would make a recommendation.

The Premier: Select committees express opinions.

Mr. HUGHES: After all, the recommendation may be only an opinion, but it would be the decision of a body this House had created, knowing that members of that body were going to review the decision of the Public Service Appeal Board.

The Premier: That should not be the duty of a select committee.

Hon. C. G. Latham: A board with a judge as chairman.

Mr. HUGHES: If the select committee were going to accept the decision of the appeal board, their function could be disposed of in a short time. I am satisfied it would not be the intention of the committee to accept that decision but that they would go behind it. If the Government are not prepared to honour that decision, at least it would be the duty of those who voted for the motion to turn the Government out of office. In any other event the men would be left in a false position, being led to believe that they were going to have their case examined for the purpose of getting a decision.

The Premier: That is not the job of a select committee. No one should put a select committee in that position.

Hon. W. D. Johnson: It would be the Government who would be in that position. The hon. member knows what he is doing.

Mr. HUGHES: The Premier says it is not the duty of the select committee to determine that.

The Premier: It should not be.

Mr. HUGHES: Whose duty would it be? If the Premier would say that in order to get this question definitely settled by a higher tribunal he would be willing to have the Act amended to do away with the finality of the appeal board, so that either the High Court or the Privy Council could determine this legal question, there would be no need to appoint a select committee. Apparently he is not prepared to give these men an opportunity to go to a higher tribunal.

Mr. SPEAKER: I draw the hon. member's attention to the fact that we are not discussing the Premier's intention. He must confine his remarks to the motion.

Mr. HUGHES: I am advancing reasons for the appointment of a select committee. That is a very important aspect.

Mr. SPEAKER: It may be important, but it is definitely out of order.

Mr. HUGHES: If I felt that steps would be taken to allow this matter to be dealt with by a higher tribunal I would not be prepared to vote for a select committee. In the absence of that undertaking—

Mr. SPEAKER: The hon. member must not continue along those lines. I have already drawn his attention to that. Why does he continue? He is out of order.

Mr. HUGHES: I had just decided to finish with that point when you spoke, Mr. Speaker. I am sorry you were not more patient.

Mr. SPEAKER: I am sorry I did not interpose a little earlier.

Mr. HUGHES: The only means we have of giving these people some redress is to appoint a select committee in the hope that their decision will be honourably observed by both sides, and honestly enforced by those who appoint the committee and sit upon it *irrespective of the consequences*. In voting for the appointment of a select committee I shall in honour be voting for the adoption of the decisions of that committee, even if it entails the unpleasant consequence of turning the Government out of office. Therefore I hope the select committee will be appointed. I hope, also, it will be appointed on the clear understanding that its decision

is to be honourably observed by both sides. Otherwise we shall be placing the men concerned in a false position, creating for them another disappointment on top of the many disappointments they have already experienced.

MRS. CARDELL-OLIVER (Subiaco) [8.36]: I am sorry that I have listened to the last two speakers. I hope I may say that.

The Premier: You are convinced now?

Mrs. CARDELL-OLIVER: No; but they make one feel so involved that one does not quite know where one is. That generally happens when one listens to the legal fraternity. I feel that if the motion had been put before the last speaker spoke, it would have been carried unanimously, except as regards the Premier. However, I feel that the question is whether we should appoint a select committee or not; and all the intricacies that have been introduced into the question by the two legal members have really quite upset me. However, I shall vote for the appointment of a select committee. A committee could perhaps recommend the Government to bring in the necessary legislation to enable these men to obtain justice. It has been stated that this is a legal but not a moral question. I feel that it is both. I have heard many members of this Chamber express themselves on various platforms to the effect that they believed the men should have pensions. I have heard them also express themselves to the effect that they believe in the Railway Appeal Board and respect the decisions of that body. I do not think members of this House would be in honour bound to make any legal decision. I feel that members are here to vote for a select committee, and that we can leave the rest to the select committee. If we can get back to the moral question, I wish to read the first section of the Act. We have heard a lot about wages men and salaried staff, but the Act says:—

Subject to the exceptions and provisions hereinafter contained, the superannuation allowance shall be granted after the commencement of this Act to persons who shall have served in an established capacity in the permanent civil service of the Colonial Government whether their remuneration be computed by the day, weekly wages, or annual salary.

It seems to me that we should not so much consider whether an employee has been on

the salaried staff or not. The Act says distinctly:—

whether their remuneration be computed by the day, weekly wages, or annual salary.

Therefore it appears to me that both the wages men and the salaried men should receive pensions.

The Premier: Why have the words "established capacity" been inserted?

Mrs. CARDELL-OLIVER: I am not going to speak about the words "established capacity."

The Premier: They must have been put in for a reason.

Mrs. CARDELL-OLIVER: Yes. My firm belief is that "established capacity" means the capacity in which the men were working. We have the opinion of Mr. Septimus Burt on that subject. All who knew him are aware that he was the most Conservative gentleman that ever lived. He was so Conservative that he once made me do something that I did not want to do. He made me sign something I did not want to sign. The Minister for Railways will remember my asking him a question as to how many men had received pensions under the Act of 1871. His answer to me was "None." The day after getting that reply from the hon. gentleman, I received a letter from a railway official stating:—

I can supply you with the names of five men who were granted and are receiving pensions, and they were all on daily wages, and did not get put on the salaried staff until 1921.

He then gave the names—T. G. Matheson, W. H. Campbell, J. J. O'Farrell, D. Mouton, J. Kirk. These men, he adds, were respectively placed on the salaried staff in 1923, 1917, 1922, 1922, and 1923. The writer of the letter also, by request of the department, made application for his pension. He made the application on the 31st July, 1935, and received an answer to that application on the 22nd September, 1937—almost two years later. The answer was the usual one, the same as was read by the member for Perth (Mr. Needham), to the effect that the applicant had not served as a salaried officer prior to 1921. I believe that on the same date 17 other men received the same reply. No doubt it was a circular letter. Although the men had worked under exactly the same conditions as others who were granted not only pensions but lump sums for retrospective claims, that was the reply. The man of whom I speak was notified that

it would be useless for him to approach the Appeal Board, and that the Government would not recognise any decision of that body. It may elucidate matters if I read the letter which was read by the member for Perth when moving his motion—

An appeal by you to the Public Service Appeal Board will not affect the decision of the Government, whatever the decision of the Public Service Appeal Board may be, because of a policy adopted by the Government on 24th December, 1936.

From that policy, I believe, all the injustice has arisen. It seems to me that we cannot allow laws and regulations to be made and contracts to be entered into under them and then permit the Government to break those contracts by making other laws and regulations. As to the moral part of the question, many of these men are living on old-age pensions. Some of them have married women younger than themselves; and those women, perhaps not yet old enough to be eligible for the old-age pension, are out charring and doing various kinds of work to try and keep their little homes together. As pointed out by the member for Perth, if the pensions were given, the liability of the Government would be a decreasing one, because the men are now old. I believe that if the Government would consider something in the nature of a Superannuation Act such as has been passed in South Australia, embracing old men and young men, something could be done at the present time. The Premier gave us a long dissertation about why the men should not receive pensions. A day or two later there was a long letter from a union secretary saying why the men should receive pensions. Tonight we have had one of the legal fraternity stating why the men should not receive them, and another member telling us why they should receive them. The select committee, if appointed, may decide that legislation should be introduced so that these men may receive justice, and if they do so I hope that matter will receive the consideration of members. I intend to vote in favour of the appointment of a select committee, and I trust other members will do so, without befogging their brains concerning what will happen afterwards.

HON. C. G. LATHAM (York) [8.46]: I intimated before that I was not opposed to the appointment of a select committee, but I assure members that I do not expect any great results as a consequence of any such

move. The member for Perth has moved for the appointment of the select committee to inquire into the liability of the Government to pay superannuation to persons employed in the railway services of the State as from the 8th August, 1871, to the 17th April, 1905, under the provisions of the Superannuation Act, 1871. That is a purely legal matter, and cannot be otherwise. It will be a matter of interpretation of the Act of 1871, and I think that governs the whole position. There is no doubt there has been a good deal of disagreement among the legal fraternity as to the interpretation.

The Premier: There has been no disagreement among the chief legal advisers of the Crown during the last 40 years.

Hon. C. G. LATHAM: There is one matter in respect to which there has been disagreement.

The Premier: And there have been many officers who have advised Governments during that period.

Hon. C. G. LATHAM: The Act does not make it obligatory upon any Government to pay pensions.

The Premier: That is so.

Hon. C. G. LATHAM: The member for Subiaco (Mrs. Cardell-Oliver) read the applicable section of the Act, and I could not help thinking that it was perfectly clear. In 1871 the Public Service was totally different from what it is to-day. At that time there was no Railway Department. It was never contemplated that the Government would ever enter into any business transactions. Since then, the Railways have become part of the ordinary governmental activities, and in consequence we find a clerical staff employed in the Railway Department, almost on the same footing as the clerical staff in the Public Service.

Mr. Patrick: When was the first railway constructed?

The Premier: About 1878.

Hon. C. G. LATHAM: It is perfectly clear to me. Section 1 of the Pensions and Superannuations Act of 1871 says—

Subject to the exceptions and provisions hereinafter contained, the superannuation allowance to be granted after the commencement of this Act to persons who shall have served in an established capacity in the permanent Civil Service of the Colonial Government, whether their remuneration be computed by day pay, weekly wages, or annual salary . . .

Reference is made to "day pay, weekly wages or annual salary," and it looks as

though it was intended to include everyone. Then there are the words "established capacity," which have led to a great deal of legal argument. I am convinced that a layman may be able to interpret the meaning of the words just as well as an individual belonging to the legal profession. I suggest that an engine-driver is employed in an "established capacity." Immediately he ceases work another man has to be put on in his place. The railway porter is employed in an "established capacity." When we come to consider the meaning of that term it merely refers to an established position. To my mind, there can be no misunderstanding about it. As I pointed out previously, I believe Government policy has entered into the question. The possible obligations mounted up and instead of declaring that they were not bound to pay pensions—and I believe they are not—the matter was allowed to drift. I believe the Government are not bound to pay pensions because Section 12 states—

Nothing in this Act contained shall extend or be construed to extend to give any person an absolute right to compensation for past services or to any superannuation or retiring allowance under this Act or to deprive the Governor of the power and authority to dismiss any person from the Public Service without compensation.

That definitely sets out that the Government may, if they so desire, pay a pension.

The Premier: That is so.

Hon. C. G. LATHAM: On the other hand, I do not think the Act permits of differentiation. That is my private opinion.

The Premier: Parliament, which was the Legislative Council at the time, must have had some idea about that.

Hon. C. G. LATHAM: What does employment in an "established capacity" imply? A man who is earning a weekly or daily wage, so long as he is permanently employed, and the position is such that, should he vacate the post, someone else must be appointed at once to fill it, must be regarded as employed in an "established capacity." In addition, the Act indicates that that man must receive the same consideration as any other officer in receipt of a salary. If that is not so, then why should those words be inserted specifically?

The Minister for Railways: Why did they not merely refer to employment in a permanent position?

Hon. C. G. LATHAM: It refers to anyone in receipt of day pay, weekly wages or annual salary. It is comprehensive.

The Premier: I do not know why they did not merely provide for persons who were employed permanently by the Government.

Hon. C. G. LATHAM: Instead of that, they used the term "established capacity." As I have pointed out, an engine-driver is employed in an "established capacity" exactly the same as a law clerk in the Crown Law Department or the Under-Secretary in the Lands Department. The same applies to the porter as to the station-master. So long as the Government carry on the Railway Department, they must have engine-drivers, firemen, guards and others all employed in an "established capacity."

Hon. P. D. Ferguson: The Appeal Board did not agree with your assertion.

Hon. C. G. LATHAM: That may be so, but the Appeal Board are not always right. That was demonstrated recently when the High Court were here. I would like to give these men an opportunity to secure a final determination. We have left it to ourselves.

The Premier: The Act leaves the final decision with the Governor-in-Council.

Hon. C. G. LATHAM: Yes.

The Premier: And Governors-in-Council, for the last 50 or 60 years, have given the one decision.

Hon. C. G. LATHAM: But who constitute the Governor-in-Council? The officials of the Crown Law Department are really the Governor-in-Council.

The Premier: No fear. The Government of the day, with the Governor, constitute that body.

Hon. C. G. LATHAM: Then if I were to express my opinion truthfully I would say that these men are entitled to this consideration. If I were of that opinion and the rest of Cabinet agreed with me, all that would be necessary would be to get the Governor to come along, and the men would get the pension.

The Premier: Certainly.

Hon. C. G. LATHAM: But every Government accepts the advice from the Crown Law authorities.

The Premier: No.

Hon. C. G. LATHAM: We did. We accepted their advice, and I daresay the present Government have acted similarly.

The Premier: If you accept their advice, you do so on your own responsibility.

Hon. C. G. LATHAM: That is quite so. However, the 1871 Act is perfectly clear, and I do not think it was intended to differentiate between wages and salaried men.

When the Act was passed, Perth was a very small place with a sparse population. It was never anticipated that we would grow as we have. Succeeding Governments carried out the Act and its provisions, but finally the financial obligation became so great that they were not game to face it.

The Premier: They could advise the Governor-in-Council what to do so as to rectify the position, and no doubt that is what was done.

Hon. C. G. LATHAM: Perhaps so. But they have always been prepared to accept the same advice.

Mr. SPEAKER: The Leader of the Opposition had better address the Chair now for a change.

Hon. C. G. LATHAM: The same advice has been tendered every time, Mr. Speaker. These people feel that they have a claim and probably they look at the matter in exactly the same light as I do. It was never intended to differentiate between the two sections. Naturally, the provisions did not apply to all workers. A man had to be employed for at least 10 years. A man who was employed on works for which Loan funds were provided and which closed down after a month or two could not be said to be engaged in an established capacity. It was never intended that such men should get the benefit of this provision. But where men are employed in permanent positions, as I contend all railway men are, those men are in an established capacity. I should like this to be settled. It is a legal matter, a matter of an interpretation of the law. I should like to see it submitted to the highest authorities to determine whether these men are entitled to the money.

The Premier: If you were the head of the Government to-morrow would you ask legal advice or take the responsibility yourself?

Hon. C. G. LATHAM: I would follow precedent.

The Premier: Then why delude people?

Hon. C. G. LATHAM: I am not deluding people. We accepted the advice which was tendered to us. I have opinions but I go to legal gentlemen to advise me, despite the fact that I sometimes disagree with them. I pay for their advice because they may be right, and I may be wrong. If they agree with the views I express, I feel

that I have a much more solid foundation for those views.

The Minister for Works: You would feel a responsibility in having to decide whether you should give away public money.

Hon. C. G. LATHAM: I will admit that but we have no right to shelter ourselves behind that view if the legal obligation is in the statute. We may have made mistakes. It may be necessary to compromise with these men and say that we can only pay them from now on, that the payments cannot be retrospective because large sums of money would be involved. But I think these men are reasonable. My interpretation of the law as I have given it may be wrong. If there is any doubt let us get the High Court to decide the issue, but the motion asks that it shall be limited entirely to members of this House to give a legal interpretation. Their interpretation might be the same as mine; it might be wrong. Or it might be in the opposite direction from mine.

The Premier: Do you think we should promiscuously select five members of Parliament to give a legal opinion on this matter?

Hon. C. G. LATHAM: No. I say that I cannot see how we can possibly accept that. This is a matter of an interpretation of the law. We make the laws here but we often find that when they get to the people who have to interpret them, they apply to them a totally different meaning from what Parliament intended. We experience that frequently and the Premier will agree with me that that is so. Nevertheless, I feel that there is some satisfaction due to these men who feel that they have a claim, and we should satisfy them, but I do not think we can satisfy them with a select committee.

The Premier: They might say, "Leave the matter as it is."

Hon. C. G. LATHAM: The wording of the motion places them in the position of a judiciary without legal training.

Mr. Patrick: Put five legal men on the committee.

Hon. C. G. LATHAM: My friend says we could put five legal men on the committee. More than likely, if we did that, we would get five different opinions. That would get us nowhere. The only thing to be done is to submit the matter to a tribunal for a final decision.

The Premier interjected.

Hon. C. G. LATHAM: May I ask why it has been limited to persons employed in

the railway service? There may be others entitled to the pension and we cannot deprive them of it. I do not think it was intended that there should be a differentiation between wages and salaried men, but it is not for five laymen of this House to interpret the law. I do not consider they are capable of doing it. It is a matter that must be legally determined. We have not the qualification to determine this matter. Our qualification generally is common sense and I think that is all the qualification we, as members of Parliament, are expected to have. Unfortunately, when the laws we make in this House come to be interpreted by the legal fraternity, we find they have been given a different meaning from what we intended. Frankly, I am in a quandary. I should like to see the matter cleaned up, but I am doubtful whether five laymen of this House can clean it up, because it is a matter of a legal interpretation. If we appoint five legal men—

Mr. Raphael: Don't say that again, you have said it four times already.

Hon. C. G. LATHAM:—we will have five different opinions.

MR. STYANTS (Kalgoorlie) [9.2]: I find myself in the unusual position of agreeing almost entirely with the Leader of the Opposition.

Hon. C. G. Latham: Sometimes you are sound, you know.

The Premier: When he agrees with you.

Mr. STYANTS: When I was in the railway service I was not concerned with this particular Act because I did not come under its provisions, even were the men's claims established. Naturally, however, I have heard a great deal of conversation about the matter and a great number of opinions as to whether the wages men in the service prior to 1905 were entitled to a pension under the 1871 Act. I am prepared to admit that until quite recently I had heard only the men's side of the case. I was under the impression for many years that these wages men were just as entitled to a pension under the 1871 Act as were the salaried men. After listening to the other side of the case as presented in the House, I have not changed my opinion. Those who have put up the Government side of the case have not brought forward anything of a concrete nature to induce me to change my opinion. The wording of the Act, which has in it that the pension is available to anyone

working for day or weekly pay or annual salary in an established capacity, has been the cause of the trouble. From my knowledge of the claims which have been advanced from time to time, those claims have been broken down on the words "established capacity." It is my contention that the wages man who has worked for 35 years in the railway service is just as much in an established capacity—

Mr. SPEAKER: I would ask hon. members to cease their conversations. I can hardly hear what the hon. member is saying.

Mr. STYANTS: I was saying that in my opinion the wages man who works in the Railway Department for 35 or 40 years is just as much in an established capacity as the salaried officer who serves for a like time. Let us see if there is any material difference in the condition of service. A salaried officer is subject to dismissal if he misbehaves himself, and he is subject to retrenchment if the conditions of service necessitate it. The wages man is in exactly the same position as the salaried man as to dismissal or retirement. Consequently the wages man is just as much in an established capacity as is the salaried officer. I have heard it asserted by the representatives of the men concerned—I cannot vouch for it myself—that in the Imperial Act from which our 1871 Act was framed, there is distinctly stated a difference between the wages man and the salaried man in that the wages man is definitely excluded from pension rights. Therefore it is contended that in our Act of 1871 it was intended that the wages man should be included in the matter of pension. It is my opinion that the reason why the difference was made was that the conditions of service in this State at that time and up to about 1900, particularly in the railway service, were very arduous and that the men had no barrack accommodation provided for them. Even in 1912, when I commenced service in the Railway Department, men had to go out in the farming areas and sleep in the open, because there was no barrack accommodation for them. In my view that was the reason why it was decided by the framers of the 1871 Act not to make any difference between wages men and salaried men in point of pension. If we go back and try to reason out what was meant by "established capacity," we find the theory advanced that in the early stages of the railways in this State, a wages man who required to leave

the service had to give a month's notice. It is definitely laid down in the regulations of those days that if he did not give a month's notice he was liable to a severe penalty. On the other side, the Railway Department also had to give a month's notice to an employee. That applied to all workers except casuals, and a casual was a man who had not served continuously for a certain time in the service. After he had served a certain time he was given a rule book, and it was always accepted by the department that any man in possession of a rule book was serving in an established capacity. I have seen a number of notices notifying that from such and such a date certain employees were appointed to the permanent staff. If a man who has been appointed to the permanent staff is not serving in an established capacity, then it is difficult for a layman to define what "established capacity" really means. As to the attitude of the Premier, I agree that he should not take up any other position. He is responsible to the whole of the taxpayers of the State, and as successive Governments for the last 32 years have not recognised the men's claim it would be wrong on the Premier's part as Leader of the Government to admit a claim that was going to cost the taxpayers an immense sum of money. The time when this question should have been brought forward was in 1905, when the Act was amended, instead of allowing the question to lie for 32 years. That was the time when the men should have brought up their case, in 1905, when the Act was amended in such a way as to deprive them of what they claimed were their just rights. At that time the compulsory retiring age of 65 was not in operation. A man, so long as he was capable of doing his work was allowed to remain in the service. Consequently the men did not take much exception to being deprived of their pension rights; because an active man does not want to go off his job. It has been definitely established that a railway man, particularly if he be in the transport section, will live to a greater age if allowed to continue his work than he would if compulsorily retired at the age of 65 years. As I say, in those days the men were allowed to remain at their work while they were able to do it, and they were satisfied to remain at their work in preference to being compulsorily retired on a pension. Here is a matter on which I would disabuse the minds of the men: An endeavour has been made in some quarters to create the atmosphere that it is the Labour

'Government that are refusing to give those men their pension rights. But every successive Government since 1905 has refused to admit that the men are entitled to pensions under the 1871 Act. As for the select committee, I am in accord with the member for East Perth (Mr. Hughes). I cannot see that the appointment of a select committee is going to prove conclusive, or not to any material extent. The best the men can hope for is a favourable decision or recommendation made by that committee to this House on their behalf. Of course the making of a recommendation does not compel the House to accept it. I think it very doubtful whether the House would or could accept the recommendation of the proposed select committee. The member for East Perth has said that he knows who is going to be appointed on the committee. If he does know that, he has inside information that this side of the House has not.

Mr. Hughes: I know who the chairman will be.

Mr. STYANTS: Of course the mover of the motion will be the chairman. I agree with the suggestion that means should be adopted to secure finality and give the men an opportunity to know definitely whether they are entitled to the pension, but those means should take some form other than that of inquiry by select committee. If there is no guarantee that the matter will be referred to a legal tribunal in order that finality might be reached, I shall support the appointment of a select committee. I have expressed the opinion to a number of men that if a select committee brought in a favourable recommendation, that recommendation would not necessarily be adopted by the House. Therefore I would prefer to have an assurance that the necessary alterations will be made to existing Acts to allow those men to place their case before some high judicial tribunal in order that finality might be reached. I believe, as I have always believed, that those men are justly entitled to the pension and that the framers of the 1871 Act never intended to draw any distinction between the wages men and the salaried men of the railways in the matter of pensions.

THE MINISTER FOR LANDS (Hon. M. F. Troy—Mt. Magnet) [9.17]: I recall that in 1932 the then member for Subiaco (Mr. Richardson) moved and secured the passage of legislation giving the right to

certain persons to appeal in order to prove their claims to a pension. On that occasion I referred to the measure as a hoax. I said there was no sincerity behind it. It merely conveyed to a number of ex-Government employees that they had certain rights that no Government in this country ever admitted. The appeal took them nowhere except that they might get a favourable decision from some one. But the favourable decision would not cast an obligation on any Government to pay the pension. I have re-read the speech I made on that occasion, and I repeat that the measure was a hoax without any sincerity in it. There was behind it political pressure, as there is behind this motion. Members know that no Government ever admitted the responsibility for paying pensions which might amount to £200,000.

The Premier: More than that.

The MINISTER FOR LANDS: Do members think that any Government now, next week, or next year, would meet pensions at a cost of £200,000, in addition to the £130,000 we are already paying, and on grounds that have never been justified? Therefore it is only right that members should face the issue. When another party occupied the Treasury benches, they did not pay the pensions or recognise any obligation. I well remember the speech delivered in 1932 by the then Attorney General, who said he supported Mr. Richardson's Bill, not because he thought the Bill would give anything to the men claiming pensions, but because Mr. Richardson might get some kudos and political support out of it.

Hon. C. G. Latham: He did not say that.

The MINISTER FOR LANDS: No, I said that in my speech. I told the House the whole purpose of the Bill. The position to-day is as it was then. It has not altered in any respect. Mr. Davy, in 1932, said:—

I raise no objection to the Bill.

When the member for Guildford-Midland questioned the Attorney General as to his sincerity, he said:—

I did not introduce the Bill, and I do not know that any onus rests with me to say what the benefits may be. Behind the Bill there is this possibility—I think those who are rathering the measure should know it—that if the Bill becomes law, and if some of the persons who desire to secure benefit from it are successful with their appeals, it may create an impossible position for the Government, who may be faced with liability for a sum of money that no Government in this State could possibly meet.

The member for Guildford-Midland pressed the Attorney General for an opinion, but he evaded giving an opinion except to say that no Government had ever met the liability and no Government could meet it. If any claim was proved before the Appeal Board, the Government would consider it. The member for Guildford-Midland further questioned the Attorney General as follows:—

Hon. W. D. Johnson: Did you face that problem previously in connection with the Education Department?

The Attorney General: Yes.

Hon. W. D. Johnson: The Appeal Board has heard appeals and made representations to the Government. Why did you not act then?

The Attorney General: Do not say, "Why did you not act then?"

Hon. W. D. Johnson: Then why did not other Governments act?

The Attorney General: I do not know, but presumably they followed out a uniform policy observed by every Government, irrespective of party, since 1905.

Hon. W. D. Johnson: Will this Bill change that policy?

The Attorney General: I do not say it will.

The Attorney General of the day knew that it would not. The member for Guildford-Midland asked how the Bill would alter the position, and the Attorney General stated:—

It will enable persons who think they have a grievance to apply to the Appeal Board and have their grievance decided one way or another. . . . The onus will be on the Government to say whether they will be prepared to depart from that policy. . . . The Government should be prepared to accept the responsibility of saying "yea" or "nay" after the rights of the officers have been determined by the Appeal Board.

That is the position to-night. The Government have to say "yea" or "nay."

Otherwise the appointment of the Appeal Board has been so much camouflage and nonsense.

Which it was.

I think the Appeal Board should be allowed to determine the claim of every person who considers he should have a pension under the Superannuation Act I do not want it to be thought that the present or any other Government would grant pensions, even if the Bill be agreed to and appeals are successful. That is what Mr. Davy said respecting Mr. Richardson's Bill. Let me repeat those words, "I do not want it to be thought that the present or any other Government would grant pensions, even if the Bill be agreed to and appeals are successful." That is just the position to-night. What can the select committee do? Is it thought that the select committee by reporting to

the House, or expressing the opinion that certain persons were entitled to a pension, can force the Government to grant such pensions? There have been occasions when select committees have in my time recommended compassionate allowances, some small sums, which have not amounted to much, and Governments have paid them. Suppose this select committee reported enthusiastically regarding this proposal? Would the Government pay the pensions? The Government would say, "It is hopeless; we cannot pay £200,000." Any Government who sat here would say the same thing. The Attorney-General of the Government who passed the Bill to which I have referred, providing for an appeal board, said his Government would not pay either. What could the select committee do? They could tell us we ought to do things, but we could tell them that we cannot do those things. Just what could they do? They could move to put the Government out of office. They could say to the Government, "You no longer possess our confidence." We would say, "All right; put someone else here if you think they can do something we cannot do." But they would not be able to do what we cannot do. Not a man in the House would accept the responsibility of providing pensions amounting to £200,000. If a select committee were appointed and made a recommendation, the persons who are claiming pensions may think they are getting a step further, but they will actually be in the same position they have been in for the last 30 years. The Government cannot admit the demands, and no payment can be made except the Government will it. No Government in this State have ever recognised the claim. I do not wish to be misunderstood. I adopt the same attitude to-night as I adopted in October, 1932, five years ago. When Mr. Richardson introduced the Bill giving the right to these persons to appeal I said it would have no effect, and it has had no effect. I also said I did not think those persons considered that they were entitled to a pension. I have never known wages men in the railway service or any other service to be entitled to pensions. My regret is that all the people cannot get pensions, that the country is not rich enough to give pensions to all types of persons. I have known of thousands who have borne the heat and the burden of the day, taken their

risks in life, who are not in the Government service, but who also ought to have pensions. I have known of men who have had temporary employment, and taken grave risks, who ought to have pensions if they could get them. It is a great pity we cannot give everyone a pension. I would have no objection to giving these claimants a pension if it could be done, but the Government cannot do it because they cannot find that sum of money. If the Government could find the money they would be very happy about the position. We do not take up a hostile attitude because some men have made a claim. Members of Parliament all appreciate the fact that if we could make people happier and better off we would do so. It is not that we have no sympathy for the men. We have to do certain things because we know the limitations of our capacity, and the capacity of the people to meet certain charges. That is a responsibility we have to take. It does not matter what people will think of us or whether they regard us as friends or enemies; that is our responsibility and we cannot escape it. No member of Cabinet can take office unless he accepts all the responsibilities attached to the office. It is a great pity that people outside think that members and Ministers must be regarded as enemies and as people who do not wish to help them. That is not a fact. We all have our responsibilities. We cannot call upon the community to find £200,000 when we are already getting out of their pockets all we can possibly or legitimately take. If the select committee is appointed and reports that these men should be paid a pension, we shall have to adopt the same attitude that every other Government has adopted in the past 30 years, and say that we cannot pay such premiums. No pension can be paid unless the executive agrees that it shall be paid.

Member: You paid some.

The MINISTER FOR LANDS: If a mistake was made in paying some pensions, nothing would be more foolish than for the Government to continue to do something which they knew had been wrongly done in the first place. It is no justification that because the door has been left open once it should remain open always, in other words, that the wrongdoing should be continued. I have heard about precedents. It has been said that a precedent has been established. People say, "Your predecessor established a

precedent." I do not care what precedent was established. I make my own. If anything has been done that I think has been wrongly done the important thing is that I refrain from doing the same thing. I agree that certain persons have been paid pensions, but that is no argument why the Government should pay hundreds or thousands of others who are not entitled to be paid. I oppose the appointment of a select committee, though I do not object to the House having its own will in these matters. If the select committee bring forward a unanimous recommendation that the Government ought to pay these pensions, the Government will not be able to pay, and will not pay. This House must take the responsibility. The Government must also stand up to their responsibilities. We are not in the position to pay the peoples' money if any recommendation is made in that direction. I have told the House that the late Mr. Davy, when Attorney General, stated definitely that the Government must pursue the course adopted in the last 10 years. I conclude my remarks by quoting his statement, in which I concur—

I do not want it to be thought that the present or any other Government would grant pensions, even if the Bill be agreed to and the appeals are successful.

I do not want it to be thought that any select committee could coerce the Government into doing something which they thought they ought not to do in all the circumstances.

MR. NEEDHAM (Perth—in reply) [9.35]: I shall endeavour not to detain the House long in replying to the debate. The closing words of the Minister for Lands, referring to the responsibility of the Government, suggest to me that every member of the House has a responsibility in this matter as in others. I am fully conscious of the responsibility I have accepted in bringing the matter forward. I am also fully conscious of the responsibility I shall incur by adhering to the decision of the select committee—if the House appoints one—whatever that decision may be. I am fully prepared to stand up to that responsibility, either here or outside. The Premier has replied exhaustively to the speech I made when moving the motion. Not only did I listen most attentively to his speech, but I took the opportunity to read it afterwards so that I should make no mistake as

to what the hon. gentleman said. He pointed out that in 1890 responsible government was established in Western Australia, and that from then until now only salaried persons have been considered eligible for pensions. As has already been pointed out in the course of the debate, other than salaried men have received pensions—wages men. Although the Minister for Lands attempted to brush that lightly aside, the incontrovertible fact remains that wages men have been paid and are receiving State pensions under the provisions of the Act of 1871. The Premier has based his objection to the motion on two main grounds. One is that because the present practice has existed for so many years, it should continue. The other is that because the practice has been in existence for so long, it is right.

The Premier: No. Everybody said it was right all along.

Mr. NEEDHAM: I disagree with the Premier there. I have heard many statements to the contrary. I have heard the statement that the practice is wrong, and not only within the past year or so, but within the past many years. I have heard statements that the decision is wrong in equity, and that the interpretation given by the late Mr. Septimus Burt to the words "established capacity" is also wrong. On those two points the Premier based his reply. The hon. gentleman said—

Even under the various applications of the 1871 Act the Government and Parliament of 1904 could see that Western Australia was building up an immense liability in the matter of superannuation payments; and at that stage they decided that from then on there would be no liability to, or no eligibility for, pensions in respect of anybody employed by the Government in any capacity.

That is scarcely correct. The hon. gentleman, when making that statement, must have forgotten that pensions are being received to-day by many men who left the Public Service since the passage of the Superannuation Act, one of them receiving a pension of £1,000 a year. So it is idle to say that the determination not to recognise a pension in any capacity has been carried out to the letter. There are exceptions, as I have mentioned. The Premier also referred to compassionate allowances, and mentioned a sum of £140,000. I do not see that compassionate allowances have anything at all to do with the motion under discussion. I am claiming that the railway men are entitled to pensions as a matter of right and not as a matter of

grace. A compassionate allowance is purely a matter of grace and not a matter of right. Therein lies the distinction between the two positions. The Premier dealt exhaustively with the Public Service Act of 1905. He said:

While it is admitted that there is a limited application in respect of the 1904 Act, that deals only with public servants. When any Act is passed dealing with any section of the Public Service in a matter such as superannuation, it has also been interpreted to mean the whole of the persons in Government employment. In common fairness, there cannot be differential treatment.

I wish to point out in that regard that the Public Service Act of 1905 placed the railway service in a department by itself. I remember when that measure was going through this Parliament. I was here, and I opposed the proposal to eliminate railway employees from the Public Service Act. When that Act was passed, Section 83 undoubtedly protected the rights of the men who were placed in the railway service as distinct from the Public Service. Unquestionably that section protected the rights which have accumulated, as the section states that as from April of 1905 no pensions will be paid. But that Act was not retrospective so far as the railway men are concerned. They had been put in a department of their own, as apart from the Public Service Commissioner. I could understand the Premier's attitude if the Act of 1905 had specifically repealed the section of the 1871 Act which has been so freely quoted to-night, giving to men in the Public Service of Western Australia the right to a pension whether on a daily wage or a weekly wage or on annual salary, after serving 10 years in an established capacity. The Premier quoted also the Act of 1900 amending the Public Service Act. However, the 1900 Act does not operate in any retrospective manner whatever against railway men. I contend that the amendments contained in the 1900 Act do not in any way affect the rights conferred upon the railway men by the Act of 1871. I have little more to say in reply to the Premier's contentions. There are other points which I noted, but I do not wish to detain the House at this period of the night. The member for West Perth (Mr. McDonald) dealt exhaustively with the question of the appeal board. He pointed out that we are now going to have a tribunal to review decisions arrived at by the Public Service Appeal Board. When speaking originally on this motion I

pointed out that the decision of the board was not a judicial finding and I still do not think it was. The President of the Public Service Appeal Board, although a judge of the Supreme Court, was not giving the decision as if he were a judge of that court. I still adhere to that opinion. There is another reason why I object to that phase of the debate that was advanced by the member for West Perth (Mr. McDonald). Had the provisions of the Superannuation Act of 1871 been carried out, there would have been no need for the appointment of the Public Service Appeal Board. The whole situation could have been dealt with. The only reservation in the Act is that the Governor in Council can determine any question. The only matter that was in the minds of the framers of the Acts at the time as constituting the basis on which a pension could be refused, would be misconduct or something of that description. Any man who had rendered ten years of satisfactory service would have been duly qualified to receive a pension. The cost involved was mentioned as £200,000. I do not think any member is in a position to say what it would cost at this stage. That is something for the select committee to find out. I would remind the Premier of a statement he made in reply to a deputation from the men who met him last year. When the question of cost was mentioned the Premier said that the matter of cost would not stand in the way of the Government if the claims of the men were just. I give the Premier credit for having made that statement, which is on record. Therefore, it is for the select committee to find out what the cost will be. I commend the motion to the House and I hope it will be carried.

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

Ayes	31
Noes	10
Majority for	21

AYES.

Mr. Boyle
Mrs. Cardell-Oliver
Mr. Coverley
Mr. Cross
Mr. Doney
Mr. Ferguson
Mr. Fox
Mr. Hill
Miss Holman
Mr. Hughes
Mr. Johnson
Mr. Latham
Mr. Mann
Mr. Marshall
Mr. McLarty
Mr. Needham

Mr. North
Mr. Nulsen
Mr. Patrick
Mr. Raphael
Mr. Sampson
Mr. Shearn
Mr. Sleeman
Mr. Styants
Mr. Thorn
Mr. Tonkin
Mr. Warner
Mr. Watts
Mr. Welsh
Mr. Withers
Mr. Wilson

(Teller.)

NOES.

Mr. Collier
Mr. Doust
Mr. Hawke
Mr. McDonald
Mr. Millington

Mr. Munale
Mr. Rodoreda
Mr. F. C. L. Smith
Mr. Willcock
Mr. Seward

(Teller.)

PAIRS.

AYES.
Mr. J. M. Smith
Mr. Stubbs

NOES.
Mr. Troy
Mr. Wise

Question thus passed.

Select Committee Appointed.

Ballot taken and a committee appointed consisting of Messrs. Rodoreda, Coverley, North, Doney, and the mover, with power to call for persons and papers, to sit on days over which the House stands adjourned and to report on the 27th October.

MOTION—NATIVE ADMINISTRATION ACT.

To Disallow Regulations.

Debate resumed from the 15th September on the following motion by Mr. Coverley:—

That Regulation No. 4, and Part B (III) and Part C (iii) of Regulation No. 9 relating to the Natives' Medical Fund, under the Native Administration Act, 1905-1936, as published in the "Government Gazette" of 2nd July, 1937, and laid upon the Table of the House on 10th August, 1937, be and are hereby disallowed.

THE MINISTER FOR WORKS (Hon.

H. Millington—Mt. Hawthorn) [10.5]: These regulations have to do with a medical fund contributed to by the employers for the provision of medical, surgical and hospital attendance. Also there is payment to be made under the Workers' Compensation Act. A good deal of difficulty was experienced in devising a schedule of payments which would be sufficiently substantial to ensure the fund. The member for Kimberley mentioned the Northern Territory scale of payments. Had we adopted the country schedule of payments in the Northern Territory it would have yielded only £1,417 and had we adopted the town scale under the Northern Territory regulations the total would have amounted to £1,140. However, under the scheme that was devised it is estimated that there will be realised about £4,000 per annum. Under that scheme it was mentioned by the member for Kimberley that the employers would have to pay a flat rate of £1 per head for each native employed as a premium to the medical fund. The hon.

member also mentioned the number of those employed and the relatives of those employed, together with certain of those other hangers on.

Mr. Marshall: And then there are the dogs. They also have to be kept.

The MINISTER FOR WORKS: And there were also the indigents. The hon. member pointed out that this imposed an impossible liability on the large employer of natives in the Kimberley district. Evidently the Chief Secretary, who has the administration of this Act, realised that there was some force in the arguments put forward, for he has since had a conference with representative pastoralists in the North-West and they have agreed that the maximum should be fixed. Regulations are now to issue under which the maximum payment for any one employer shall be £50. The hon. member also mentioned the casual employees. I think one peanut grower up there employs 150 natives. Under the existing regulations he would have to pay £1 per head for all the natives employed. To that also consideration has been given, and it is now agreed that for casual employees only 5s. per head shall be charged. I understand that under the existing regulations £1 per head would have to be paid, and if the employer could prove that they were merely casual employees a rebate of 15s. would be paid. However, it is agreed under the amended regulations that only 5s. shall be charged for each casual employee. Also there is a charge imposed in the case of a native taken to hospital without justification. Under the amended regulations the maximum for which the employer will be responsible in such a case will be £10. So a limit has been placed upon that. Regarding the whole question, in consultation with the Chief Secretary, I asked him what the position would be if the existing regulations were disallowed. He said that instead of paying into an insurance fund against all liabilities in respect to medical, surgical and hospital attendance, and under the Workers' Compensation Act, it would all become a personal liability on the individual employer. So it appears that if these regulations are to be disallowed, particularly now that they are to be modified and some of their objectionable features removed, the employer will not be relieved of his liability. It will simply mean that he will have an individual responsibility instead of paying to an insurance policy. Since this is a new feature there was

a difficulty in assessing the charge to be made for these permits. The whole thing was considered from every angle, and the Northern Territory regulations were taken into consideration when the amount was being fixed. Of course when such a fund as the medical fund is established such obligations must be imposed as will ensure that the fund is effective. The position is now that under the regulations any employer who takes a native to the hospital without justification will not be permitted to dodge his liability in that way.

Mr. Welsh: He is not likely to do that when it means a journey of 150 miles.

The MINISTER FOR WORKS: It would not happen in the North-West, but that is not to say that it would not happen in other parts of the State. The regulation was provided to meet such cases. That is the manner in which these regulations have been explained to me. The difficulty is that the employer is not relieved of liability if the regulations be disallowed, but will carry an individual responsibility for the payments. I think our experience is that in such cases it is preferable to pay through an insurance policy than carry the complete liability. I quite admit the force of the hon. member's argument when he pointed out the difficulty of large employers. I discussed that matter with the Chief Secretary and learnt that those who had conferred with him had satisfied him that it was an injustice to employers in the Kimberley district where undoubtedly great difficulties exist. That has been overcome to the extent that the maximum amount is now £50, irrespective of the number of natives employed, and I think the justifiable complaint that the pastoralists were charged £1 per head for casual employees has also been removed.

Mr. Rodoreda: Where are the amended regulations?

The MINISTER FOR WORKS: I have the assurance of the Chief Secretary that they have been definitely agreed to and will be gazetted.

Mr. Marshall: Have they not to be tabled in Parliament before being gazetted?

The MINISTER FOR WORKS: No, they are first gazetted and then tabled. The force of the hon. member's argument has had effect and some of the objectionable features of the regulations have been removed. I regret that the responsible Minister is not

present because he is well acquainted with the conditions. I recognise the necessity of having personal knowledge of such matters. In any event the Chief Secretary has shown a disposition to meet the objections, and he assures me that the pastoralists, even in the Kimberley district, are now satisfied with the regulations as amended.

Mr. Marshall: If the squatters are as well satisfied with the regulations as with the Act, it is not saying much.

The MINISTER FOR WORKS: We are merely dealing with the insurance policy which undoubtedly carries a large liability. If a charge of £1 is necessary to provide for medical, health, hospital accommodation and workers' compensation, it must be a heavy liability. However, this fund is in the experimental stage and the Chief Secretary admits that he had to fix an amount which, in the opinion of those responsible, would meet the liability involved under the regulations. In view of the modifications made, I hope the hon. member will not proceed with the motion. However, that is the departmental view. The officials are anxious to deal fairly by the natives and reasonably with those who employ the natives.

MR. COVERLEY (Kimberley—in reply) [10.19]: As pointed out by the Minister for Works, this is experimental legislation. I have no objection to the establishment of a medical fund for the purposes laid down in the Act. I am not concerned with what promises have been given regarding regulations proposed to be laid before the House. I am concerned only with the wording of the regulations that are at present before us. Some information has been given by the Minister that he doubtless gave believing it to be correct. I wish to give the other side, in order to show members that my argument as to an imposition being placed on the North still stands. The Minister's statements might mislead members, especially the statement that a deputation had waited on the Chief Secretary and, on receiving an explanation of the modifications, were satisfied. I believe that to be true, but I point out that there was not one representative of the Kimberley district on the deputation. Therefore the position of Kimberley was not represented, was not considered, and was not debated in the presence of the Chief Secretary. I believe that those who waited on the Chief Secretary and discussed the proposal from

their point of view were satisfied, which brings me back to my first argument. My only objection to the regulations as tabled was the application of a flat rate. The regulation provides that every employer of a native in the State of Western Australia shall pay a flat rate of £1 per year to the medical fund. I have explained that there are three different classes of employers of natives. There is the farmer in the South-West area who would probably employ a couple of half-castes and would pay £2 per annum into the medical fund. Apart from the wages, his obligation would cease with the payment of the £2, except in regard to the next clause of the regulations dealing with the transport of a sick native to hospital. Going further north there are pastoralists in the sheep industry who employ only a small number of natives. That small number of eight or ten would not have many tribal relations to be kept by the pastoral company. Therefore the obligation of the pastoralist in the North-West would be less than that of the pastoralist in the Kimberley district. The further north one goes the greater is the number of natives employed and the greater the number of tribal relatives to be cared for.

Hon. W. D. Johnson: In each case would not that number be proportionate?

Mr. COVERLEY: No, in each case the pastoralist has to pay £1 for each native employed.

Hon. W. D. Johnson: But if a pastoralist employed 10 natives, would not the number of tribal relations be proportionate?

Mr. COVERLEY: The smaller the number of natives employed, the smaller would be the number of tribal relations to be maintained by the station. In the Kimberley district stations employ 40 to 90 natives and there would be 200 or 300 native relatives to be maintained. The pastoralists, by maintaining those people, are doing something to relieve the taxpayers. If the stations were not keeping the relations of the natives employed, they would have to be put in a compound or cared for by the department, and the money of the taxpayers would have to be expended in keeping a lot of indigent natives who are now cared for by the pastoralists. I wish members to appreciate that that point was not put to the Chief Secretary by the deputation.

Hon. P. D. Ferguson: Who comprised the deputation?

Mr. COVERLEY: I understand there were representatives of the Pastoralists' Association, accompanied by the member for Pilbara and the Hon. G. W. Miles, but not one Kimberley pastoralist was present.

Mr. Welsh: I was not at the deputation.

Mr. COVERLEY: I know that the Kimberley side of the case was not represented. Those who were present agreed with the Minister because the modifications suited them; they do not employ many natives. The flat rate should not be imposed. I urged that the rate should be on the lines of the Northern Territory award, which consists of a sliding scale. I do not say that the Minister should stick to the exact amounts charged in the Northern Territory. I have never suggested that. I suggest that should be the basis upon which the charge should be made. The Minister said they required approximately £4,000 with which to do the job. If the Northern Territory rate was adopted, he said, they would receive only £1,400. He did not tell members that these rates could be increased pro rata on a sliding scale so as to bring in the necessary £4,000. The Minister said there would be a personal liability upon the pastoralists if these regulations were disallowed. That would be nothing new. Pastoralists of the North-West have always carried that responsibility. They are prepared to carry on under the conditions that existed before the medical fund was established, rather than accept the flat rate of £1 per head. I am speaking only for the district I represent. If this regulation is disallowed, they desire that the sliding scale should be substituted. There will be no aftermath so far as the people I represent are concerned, if the regulation is disallowed, unless something unforeseen occurs or something is forced upon them by the Government. They are prepared that the regulation should be disallowed, and would accept the sliding scale basis of payment. Workers' compensation was paid, medical attention given, and much other care taken of tribal natives, prior to the new Act coming into force. These things will continue to be done. My argument holds good, that there is a difference between the three districts in which natives are employed. The reasonable thing to do is to have the sliding scale. The second regulation to which I object is that which

imposes upon the pastoralists the obligation of seeing that any native who is ill is taken to the nearest hospital for treatment. To my knowledge that has always been done, and it will be continued if this regulation is disallowed. The regulation says in effect that if a pastoralist has a sick native on his property he must take him to the nearest hospital for attention and accommodation. If in the opinion of the Commissioner for Native Affairs the native was not sick enough to go to hospital and receive medical attention, he can summon the pastoralist who was good enough to take the native there, and make him pay the expenses of the doctor and hospital. It is a foolish regulation. Surely it is the object of the department to see that natives receive all necessary medical attention, but if the regulation is persisted in it will defeat that object. I cannot see any pastoralist taking the risk of travelling 300 miles by motor car to convey a sick native to the Derby hospital. Cattle stations in the East Kimberleys are from 100 to 300 miles away from a hospital. In the case of most of the stations the patient would have to travel quite 300 miles to reach such an institution. The obligation to do this would be an extra handicap upon the North compared with what appertains in the southern areas. If a farmer in the Katanning district had a sick native he could run him into the hospital and be back on his farm in two hours. The position is very different in the North-West. This regulation applies to every person who employs a native. It is unfair, and constitutes an additional handicap upon pastoralists who are already doing a great deal for the taxpayers of the country by maintaining tribal natives who do no work themselves and would otherwise become a charge on the department. I hope the House will disallow these regulations. The Minister has given the House to understand that fresh regulations are in course of preparation and will be introduced. If that is so, he can see no objection to these regulations being disallowed for the time being.

Question put and passed.

House adjourned at 10.31 p.m.