education and teaching in this State. This year about 8,000 teachers college scholarships were offered in the initial stage, and less than half of them were taken up. The department is now in the process of offering to other applicants those that were not taken up. They are being taken up, and the process of filling the vacancies will probably go on for another month or so.

I am disturbed that girls who have left school are unemployed in Newcastle. This would disturb anyone, but I do not think it is fair to say that, because they cannot obtain employment in Newcastle, they become the responsibility of the Department of Education. I do not think the average fair-minded person would say that this is a requirement of this Government; certainly, it was not a requirement of the Government which the honourable member for Waratah supported.

Mr JONES: It is the Government's responsibility to assist in the employment of the people.

Mr WADDY: Yes, but the honourable member is speaking of two different subjects. One is the awarding of teachers college scholarships and the other is employment. He contends that more people in Newcastle should be given teachers college scholarships, but I point out that the granting of scholarships is not the same as employing people. I shall refer the honourable member's remarks to the Minister for Education.

Motion agreed to.

House adjourned at 4.27 p.m.

Legislative Council

Tuesday, 25 February, 1969

Printed Questions and Answers—Assent to Bills—Ministerial Arrangements—*Barton* v *Armstrong and Others*—Coroners (Amendment) Bill (first reading)—Trustee Companies (Amendment) Bill (first reading)—Aborigines Bill (first reading)—Judges' Pensions and Equity (Amendment) Bill (first reading)—Supreme Court and Circuit Courts (Amendment) Bill (first reading)—City Night Refuge and Soup Kitchen Incorporaton (Amendment) Bil (Petition)—Adjournment (Business of the House).

The PRESIDENT took the chair at 4.28 p.m.

The Prayer was read.

PRINTED QUESTIONS AND ANSWERS

OFFSET PRINTING MACHINES

The Hon. C. COLBORNE asked THE VICE-PRESIDENT OF THE EXECUTIVE COUNCIL—(1) Will the Minister advise how many government departments have installed small offset printing machines known by such trades names as Multilith, Gestelith, Rotaprint, to name a few, and the names of the departments in which such machines are installed? (2) Do these departments also have plate-making equipment installed in order to enable the production of presensitized plates for the small offset machines? (3) What is the award classification of the personnel who produce printed matter on these machines?

The Hon. J. B. M. FULLER replied—(1) Small offset printing machines are installed in the following departments under the control of the Public Service Board—Government Printing Office; Registrar General's Department; Department of Education; Department of Lands; Department of Public Works; Government Insurance Office. (2) Equipment for the production of pre-sensitized plates for such machines is in use in—Government Printing Office; Registrar General's Department; Department of Education; Department of Lands; Department of Public Works. (3) The appropriate award classification under the graphic arts award for operators of the printing machines referred to is small offset lithographic printing machinist (male or female).

STREET LIGHTING

The Hon. W. T. MURRAY asked THE VICE-PRESIDENT OF THE EXECUTIVE COUNCIL—(1) Has the Minister's attention been drawn to a report in *The Sun-Herald* of Sunday, 24th November last, in which a street lighting expert, Mr H. Turner, senior lecturer, School of Traffic Engineering, University of New South Wales, was quoted as having described the street lighting in Sydney metropolitan area and in New South Wales generally as being "incredibly bad"?

(2) Is the Minister aware that in the same article a visiting street lighting expert, Professor J. B. de Boer, of Holland, was quoted as having said that "Australian street

lighting was not acceptable by European standards", and in the same article Mr Turner was quoted as having said "it is fair to say that our best standard of street lighting is lower than that in Britain and Europe" and that our street lighting should be improved to "three or four times the illumination we have now" and also that "taken on average you can expect to reduce your night accident rate by 25 per cent with improved lighting"?

(3) Is it a fact that at present the Department of Main Roads is responsible only for the lighting of the Harbour Bridge, Gladesville Bridge, Warringah Expressway, and minor sections of main roads in New South Wales?

(4) Is it correct that local government has since 1937 been seeking for the Main Roads Department to take over the responsibility for the lighting of all main roads throughout the State?

(5) Is the Minister aware that the cost of lighting of main roads in most other countries in the world, including all the major nations, is met by centralized government and not by local government?

(6) Is it a fact that in New Zealand the Government provides the total cost of lighting of main roads, five-sevenths of the cost of arterial road lighting, and two-sevenths of the cost of minor urban lighting?

(7) Did the former Labor Government of New South Wales introduce a highway lighting subsidy scheme in 1964 under which the cost of lighting main roads throughout the State, to an approved standard, would be subsidized on the basis of 25 per cent from a special Government fund, leaving the remaining 75 per cent to be divided between local councils and electricity county councils on the ratio of 50 per cent and 25 per cent, respectively, and did that Government indicate its intention to improve upon the Government's contribution to this scheme in the light of experience and development?

(8) Is it also true that when the Liberal Government came into office in 1965, the Premier, Mr Askin, in his capacity as Leader of the Liberal Party of New South Wales, indicated to councils in a letter (printed in a bulletin of the Local Government Electricity Association dated 28 July, 1965), that "I am strongly in favour of an increase in the ratio of Government's subsidy for main road lighting and I believe that our finances are sufficiently healthy to enable this to be done"; whilst the Deputy Premier, Mr Cutler, in his capacity as Leader of the Country Party, indicated in a similar letter (printed in the same bulletin) that "we are sympathetically disposed towards the increase in the ratio of the Government subsidy for main road lighting, but naturally we must have some consideration of costs involved"?

(9) Will the Minister advise the House of the Government's present policy with respect to the matter of street lighting and main road lighting throughout New South Wales?

(10) Will the Minister also indicate what sympathies the Government now has in the matter of increased subsidy for street lighting and state what action it proposes to take to improve the standard throughout the State?

(11) Does the Minister agree that responsibility for the lighting of main roads in New South Wales is indivisible from the responsibility of erecting and maintaining main roads and safety fences, etc.?

(12) Will the Minister recommend to the Government that the Department of Main Roads should become responsible for the total cost of street lighting on main roads which are under its control?

The Hon. J. B. M. FULLER replied—(1) and (2) The Minister for Local Government has informed me that the statements attributed to Mr H. J. Turner and Professor J. B. de Boer in the report in the *Sun-Herald* on Sunday, 24th November, 1968, had not escaped his notice. In fact, Professor de Boer's remarks were reported earlier in the *Australian* of 19th November, 1968, and the *Sydney Morning Herald* of 21st November, 1968, and the Electricity Authority of New South Wales had already been asked to comment on his statements before the matter was raised by the honourable member. Both Mr Turner's and Professor de Boer's principal criticisms were of lighting in the city of Sydney. Mr Tur-

ner did not, as the honourable member suggested, apply the term "incredibly bad" to street lighting in the Sydney metropolitan area and in New South Wales generally. His reported statement that "you could definitely improve our lighting to three or four times the illumination we now have", was made in respect of some city streets which are poorly lit at present. The criticisms of Sydney's street lighting, as general statements, are largely justified. Though there are some examples of good standard lighting—Park and William streets, Parramatta Road, Warringah Expressway, etc.—the city is not well lit by overseas standards. To some extent the same can be said of suburban Sydney, though here a rapid change can be seen taking place. Under the impetus of the Government's traffic route lighting subsidy scheme, administered by the Electricity Authority of New South Wales, and the publication of the present Australian S.A.A. street lighting code in latter 1964, electricity county councils are now geared to install lighting at a much faster rate than ever before and code standard installations are appearing on more and more suburban traffic routes. Over 230 miles of contiguous code standard lighting installed in the last four years is at present being subsidized in New South Wales and in another eighteen months the figure will have increased to more than 400 miles. It is interesting to note that the rate of installation in New South Wales is at present considerably greater than that in all other Australian States combined. At present, the bulk of the improvement is being concentrated on heavily trafficked routes outside city centres where traffic movement is faster and the potential for accident saving at night is greater, though plans for the relighting of the city of Sydney are also well advanced.

(3) The Department of Main Roads undertakes the responsibility and carries out the full cost of lighting expressways and associated road complexes and also major bridges and their approach roads. It also contributes to the lighting of certain other bridges on main roads. It pays the full cost or makes a substantial contribution to the lighting of channelized intersections constructed to assist traffic flow remote from centres of population. In addition the Department of Main Roads is a contributor to the traffic route lighting subsidy account from which subsidies are paid by the Electricity Authority of New South Wales. The amount of the contribution is one-third of one per cent of the revenue derived by that department from the motor vehicle tax and is limited to $150,000 in any one year. Since the commencement of the subsidy scheme in 1964 the Department of Main Roads has contributed $461,080.25 to the fund and will be making a further contribution of $108,908.96 during the present financial year.

(4) It is true that representations have been made from time to time since 1937 by local government interests that the responsibility for lighting main roads be borne by the Department of Main Roads. It is equally true, however, that there has been and still is a body of local government opinion which, having regard to the purposes which street lighting is intended to serve and the local benefit derived therefrom, is strongly opposed to any suggestion that the responsibility for street lighting be taken away from local government. In weighing the matter prior to the introduction of the present traffic route lighting subsidy scheme it was recognized that a through traffic route generally serves an admixture of through traffic, terminating traffic and local traffic. In consequence of the through traffic a higher standard of lighting is generally required than would be necessary for purely local purposes and it is therefore reasonable that the local council should be assisted in meeting the costs of the higher standard lighting. At the same time it should be remembered that some "fringe" benefits in the form of comfort, amenity, local prestige and improved local traffic service usually accrue to local residents from the higher standard lighting.

(5) The position in other countries varies but it is generally true that in the developed nations central government meets the whole or part of the cost of lighting major through roads, not necessarily of main roads as we know them.

(6) Information is not available as to the present position in New Zealand with respect to the proportion of the cost of

street lighting which is met by the government of that country. Details are being sought from New Zealand and will be supplied to the honourable member when received.

(7) The present traffic route lighting subsidy scheme was introduced in 1964. The subsidy payable under the scheme is an annual subsidy based on a standard schedule of annual charges determined by the Electricity Authority of New South Wales and amounts to 25 per cent of the annual charges so computed for the whole installation. The electricity supply authority is also required to contribute each year towards the annual charges for such lighting an amount equal to the amount of the subsidy payable by the authority. The supply authority's contribution is therefore 25 per cent of the estimated standard annual charges abovementioned. The balance of the actual annual charges is met by the local council.

(8) Prior to the 1965 State elections the New South Wales electricity executive of the Local Government Electricity Association of New South Wales asked the leaders of the three major political parties to advise the association as to their policies in respect of three matters. One of the questions posed to the respective leaders was—"The possibility of an increase in the ratio of the Government's subsidy for main road lighting (the present ratio being disproportionate by comparison with Government subsidies granted for many other less vital services, etc.)" The replies which the association received from the Premier, Mr Askin, in his capacity as Leader of the Liberal Party of New South Wales, and the Deputy Premier, Mr Cutler, in his capacity as Leader of the County Party of New South Wales, were as quoted by the honourable member.

(9), (10), (11) and (12) In formulating the traffic route lighting subsidy scheme the then Government was concerned to ensure that the scheme would offer councils the financial incentive to undertake improved traffic route lighting in their areas without interfering with their powers and responsibilities relating to street lighting. Accordingly, the scheme was designed to work within the existing framework of local government, with electricity supply authorities carrying out the construction and maintenance work and the service being paid for by constituent councils by means of annual charges for each lantern installed. The scheme acknowledges that councils have a responsibility to light roads within their areas to a level adequate for local needs, but that the added cost of the higher level of lighting needed on sections of traffic routes traversing built-up areas should be shared by the community generally. It is this sharing of cost that the subsidy scheme aims to achieve. The financial aid made available under the scheme is providing the encouragement needed by councils to carry out the State-wide programme of traffic route lighting envisaged under the scheme. The scheme is a project of some magnitude, the capital cost of which was estimated at $14,000,000 over a period of ten years at the time it was implemented. It has been in operation now for some four years and there is ample evidence of extensive traffic route lighting improvement as the number of code standard installations is increasing weekly.

As I have said in reply to question (4) above, the Minister for Local Government has informed me that the question of making the Department of Main Roads responsible for the full cost of lighting main roads has been considered on a number of occasions. The Main Roads Act, 1924, does not place any responsibility upon the Department of Main Roads to expend its funds on street lighting and it is considered that in view of the progress already made and the results anticipated by the ready co-operation of councils in the subsidy scheme an amendment of the Act for that purpose could not be justified. Street lighting is essentially a function of local government and, having regard to the assistance which may be afforded by the traffic route lighting subsidy scheme in providing lighting on traffic routes to a standard higher than that which may be required for local needs the Government is of opinion that no justification exists for requiring the Department of Main Roads to make any further contribution to the lighting of main roads.

OVERDUE ELECTRICITY ACCOUNTS

The Hon. W. T. MURRAY asked THE VICE-PRESIDENT OF THE EXECUTIVE COUNCIL—(1) Is the Minister aware that many electricity councils in New South Wales are experiencing considerable difficulty in collecting accounts from some large industrial and commercial customers who pay only after two or three months have elapsed and then only after a number of letters have been sent and legal action threatened? (2) Is the Minister aware that electricity councils are loath to disconnect industrial and commercial organizations for non-payment of accounts because the employment of large numbers of people therein engaged would be jeopardized and that such organizations take advantage of this situation? (3) Is the Minister also aware that by delaying the payment of electricity accounts these organizations gain considerable financial advantage for up to three and four months at the expense of electricity councils and consumers? (4) Having in mind that legislation already exists whereby local councils can charge up to 7 per cent on overdue ratepayer accounts, will the Minister raise this matter with the Government with a view to introducing legislation to enable electricity councils to charge an appropriate rate of interest in respect of overdue electricity accounts in cases where it is not possible or appropriate for councils to exercise their powers of disconnection for non-payment?

The Hon. J. B. M. FULLER replied—The power which councils have of disconnecting the supply of electricity combined with the monopoly of supply in their areas places them in a very favourable position compared with private enterprise in obtaining prompt payment of outstanding accounts. Private businesses are prevented by the operation of the general law from recovering interest or other amounts by way of fines for late payment of accounts. Section 512F of the Local Government Act, 1919, requires that reasonable notice be given prior to disconnection action and it is considered that if councils demonstrated they were prepared to disconnect a supply for non-payment of accounts in the case of large consumers then much of the difficulty in collecting electricity accounts from these consumers would be overcome. However, if supply authorities are reluctant to exercise their powers of disconnection so far as these large commercial and industrial consumers are concerned, it would be appropriate for them to allow discounts to encourage prompt payment of accounts. An adjustment to the tariff applying to the class of consumer concerned would need to be made before the discount was introduced. The withholding of the discount from consumers who do not pay within the prescribed time would have the same effect in penalizing those consumers as the application of interest. In the circumstances, I do not consider that the granting to councils conducting electricity supply undertakings of the additional advantage of being able to charge interest on overdue accounts is warranted.

ASSENT TO BILLS

Royal assent to the following bills reported:

Meat Industry (Amendment) Bill

Landlord and Tenant (Amendment) Bill

Broken Hill to South Australian Border Railway Agreement Bill

Constitution (Amendment) Bill

Crown Lands and Closer Settlement (Amendment) Bill

Land Tax (Amendment) Bill

Local Government (Grants Commission) Amendment Bill

Motor Traffic (Amendment) Bill

New South Wales-Queensland Border Rivers (Amendment) Bill

Oakdale State Coal Mine (Sale) Bill

Port Kembla Inner Harbour (Further Extensions) Bill

Sydney County Council (Elections) Bill

Textile Products Labelling (Amendment) Bill

Theatres and Public Halls (Amendment) Bill

Peak Hill A.I.F. Memorial School of Arts (Land Sale) Bill

MINISTERIAL ARRANGEMENTS

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive

Council [4.31]: I have to inform the House that on 11th February, 1969, the Premier, the Hon. R. W. Askin, M.L.A., submitted his resignation as Premier and Treasurer to His Excellency the Governor, which action involved the resignation of all the Ministers of the Crown. On the same day the Hon. R. W. Askin was reappointed by His Excellency as a member of the Executive Council and as Premier and Treasurer, and the following gentlemen were appointed by His Excellency as members of the Ministry:

The Hon. Charles Benjamin Cutler, E.D., M.L.A., Deputy Premier, Minister for Education and Minister for Science.

The Hon. Eric Archibald Willis, B.A., M.L.A., Minister for Labour and Industry, Chief Secretary and Minister for Tourism.

The Hon. John Bryan Munro Fuller, M.L.C., Minister for Decentralisation and Development and Vice-President of the Executive Council.

The Hon. Davis Hughes, M.L.A., Minister for Public Works.

The Hon. Kenneth Malcolm McCaw, M.L.A., Attorney-General.

The Hon. Philip Henry Morton, M.L.A., Minister for Local Government and Minister for Highways.

The Hon. Milton Arthur Morris, M.L.A., Minister for Transport.

The Hon. Thomas Lancelot Lewis, M.L.A., Minister for Lands.

The Hon. Jack Gordon Beale, M.E., M.L.A., Minister for Conservation.

The Hon. Geoffrey Robertson Crawford, D.C.M., M.L.A., Minister for Agriculture.

The Hon. Stanley Tunstall Stephens, M.L.A., Minister for Housing and Minister for Co-operative Societies.

The Hon. John Clarkson Maddison, B.A., LL.B., M.L.A., Minister of Justice.

The Hon. Arnold Henry Jago, M.L.A., Minister for Health.

The Hon. Wallace Clyde Fife, M.L.A., Minister for Mines.

The Hon. Frederick Maclean Hewitt, M.L.C., Minister for Child Welfare and Minister for Social Welfare.

The Hon. John Lloyd Waddy, O.B.E., D.F.C., M.L.A., Assistant Minister.

The Hon. George Francis Freudenstein, M.L.A., Assistant Minister.

I shall continue to act as Leader of the Government in the Legislative Council, and the Hon. F. M. Hewitt will continue to act as Deputy Leader of the Government in the Legislative Council.

The Hon. J. B. M. Fuller]

BARTON v *ARMSTRONG AND OTHERS*

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [4.34]: I lay upon the table of the House a copy of the judgment handed down by His Honour Mr Justice Street on 19th December, 1968, in the case *Barton* v. *Armstrong and Others,* No. 23 of 1968, in the Supreme Court in Equity.

Ordered to be printed, on motion by the Hon. J. B. M. Fuller.

PRIVILEGE

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council [4.35]: As a matter of privilege I move:

(1) That in view of evidence given by the Hon. Alexander Ewan Armstrong and the comments in the judgment delivered by His Honour Mr Justice Street on 19th December, 1968, in the case of *Barton* v. *Armstrong and Ors,* No. 23 of 1968, in the Supreme Court in Equity, the Hon. Alexander Ewan Armstrong is adjudged guilty of conduct unworthy of a member of the Legislative Council.

(2) That the Hon. Alexander Ewan Armstrong is expelled by this House and his seat in the Legislative Council is hereby declared vacant.

The Hon. A. E. ARMSTRONG: On a point of order. I submit that the motion is *sub judice* for the following reasons: the motion assigns as the grounds for the conclusion that my conduct was unworthy of a member of the Legislative Council, first, the evidence given before His Honour Mr Justice Street and, second, the comments in Mr Justice Street's judgment. That judgment is at present subject to an appeal to the Court of Appeal which has not yet been heard. In the course of argument in that appeal the whole of my evidence will have to be reviewed and considered by the court. It will then become a matter for the Court of Appeal to decide whether Mr Justice Street's judgment and the comments in it are correct.

The motion seeks to expel me upon the assumption that Mr Justice Street's comments are correct. What happens if the Court of Appeal later says that those comments are incorrect or unjustified? How

can I resume my place in the House after the appeal? It would be obviously unjust and unfair to expel me now, and such action might possibly be a source of considerable embarrassment to the Court of Appeal, which has to decide whether Mr Justice Street's comments were in fact unjustified after they had been accepted as correct by this House. Furthermore, a number of actions are awaiting hearing by the court that arise out of and relate to the *Barton* v. *Armstrong* litigation—one by Barton for assault for $2,000,000, and two actions by me for libel, one against Mr David McNicol for $1,000,000 and one against the *Daily Telegraph* for $1,000,000. All these legal actions may be prejudiced by comment made during debate on this motion. Accordingly I request that you rule that debate on this matter is *sub judice*.

The PRESIDENT: Order! There is no standing order of the Legislative Council applying the *sub judice* rule to debates or questions in this House. The *sub judice* rule is applied in the British Parliament to matters awaiting or under adjudication in all courts exercising a criminal jurisdiction, in courts martial from the moment the law is set in motion by a charge being made and, again, when notice of appeal is given until the appeal is decided, and to matters awaiting or under adjudication in a civil court, from the time that the case has been set down for trial or otherwise brought before the court. The rule is invoked so that any debate or motion in the House will not prejudice a fair trial or influence the court's decision. I feel that the motion is not out of order because the matter contained in it is *sub judice*. However, before I give a ruling I should like to hear some debate on the point.

The Hon. B. B. RILEY: Before I say anything on this matter I feel that I must ask your indulgence, Mr President, to make as it were a personal explanation. The topic under discussion arises out of litigation between a Mr Barton and the Hon. A. E. Armstrong. This was not the first litigation between them. In some of the earlier litigation I acted in the interests of Mr Barton. Of course that litigation is now concluded and well out of the way. I feel no embarrassment in speaking on the matter in this House, but I think that first it is only proper to make it entirely clear to the House that I have been interested in the way that I have disclosed. If the House wishes to think that I have come here with preconceived opinions or with bias, it is at liberty to do so on the facts that I lay before honourable members.

The question of whether or not a matter is *sub judice* is, as you yourself have said, Mr President, the subject of a finding or submission by a select committee of the House of Commons on procedure, which reported as recently as 1963 on this matter. A moment ago you, sir, quoted some of the principles which that committee suggested should govern the matter. However, that select committee concluded its remarks by pointing out that in the last resort the discretion of the Chair must be absolute. I think it is correct to say that the whole tenor of this report was that the rules that might be laid down were for the guidance of the Chair only.

The question which people have always put in the discussion of the *sub judice* rule and have tried to answer—and the select committee of the House of Commons tried to answer to a certain extent in some of the remarks you quoted from their report—has always been, "When is a matter before a court?" The view that, because one can imagine the possibility of prejudice in some instances all debate on the matter before a court must be stifled, is a view that takes little account of the dangers and disadvantages involved in the prevention of free parliamentary debate, perhaps for months at a time on a matter of public importance.

The real question, I submit, for your consideration is whether the discussion is likely to prejudice an impartial hearing of the legal proceedings which it is said are pending. One can, of course, never know that precisely but, as the learned author of an article in the *Australian Law Journal* said: "At least in our present society judges do not give the appearance of being delicate hot-house plants bound to wilt in any wind that blows their way." The real question, I repeat, is whether an appeal court is likely to be affected and whether there is a possibility that an impartial hearing by an appellate court of the

Supreme Court of New South Wales would be prejudiced by the discussion of the present matter by this House today.

There is a similar situation that arises in connection with newspapers when they publish matter before a forthcoming trial. If what they publish is likely to prejudice the fair trial of an accused person, then they are in contempt of court and the court has power to punish summarily such forms of contempt, for the reason that the trial is likely to be prejudiced. I shall refer to some remarks of the four judges, Sir Owen Dixon, Sir Wilfred Fullagar, Sir Frank Kitto and Sir Alan Taylor in a case, ten or thirteen years ago, when this matter arose in the High Court. This is reported in 93 C.L.R., at pages 370–371. Their Honours say:

> We are in complete agreement with *Owen* J.——

Who was the judge in the court below——

> when he says, in effect, that it would be a disgraceful thing if "trial by newspaper" were allowed to supersede, or influence, the ordinary process of the court. Perhaps there has been in the past too little vigilance on the part of the Crown for the vindication of this principle. On the other hand, because of its exceptional nature, this summary jurisdiction——

I interrupt to say that the court is referring to the summary jurisdiction of the court to punish for contempt by prejudicing a court of justice——

> has always been regarded as one which is to be exercised with great caution, and, in this particular class of case, to be exercised only if it is made quite clear to the court——

And these are important words——

> that the matter published has, as a matter of practical reality, a tendency to interfere with the due course of justice in a particular case.
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> . . . . . .
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> Sometimes the court may think that, technically speaking, a contempt has been committed, but that, because the tendency to embarrass is slight, or because of special circumstances, it ought to refuse to exercise its summary jurisdiction. There may be occasions when it will be material to remember that there may be attempts to abuse the jurisdiction. There have been occasions when summary proceedings for contempt have been commenced, or threatened, not with the real object of ensuring the impartial administration of justice, but solely for the purpose of stopping public comment on, or even public inquiry into, a matter of public importance. A court possessing the summary jurisdiction will not allow itself to be made the instrument for effecting such a purpose.

It is for you, Mr President, in your discretion to decide this matter but I have offered one or two statements of principle which I hope may help you. It is unfortunate perhaps that you have not heard the Minister's speech in support of the motion. I must say that if I were a Minister I should be approaching this motion on this basis: I should be dealing only with the evidence given in the suit before Mr Justice Street by the Hon. A. E. Armstrong himself and the documents that the Hon. A. E. Armstrong swore were his own documents. For the purposes of this motion, I should exclude from consideration everything else. I should exclude from my consideration what the judge said about the Hon. A. E. Armstrong. What His Honour said is his comment on the evidence that he heard. I should myself be looking at the evidence to see what the Hon. A. E. Armstrong had said and had written.

It may be that this is the way that the Minister will approach the matter: let me assume for a moment it is. I should suggest to you that it is difficult indeed to see how that evidence given by the Hon. A. E. Armstrong on oath, and the documents that he swore were his documents, could be received by a court of appeal in any way which depended on what this House thought about it. I find it extraordinarily difficult—indeed, impossible, at the risk of having my ignorance disclosed—to imagine how it could be that an appeal from Mr Justice Street's judgment could result in a finding that the Hon. A. E. Armstrong's sworn evidence before the court, and his own documents before the court, could be otherwise than acceptable to the Court of Appeal. I do not think there is anything that I could usefully add. I hope that what I have said will perhaps help you, Mr President.

The Hon. R. R. DOWNING: I do not propose to discuss the question of how you should rule, Mr President, but I should like to make a few observations. Though all that the Hon. B. B. Riley has said of his

past association as counsel and barrister at the bar will be appreciated by the legal profession, I have some reservations about how far it will be accepted as impartial by the lay community. The Hon. B. B. Riley should realize that. Had I been in his position I should have been most reluctant to come along with a well-prepared brief to support the President's ruling. To that extent, I believe that the Hon. B. B. Riley has shown ill-judgment in the comments he has made on this matter.

The honourable member submitted that it is a matter for your discretion, Mr President. I should like to hear your ruling on it. It is for you, and for you alone, to decide whether the statement by the Hon. A. E. Armstrong brings the present discussion on this matter into the rule that has been referred to by yourself and the Hon. B. B. Riley. I only say that you might direct your attention to what extent, if any, the defamation action that the Hon. A. E. Armstrong referred to is tied up in the ruling that you might give.

While I agree with the statement by the Hon. B. B. Riley that these things are unlikely to influence the Court of Appeal, if there is any question of a jury action that is in any way related to this, then that is a matter on which I think some honourable members would put some views before you. So far as a jury action is concerned, I feel that this is a responsibility you must take. You have to weigh that aspect, and it is your responsibility to decide whether in the circumstances, the matters raised by the Hon. A. E. Armstrong are *sub judice*.

That is the only comment that I should like to make in respect of the matters raised by the Hon. B. B. Riley. It is a matter for you, Mr President. Obviously it has been well considered by you, and obviously well prepared, in advance, by the Hon. B. B. Riley. I am sorry that I must feel that the Hon. B. B. Riley's decision to take part in this debate on this matter at this stage does the legal profession no good service in the minds of the lay community in this State.

The Hon. A. E. ARMSTRONG: Mr President——

The PRESIDENT: Order! The honourable member cannot speak twice. I have given this matter very careful consideration and I feel that the decision I must make is whether the consideration by the House today of this motion will prejudice or influence in any way the court or courts—there are a number of courts which may deal with various matters mentioned by the Hon. A. E. Armstrong. I am satisfied it will not. Therefore, I disallow the point of order and declare the motion in order.

The Hon. A. E. ARMSTRONG: I have a second point of order, Mr President. My second point of order is that the motion is unconstitutional and beyond the power of this Council. I have been advised by eminent senior counsel, whose written opinion I have. He has told me, also, that if this motion is passed, I may immediately approach the Equity Court to have it declared invalid. I shall now, with the House's permission, read the opinion. Is that in order, Mr President?

The PRESIDENT: Yes.

The Hon. A. E. ARMSTRONG: This is the opinion:

I have considered the question whether the Legislative Council possesses a general power of expulsion of a member for reasons related to the evidence given by Mr Armstrong in the litigation *Barton v. Armstrong* and/or in view of comments made by a judge upon the conduct and credit of a witness in proceedings before him.

It is well settled that the power of suspension or expulsion of a legislature such as the Legislative Council is defensive and not punitive. The power exists only so far as is necessary to enable the orderly conduct of the business of the legislature. The Privy Council in denying the existence of any general and unrestricted power of suspension has said, "A power of unconditional suspension, for an indefinite time, or for a definite time depending only on the irresponsible discretion of the Assembly itself, is more than the necessity of self-defence seems to require and is dangerously liable, in possible cases, to excess or abuse". *Barton* v. *Taylor* 11 A.C. at 205.

In the light of the judgment in *Barton v. Taylor* (supra) and other relevant cases which I have considered, I can see no reasonable argument to justify the existence and, even less, the exercise of a power of expulsion for "conduct adjudged by the Council" to be unworthy of a member of the Council. To concede such a power of expulsion would concede to the

majority in the Council the power to say, at any time, of any other member "we adjudge him guilty of conduct unworthy of a member of the Council" without saying why and thereupon to expel that member. This would be a novel method of eliminating the Opposition.

Accordingly, I am of opinion that the Council has no power to expel a member for conduct which it adjudges to be unworthy of a member and, in particular, because of evidence given by a member in Court or of comments made by a judge upon the character of a member of the Council. Even if my conclusion be erroneous and a general power did exist to expel a member for reasons unrelated to the conduct of the member in and about the Council or in relation to the conduct of the business of the Council, it could, in my opinion, only be exercised after a full enquiry into the relevant facts by the Council itself or a Select Committee thereof and not simply because the Council is content to accept a judge's comments as correct.

I therefore ask you to declare debate on the motion not allowable, on those grounds.

The PRESIDENT: Order! I am satisfied that the House does have the power to deal with this motion. I refer only to the fact that the Legislative Assembly on three occasions has dealt with a matter similar to this, and has carried motions expelling members. Those motions by the Legislative Assembly never were challenged. I feel that there is conclusive evidence that this House has the same powers as the Legislative Assembly, and therefore I cannot uphold the point of order.

The Hon. J. B. M. FULLER: The suit I referred to earlier had its origin in a dispute between two men for the control of a public company. The plaintiff, Mr Alexander Barton, was the managing director of that company known as Landmark Corporation Limited, and the first defendant, the Hon. Alexander Ewan Armstrong, was the chairman of directors. The hearing of this case in the equity jurisdiction extended over fifty-five court sitting days in the latter half of 1968 and the transcript of evidence totals something in the vicinity of 1,500,000 words. During the hearing of the case the press gave a great deal of publicity to various aspects of the evidence and cross examination. The judgment, handed down on 19th December, 1968, covers ninety-five foolscap pages and copies have been available—the judgment being a public document. Incidentally, on Friday, 14th February, I informed the Leader of the Opposition that there was a full copy of the transcript of the evidence available to him as the Leader of the Opposition in the Legislative Council.

Mr Barton was one of the plaintiffs and the effective plaintiff. The statement of claim sought a declaration that the deed of 17th January, 1967, and certain supplementary documents of 18th January, 1967, were executed under duress and that they were accordingly void. Mr Barton alleged that he executed the documents against his will and because he was in fear for his life and safety and the life and safety of his family. He alleged that threats and actions by Mr Armstrong occurred during the weeks preceeding 17th January, 1967, while the negotiations leading up to the deed were being carried on by the solicitors of the opposing groups.

In law, two main questions arose: first, did Mr Armstrong threaten Mr Barton; and, second, was Mr Barton intimidated by Mr Armstrong's threats into signing the deeds of 17th January, 1967? Mr Barton being the plaintiff, he bore the burden of proving his case. In order to succeed he had to satisfy the court that both of those questions should be answered in the affirmative. He had to show that his consent to the agreement was not freely given. It was not enough to prove that Mr Armstrong had threatened him: if he succeeded in doing that, he still had to show that in addition it was because of those threats he had signed the deed. The burden of proof was not the criminal burden of establishing his case beyond all reasonable doubt, but the lesser civil burden of establishing it on the balance of probabilities. Mr Barton succeeded on the first question but failed on the second. Therefore, his suit was dismissed. Both Mr Barton and Mr Armstrong gave evidence, and the evidence of each conflicted directly with the evidence of the other on innumerable matters. The credit of each witness was therefore of great importance, and was carefully considered by the judge.

I am here concerned only with the question of Mr Armstrong's credit. As to this Mr Justice Street in his judgment made the following remarks:

A strong and sustained attack was made upon Mr Armstrong's credit. Topics upon which he was challenged were many and varied. Some of the attacks did not succeed. But after hearing Mr Armstrong cross-examined over a period of some days, and observing him in the witness-box, I cannot treat his evidence as reliable. In some respects, perhaps in many respects, what he has sworn to in the witness-box can be seen, by reference to other evidence or on the probabilities, to be true. But I think so little of Mr Armstrong's credit that I am satisfied that on any point of importance he would not hesitate, if he thought it necessary for his own protection or advantage so to do, to give false evidence. This is a conclusion not to be lightly reached or stated, and I should make reference to some of the matters that have led me to it.

Counsel for the plaintiff had available to him in cross-examining Mr Armstrong a quantity of notes and memoranda written by Mr Armstrong over recent years. It was these that provided a great deal of the material relied upon in the attack on Mr Armstrong's credit. They were not shown to Mr Armstrong at the commencement of his cross-examination. Indeed, he had no fore-knowledge that any such documents were in the plaintiff's possession, nor was he at any stage of his cross-examination aware of the extent of the documents in the plaintiff's possession. I have the strong impression that on a number of topics such answers as he gave that were true, and such admissions as he made at times, were due to his anxiety lest he be confronted with some inconsistent document in his own handwriting. It was concern at the prospect of such confrontation rather than recognition of his obligation under oath to tell the truth that induced him to give true answers on some matters upon which he would have preferred to dissemble. This finding tends to support the acceptance of Mr Armstrong's evidence because, for whatever reason, he feared to tell anything other than the truth.

Mr Justice Street then went on to mention, on page 7 "the more significant topics which demonstrate Mr Armstrong's unworthiness to be regarded as a reliable witness". Those topics were three in number. First, the part that Mr Armstrong played in the obtaining of evidence in a pending divorce suit. Second, Mr Armstrong's evidence regarding the events subsequent to the divorce. Third, evidence given by Mr Armstrong when he was asked some questions about his views on bribery. I shall deal with each of those three topics in turn.

In relation to the part played by Mr Armstrong in the obtaining of evidence for a divorce suit, the suit in question was heard by Mr Justice Dovey on 25th June, 1962, and he delivered his judgment on that day. Before going further, I think I should make some preliminary observations. Apart from Mr Armstrong, there were three other people closely connected with this divorce matter. They were the wife petitioner, who for the purposes of these proceedings can virtually be ignored, the husband respondent, Mr Eskell, M.L.C., who was a business associate of Mr Armstrong, and Mrs Cleary. The part played by Mr Armstrong was played in conjunction with the husband and Mrs Cleary. Neither the husband nor Mrs Cleary gave evidence before Mr Justice Street; and that fact by itself is enough to make it important to grasp two things firmly. I say "that fact by itself" meaning that fact regardless of Mr Eskell's position as a member of this House. The two points that I wish to make are, first, that Mr Justice Street did not hear the husband's or Mrs Cleary's version of the relevant events, and so recorded in his judgment in these words at page 9:

I am not concerned in this case to pronounce judgment upon the morality or the criminality of the part played by Mr Armstrong in the events leading up to this divorce. In fairness to his associate and to the woman concerned I should record that their version of the events has not been heard. Mr Armstrong being, as I have said, a man of little credit, I should point out that his oral evidence and his notes of 25th June, 1962, do not necessarily establish the truth as against these other two persons.

Second, Mr Justice Street's conclusion was formed on what appeared from contemporary notes made by Mr Armstrong and the evidence given before him by Mr Armstrong—and on nothing else. It was stated in these terms: after having referred to the contemporary notes that I have mentioned, His Honour proceeded at page 9 of the judgment:

The notes record other facts and contain other comments, but I have quoted sufficient to demonstrate that Mr Armstrong, by his own document, is implicated on what, according to this document and to his evidence, can only be regarded as an arrangement to procure evidence for the Divorce Court. And the arrangement was one which, in Mr Armstrong's belief, was to procure false evidence.

This matter appeared to Mr Justice Street as follows, as appears from page 8 of his judgment. He said that Mr Armstrong

. . . was cross-examined at some length on the part that he played in the obtaining of evidence in a pending divorce suit. When the whole story was unfolded as his cross-examination proceeded he is exposed as a man having little regard for the need to preserve the integrity of court proceedings and for the obligation of a party to court proceedings to present a true as distinct from a manufactured case. It seems that an associate of Mr Armstrong's was the respondent in proceedings brought by his wife in the Matrimonial Causes jurisdiction seeking disolution of marriage. He was anxious that his wife should obtain a divorce, and he approached Mr Armstrong to help him to provide his wife with evidence of adultery. It is to my mind clear that his request to Mr Armstrong was directed to obtaining false evidence in the form of a false confession; I have no doubt that it was in this sense that he made the request and Mr Armstrong acceded to it. Mr Armstrong in fact complied with this request of his associate, but, providentially, the plan went astray and Dovey, J., before whom the matrimonial cause was heard, was disturbed at some aspects of the evidence, and expressed some criticism of them.

I should like to mention at this stage that in respect of any alleged involvement of the Hon. S. L. M. Eskell in any wrongdoing appearing from the transcript of evidence or the judgment in the Barton *v.* Armstrong case, my colleague the Attorney-General has obtained through the Crown Solicitor the advice of senior outside counsel, Mr J. P. Slattery, Q.C. In the judge's view, "Mr Armstrong prevaricated when first asked about the part he played in connection with this divorce." Mr Armstrong's prevarication, or evasiveness, is not material for present purposes, but the judge here refers to evidence given by Mr Armstrong in cross-examination before he was confronted by a document dated 30th June, 1962, which he agreed was in his handwriting. This appears from page 779 onwards in the transcript of evidence.

The portion of that document relevant to this topic is set out by Mr Justice Street in his judgment. It reads as follows:

(1) In January, 1962, Eskell asked A. to ask Mrs C. if she knew anyone who would admit to adultery with him to hasten his divorce case.

(2) After discussion C. agreed to sign a confession of adultery and did so at Twigg's office in February, 1962.

(3) Mrs C. told Eskell her sole motive was to help me by assisting him to clear up his divorce and work well with me as she thought he and I would make a good team in business.

. . . . .

(5) At a meeting in February Eskell told Cleary that he and his wife had agreed to an amicable divorce, but his wife did not need to know who the co-re was or anything about her. He also expressed concern over Cleary's future security and suggested A. should provide for it.

The whole text of the document can be gathered from the transcript, at pages 779 to 786.

The Hon. C. A. F. CAHILL: What was this from?

The Hon. J. B. M. FULLER: This was from a document that was produced in court and referred to by Mr Justice Street in his judgment. It is said to be in Armstrong's handwriting. I have quoted the relevant part that Mr Justice Street included in his judgment. After being cross-examined on the document Mr Armstrong then gave evidence that I shall now read from the transcript. At page 786 he was asked:

Q. Will you admit now that you agreed with Mr Eskell to procure Mrs Cleary to provide a confession of adultery in this matter? A. No. I did not procure Mrs Cleary. Mr Eskell and Mrs Cleary made their own arrangements.

Q. That is untrue, isn't it? A. No, it is not.

Q. The first approach was made by Mr Eskell to you? A. To ask Mrs Cleary would she help him in so doing. From then on I left it between the two of them. I did not want to know any more about it.

Q. And did not Mr Eskell come to you to ask you could you provide divorce evidence? A. No. He asked to ask Mrs Cleary could she provide divorce evidence.

Turning to page 787 of the transcript, Mr Armstrong was asked:

Q. You see, Mr Armstrong, I put to you some suggestions of a very serious kind. Firstly, I have suggested to you that you were a party to a conspiracy to provide evidence intended to have the effect of misleading the Divorce Court. Do you admit that or deny it? A. I think it would be fair to say that I knew something which might have been intended to mislead the Court and possibly—had I been perhaps more wise than I am—had I been as wise

then as I am now I would have gone to Mr Justice Dovey in his chambers before the case and acquainted him of the fact.

Q. And your understanding of that is that he was suggesting that you should find someone who would provide false evidence. A. I still do not know whether Mrs Cleary and Mr Eskell did commit adultery or whether they did not, to this day. So I do not know how I could be party to this. I do not know what they did before I met them.

Q. Look, sir, the fact is that Eskell came to you not for the purpose of asking whether Mrs Cleary would admit to adultery but for the purpose of asking whether Mrs Cleary would find someone who would admit to adultery? A. Whether she would help him to find someone, yes.

This is the record that appears at page 788 of the transcript:

Q. Mr Armstrong, you see, what Mr Eskell asked you in January, 1962, was whether Mrs Cleary knew anyone who would admit to adultery with him, to hasten his divorce case. That was the question, wasn't it? A. I think he asked both of us whether we knew anyone.

Q. Mr Eskell, according to your notes in your own handwriting in January, 1962, asked you to ask Mrs Cleary if she knew anyone who would admit to adultery: That is what happened, isn't it? A. He asked us to see if we could help him in his divorce case, yes.

Q. Can you explain to His Honor any reason why Mr Eskell should ask you to ask Mrs Cleary, of all people, if she knew someone who would admit to adultery? A. No, I cannot explain any reason why he would do that. He was friendly with both of us and trusted us both, I take it.

Q. The one thing that would be clear to your mind was that what Mr Eskell was asking was for false evidence of adultery, wasn't it? A. Not at that time, I would not have—I did not at that time—I was unwise and did not take it as seriously as I possibly do now or even later.

Q. But your belief at the time was that he was asking for false evidence of adultery, wasn't he? A. I think possibly, yes.

Q. And that is what you agreed to provide? A. Mrs Cleary agreed to provide it, apparently.

Q. To your knowledge the confession which she signed was false and fraudulent, wasn't it? A. I do not know. I do not know whether it was or not. I cannot say to my knowledge whether Mrs Cleary and Mr Eskell committed adultery or not. That is something I do not know.

Q. When you became aware of that confession you believed that it was signed pursuant to the request of Mr Eskell which you have mentioned in paragraph 1 of your notes? A. Probably, yes.

Q. And that was a request for false evidence, wasn't it? A. Apparently, yes, at that time, yes.

At page 802 of the transcript Mr Gruzman questioned the Hon. A. E. Armstrong in this way:

Mr GRUZMAN: Q. Mr Armstrong, I suppose that after Mr Eskell approached you about asking Mrs Cleary to get some evidence you spoke to Mrs Cleary? A. I can't recall that. It may be in those documents that you have there.

Q. Well, you have had your mind well refreshed about these matters now, haven't you? A. It is still very hard for me to remember them, you see. I didn't know of those documents, which have obviously been stolen. I had forgotten that they ever existed, to be quite frank. It would certainly help me if I saw them. It would help me if you were to show them to me.

Q. I would like you to see what you can tell His Honour of your own recollection? A. I can't recall at this stage whether an approach to Mrs Cleary was made—whether we both approached Mrs Cleary together. I take it that either one of us, or both, made an approach to Mrs Cleary.

Q. Just your recollection? A. The best recollection I can, as paraphrased, I may have said to Mrs Cleary "Stan and his wife both want a divorce. Could you help them out", or something to that effect.

Page 803 of the transcript contains this record:

Q. But she eventually agreed to do it? Did she eventually agree? A. She certainly must have. It was also—I would like to say, if I may assist the Court in this way, that the instructing solicitor, Mr Twigg, well knew that this was a peculiar situation. Shall I put it that way?

Q. I direct your attention to this portion of the notes where it says "After discussion C agreed to sign a confession of adultery and did so at Twigg's office in February, 1962." A. This is what I believe. These are things I believe. I don't know if they are facts.

At page 819 the Hon. A. E. Armstrong was asked:

Q. The arrangement was to produce false evidence? A. The arrangement that Mrs Cleary and Mr Eskell entered into apparently had that effect.

Q. You understood in helping with that you were helping Mr Eskell? A. I was helping a colleague, yes.

At page 830 of the transcript the honourable member was also asked:

Q. After your divorce—the Eskell divorce was over, did you feel that you would have to be extremely careful in any further Court proceedings? A. No, I did not think so.

Q. Did not you realise that to mislead the Court was a serious matter? Yes, I was very correct from then on. I thought—I certainly would never have had an arrangement like this again.

Q. In fact, you would not seek to deceive a Court at all after that, would you? A. No.

Q. Very correct and very careful? A. Yes.

Q. How long have you been in Parliament? A. Since 1952.

Q. Continuously? A. Yes. I think 1952.

Q. So that as at 1962 when these events took place you were a Parliamentarian of some ten years' standing? A. Yes.

Q. And up to that time you had not realised that it was a serious matter to mislead the Court? A. Apparently I did not attach the weight of misleading the Court in divorce proceedings as perhaps I should have.

Having read those extracts from the transcript, may I remind the House again of the conclusions to which Mr Justice Street came. I shall read again from page 9 of his judgment:

The notes record other facts and contain other comments, but I have quoted sufficient to demonstrate that Mr Armstrong, by his own document, is implicated in what, according to this document and to his evidence, can only be regarded as an arrangement to procure evidence for the Divorce Court. And the arrangement was one which, in Mr Armstrong's belief, was to procure false evidence.

The House may well think that these remarks of the judge are indeed fully supported by Mr Armstrong's own document and evidence. The second topic of the Hon. A. E. Armstrong's evidence regarding the events subsequent to the divorce are set out in this way on pages 9 to 11 of Mr Justice Street's judgment:

Another matter pointing strongly to the discredit of Mr Armstrong is his evidence regarding the events subsequent to the divorce. There was some publicity given to Dovey, J's, criticism of the evidence before him. It seems that the learned Judge was suspicious of the veracity of the evidence of adultery, and in particular of the reliability of the signed confession. Mr Armstrong was concerned at the possible consequences of the Judge's criticism and, in particular, about their effect upon him. He sought advice as to the course that he should adopt with a view to minimising the possible harmful effect upon himself. It was for the purpose of seeking this advice that he prepared the notes dated 30th June, 1962, from which I have already quoted some extracts. The notes contain a series of questions about which he sought advice, and some references to possible courses of action. These questions include the following:

(1) What was the reason for Dovey making a fuss over the case.

. . . . . .

(6) Remember case can be re-opened up to September 25.

(7) Keep very quiet for a time and let matter drop.

(8) If Eskell pushed too far may put A. E. A. in as well.

(9) What do we want to achieve
(a) Save Alex (b) Punish Eskell

. . . . . .

(11) Would like to know why Dovey so rough on case.

. . . . . .

(13) Can we attack or bribe Dovey.

Mr Armstrong was strongly attacked in cross-examination upon (13), namely, "Can we attack or bribe Dovey". The strength of the attack was that he is a man with so little regard for integrity and honesty that he would contemplate stooping to bribery to achieve a desired result. To quote from the judgment:

This is a valid and well-founded criticism. He is, by his own contemporaneous note, shown to have given at least a passing thought to the prospect not merely of bribery, but of bribery of a member of the Bench, an institution upon the absolute integrity of which, as Mr Armstrong must have been well aware, the preservation of the rule of law in this community is so essentially dependent. Mr Armstrong in his evidence sought to disclaim that he had seriously had in mind any such attempt as is recorded in his note. He was, however, asked some questions about the matter.

I shall refer in a moment to the evidence which appears in the transcript. Before doing so I think I should point out that the previous topic discussed by the judge was participation in an arrangement to procure false evidence, and that this second topic is the contemplation by Mr Armstrong of the bribery of a judge. These are both matters which would cause any judge great concern —as indeed, I feel, they would to any responsible member of the community. So concerned was His Honour by the raising of this topic in the course of the hearing that he took the exceptional course of making a pronouncement upon it during the course of the evidence. I quote from page 819 of the transcript.

1. There is no suggestion any attempt of bribery ever came to the knowledge of Mr Justice Dovey.

2. At the slightest shadow of any suggestion of attempted bribery coming to his notice Mr Justice Dovey, as would any other Judge, would have taken prompt and effective steps to deal with the persons involved.

3. There is no instance or suggestion of bribery of a Judge in the whole 150 or more years of judicial history of this State.

4. It is totally and absolutely unthinkable that this could ever occur.

I mention these matters because to me they emphasize the importance of this House looking not merely at the judgment of Mr Justice Street but at Mr Armstrong's own documents and his own evidence. I invite the House to decide this question on those documents and that evidence—not on what the judge said about them. I turn now to the transcript. Early in his cross-examination by counsel for Mr Barton, Mr Armstrong gave the following evidence. I quote from page 766:

Q. Is it true that you would go as far as death? A. Definitely not.

Q. Conspiring to mislead justice? A. No.

Q. Atttack anybody in any high position, including Judges? A. Certainly not, sir.

Q. There is no possibility of any truth in that? A. That would be correct.

Q. Neither in thought nor in action? A. Neither in thought nor in action.

On the same day, after cross-examining Mr Armstrong on the first topic that I have mentioned, counsel for Mr Barton turned to events after Mr Justice Dovey's judgment was delivered and asked Mr Armstrong whether he had then consulted Mr Frank Browne, the journalist and author of *Things I Hear* about that matter. This is recorded in pages 797 to 798 of the transcript. Mr Armstrong said he could not recall having done so, that he might have —at pages 798, 799 to 800—but thought that he had not. This was at page 800. He said to counsel—at page 800—"if you have got some written notes there you may be able to refresh my memory, but at the present time I have no clear recollection of going to Mr Browne about the matter". On the next day the following evidence was given. This appears at page 808:

Q. Did you ever consider bribing a Judge? A. Never.

Q. If you thought that it would serve your ends would you consider bribing a Judge? A. Well, I suppose—I don't know what documents are down there. I suppose I had better say it may incriminate me if I answer that. I don't know what I thought.

HIS HONOR: I won't uphold privilege on that.

WITNESS: I don't know what I thought about it.

Mr GRUZMAN: Q. If you thought it would serve your ends would you consider bribing a Judge? A. If I thought and would I consider? These are terribly hypothetical propositions—what goes through one's mind at some particular time. It is what you do, I think, that counts, isn't it?

HIS HONOR: I think the question is able to be answered, Mr Armstrong.

WITNESS: What is the question again?

Mr GRUZMAN: Q. If you thought it would serve your ends would you consider bribing a Judge? A. Do you mean would I think about it?

Q. Yes. A. I suppose I might think about it. There are many things one might think about and doesn't do.

Q. So that if a Judge stood in your way or annoyed you one of the matters you would consider would be whether you could bribe him? A. I don't like the word "consider". I said it could be possible I would think about it.

Q. Bribing him? A. I could think about it. I am not saying that my mind is so pure that I would not think about it.

Q. And, having thought about it, the main question would be whether it was possible to bribe the Judge? A. I don't know what you mean by that.

At page 809:

Q. Did you give consideration to bribing Mr Justice Dovey? A. Certainly not.

Q. There was no question of that? A. No question of that at all.

At page 810:

Q. Do you remember I asked you yesterday did you go to see Mr Frank Browne? A. Yes. I think I said I did, didn't I? You can perhaps remind me of my answers.

Q. Did you go to see Mr Frank Browne in connection with Mr Justice Dovey? A. Mr Frank Browne and Mr Justice Dovey? After yesterday, last night I gave this some thought.

Q. You say that, having considered the matter overnight, you now have a recollection of consulting Mr Frank Browne about Mr Justice Dovey? A. Yes, I think I did.

Q. Did you discuss with Mr Browne the question of bribing Mr Justice Dovey? A. I don't think so.

At page 811:

Q. But you may have done so? A. I don't know. You have got access to the notes. You had better show them to me so that I can refresh my memory.

Q. And I think you have already told us that you would never contemplate bribing a Judge in your sense of the use of the term? A. I don't think I would. I don't think a Judge would take a bribe for a start, anyway. But let us look at the notes. You may have forged them. You might have something there.

Mr Armstrong was then shown a document which he agreed was in his handwriting. I will read from the transcript on page 812:

Q. Have a look at para. 13 on the second page. The second page is also in your handwriting, isn't it? A. That is right.

Then at page 813:

Q. Did you write this "Can we attack or bribe Dovey?" A. I told you it may have passed through my mind at that time.

Q. The heading of the document is "Browne" isn't it? It is Browne? A. Yes. It must have passed through my mind. I don't know whether I discussed it with Mr Browne.

Q. So that the notes you prepared for your interview with Mr Browne contained, as para. 13, the question "Can we attack or bribe Dovey?" A. It apparently must have, yes.

Q. And that was one of the matters of discussion between you and Browne? A. I can't recall the discussion on this point now. It could have been, but I don't recall it. I would not like to say what I said to Mr Browne or he said to me. It is so long ago. I just don't recall it.

Q. Was the question of amount discussed? A. No, I can't remember any amount.

Q. Just try and help His Honor, if you can? A. I really can't on that matter. I don't think Mr Browne thought that anything could be done in this regard, but I can't recall.

Q. It was given thought, but it didn't seem to be a very good one? A. I don't recall clearly the discussion with Mr Browne.

Q. You would have been perfectly happy to do it if Mr Browne had said Mr Justice Dovey was that type of person, wouldn't you? A. No. I don't know whether I would or would not.

Q. It was your thought wasn't it? A. As I say it must have passed through me. It must have passed through my mind, otherwise I would not have committed my thoughts to writing, which I often do. Would you like to have all your thoughts committed to writing?

Q. The question was whether you could ever discipline a Judge or buy him off. Those were the thoughts in your mind, weren't they? A. I didn't want to buy the Judge off particularly. At that time I really don't know. All I know is what is written on this paper—on these sheets of paper—showing what thoughts were in my mind at that time. I just don't know. That is all. I can't tell you any more. You have got what is written on the paper. That is what is written on the paper.

I must now remind the House of the evidence given by Mr Armstrong before he was shown the document in his own handwriting. At page 808 the transcript states:

Mr GRUZMAN: Q. If you thought it would serve your ends would you consider bribing a Judge? A. Do you mean would I think about it?

Q. Yes. A. I suppose I might think about it. There are many things one might think about and doesn't do.

Q. So that if a Judge stood in your way or annoyed you one of the matters you would consider would be whether you could bribe him? A. I don't like the word "consider". I said it could be possible I would think about it.

Q. Bribing him? A. I could think about it. I am not saying that my mind is so pure that I would not think about it.

Q. And, having thought about it, the main question would be whether it was possible to bribe the Judge? A. I don't know what you mean by that.

In that passage of his evidence Mr Armstrong was apparently distinguishing between two mental processes—on the one hand, having a proposition enter one's mind only to be immediately rejected, and on the other hand, considering a proposition and weighing whether or not it should be adopted. This is undoubtedly a valid distinction. But it is impossible to say that one has thought about a proposition only for the purpose of immediately rejecting it if one has written that proposition down as a subject for discussion with a person whose advice one is about to seek.

Topic three deals with evidence given by Mr Armstrong when he was asked some questions about his views on bribery. In connection with this topic Mr Justice Street merely quoted a passage from Mr Armstrong's evidence in cross-examination which I shall read to the House from the transcript in a moment. Before I do that I should point out that on the second day

of his cross-examination, which lasted for the better part of eight days, Mr Armstrong was asked by counsel, at page 806, "You are a man who will indulge in bribery, aren't you?" Mr Armstrong's counsel objected to this question. His Honour warned Mr Armstrong that this general question, and presumably later questions that would follow it related to a matter which was a criminal offence and that Mr Armstrong was not obliged to answer questions if he feared that his answers might incriminate him. After an adjournment to enable Mr Armstrong to speak to his counsel, the question was repeated and Mr Armstrong's answer, at page 806, was, "I think I had better refuse to answer that question". There was further discussion and the question was then again repeated at page 807. At page 807 Mr Armstrong then claimed privilege. The judge asked him what was the nature of the self-incrimination which he feared might be involved if he were made answer the question. This also is at page 807. At Mr Armstrong's request, the question was again read to him. At page 807 the transcript proceeds as follows:

WITNESS: Can I put a hypothetical proposition to your Honor? I don't understand the situation. This is the first time in any Court —I have certainly never been in a criminal Court in my life. Can I put a hypothetical situation to Your Honour? Assume at some stage I had given a policeman in my life something in respect of a speeding charge and I answer this question, that I never indulged in bribery, I would be telling an untruth, wouldn't I?

At page 808:

HIS HONOR: Yes.

WITNESS: So if I answer this question "never" I would be telling an untruth. I believe that it would be fair to say—I am just talking aloud in this matter—it would be fair to say that at some stage I may have indulged in a mild case of bribery of that type. If I answer "Yes" to that question, if that is all that is meant, I am prepared to say that I have at certain times done mild things of that type. If you could inform me that by answering "Yes" I would not be incriminating myself in any criminal prosecution I am quite prepared to answer "Yes" to the question, if you give me your assurance that it will protect me——

HIS HONOR: I don't think I should require an answer from the witness on this question, Mr Gruzman, but it is open to you, as I have indicated, to put whatever other questions you wish to put.

I uphold your claim to privilege, Mr Armstrong, on that question.

Mr GRUZMAN: Q. Have you bribed a policeman? A. Again I claim privilege on my oath.

Q. Because you fear that the answer to the question may incriminate you? A. Yes.

HIS HONOR: I will not compel the witness to answer that question, Mr Gruzman.

Later in the day the evidence was given which Mr Justice Street, as I have said, set out in his judgment and which I will now read from the transcript at page 827:

Q. And I suggest to you it does not matter whether it is bribing a policeman for a speeding fine—that does not affront you, does it? A. I do not think it is a very serious matter to do—for a speeding fine. I do not recollect that I have ever done it.

HIS HONOR: Q. I did not hear that. A. I do not think that to offer a policeman anything for a speeding fine is a very serious matter. I do not recollect ever having done it myself. I have heard of it occurring.

Mr GRUZMAN: Q. Are you prepared to swear that you have never offered a policeman something for a speeding offence? A. I do not think I have ever offered him—anyone anything for a speeding offence.

Q. Are you prepared to swear positively that you have never offered a policeman anything in respect of a speeding offence? A. Well, I do not think I should swear anything that I cannot absolutely recall having never done. No, I would not be prepared, but I do not think I have.

At page 828:

Q. It is a possibility? A. I do not think I have on my own behalf.

Q. On whose behalf have you? A. I cannot recall that. Might have been someone that I wanted to help or something like that. I do not think I have ever done it on my own behalf.

Q. You think you may have bribed a policeman in respect of a speeding offence for someone else? A. I do not know. I cannot recall. I do not think I have.

Q. You may have? A. Possibly. I do not think so. I would not go on my oath that I have not.

Q. It is certainly not the sort of proceeding which would affront you? A. I do not know what you mean by "affront". I would not think it was a terribly serious offence. It is a thing better not done.

Q. But it is the sort of thing that men do? A. I think it does occur. I do not know.

Q. You see no real harm in it? A. I do not think it is a good practice.

Q. But you see no real harm in it? A. When I was younger I may have taken it less seriously that I do now.

Mr Justice Street's comment on this topic at pages 12 and 13 of the judgment was as follows:

I reiterate that I am not concerned with questions of morality. I have simply to evaluate whether, in the light of this confessed attitude towards bribery, Mr Armstrong is a man who would shrink from distorting his evidence on oath to suit his own purposes if he thought he could safely do so. The result of this evaluation I have already stated.

If I may now summarise the effect of what I have told the House and read to the House so far, the position is this: Mr Armstrong's own documents and evidence demonstrated to the court three things. First, that he was party to an arrangement which he believed to be an arrangement to procure false evidence for the divorce court. It is only fair to point out that he did deny, at page 782 of the transcript, that he knew the confession signed by Mrs Cleary to be false. But the important point is that, whether or not Mr Armstrong was mistaken in his belief, the fact was that he did believe the arrangement to be an arrangement to procure false evidence. Second, his documents and evidence demonstrated to the court that Mr Armstrong entertained as a real possibility the bribery of a Supreme Court judge. Third, they demonstrated his views on bribery in general. Consequently, the court, at page 7 of Mr Justice Street's judgment, was satisfied about Mr Armstrong, "that on any point of importance he would not hesitate, if he thought it necessary for his own protection or advantage so to do, to give false evidence". But that was not the end of the case: the judge had to decide the two main questions which I have already stated. His Honour's approach to those questions was described by His Honour in these words at page 13 of the judgment:

There are many other unsatisfactory features in Mr Armstrong's evidence indicating that reliance cannot safely be placed upon his word. This view of Mr Armstrong's credit does not, however, necessarily result in his failing in the suit. To a substantial extent success or failure for Mr Barton depends upon the view which I hold of Mr Barton's credit. He has deposed to a series of events, to actions taken by him, and, in particular, to the reasons which led him to sign the agreement under challenge. In so far as the evidence given by Mr Barton implicates Mr Armstrong in acts of intimidation Mr Armstrong's evidence is confined for the greater part to simple and direct denials. My conclusion that Mr Armstrong is a witness of little credit does not of itself result in my rejecting Mr Armstrong's denials simply because I am not disposed to believe them. Mr Barton's evidence itself must be carefully analysed and evaluated to see whether or not it should be accepted. If I had regarded Mr Armstrong as a witness of credit then his denials could well have been significant in my deciding whether or not Mr Barton's evidence is to be accepted; the denials would have to be weighed as a factor against accepting Mr Barton's evidence. As it is, however, Mr Armstrong's denials are of little, if any, weight; but it still remains for me to evaluate the evidence given by Mr Barton. This necessitates an examination of his credit.

The judge then considered various matters bearing on the credit of Mr Barton, and then went on to say this:

There are many other points in the mass of evidence casting doubt upon the reliability of Mr Barton's testimony. I am satisfied that most of Mr Barton's inaccuracies are due either to faulty recollection or to some bona fide distorted reconstruction. I regard his credit as superior to that of Mr Armstrong. He believes in the truth and justice of his case. But that belief is self-induced rather than being based on fact. His evidence must accordingly be regarded as suspect.

In association with these conclusions upon Mr Barton's credit I have also formed some general conclusions upon the whole of the case presented by him. It will be convenient to state these now, before proceeding to an analysis of the course of negotiations and to other aspects of the suit.

At page 16 of the judgment His Honour said:

I have the general impression that the account given by Mr Barton in his evidence is founded upon fact, but that he has, in going over and over in his mind the events of December, 1966—January, 1967, reconstructed an unreal relationship between the events of that time. I accept that he was being subjected to threats and intimidation by Mr Armstrong. I accept that these were current during the course of the negotiations. I accept hat he was in fear for the safety of himself and his family both before and certainly after his first contact with Vojinovic over the telephone on 7th January, 1967. I accept that on 17th and 18th January, 1967, documents were executed whereby the interest of Mr Armstrong and his companies in the Landmark undertakings was purchased by Mr Barton and his nominees and

by Landmark. I do not accept, however, that Mr Armstrong's threats and intimation were intended to coerce Mr Barton into making the agreement, nor that Mr Armstrong's threats and intimidation had the effect of coercing Mr Barton to make the agreement.

As I mentioned earlier, the judgment extended to 95 pages. On pages 91 and 92 His Honour stated his conclusion on the whole case as follows:

I return to the two main questions that I propounded at the commencement of these reasons, namely, did Mr Armstrong threaten Mr Barton and, second, was Mr Barton intimidated by Mr Armstrong into signing the agreement. I am satisfied that Mr Armstrong did threaten Mr Barton. But I am not satisfied that Mr Barton was intimidated by Mr Armstrong's threats into signing the agreement. The threats themselves were such as might well have intimidated the recipient into signing an agreement such as this, and I am satisfied Mr Barton was throughout the relevant period in real and justifiable fear for the safety of himself and his family. This fear was induced to a significant extent by Mr Armstrong's acts; it was enhanced by the Vojinovic incident, but this was not proved to my satisfaction to be an incident for which Mr Armstrong was responsible. It was not Mr Barton's fear that drove him into the agreement. I am satisfied that he now fervently believes that it was, but this is a belief founded upon reconstruction rather than upon recollection. It is, perhaps, an understandable reconstruction, but the detailed evidence that has been given of the events leading up to the making of the agreement demonstrates that Mr Barton was not in fact coerced into making the agreement. It follows that his claim in this suit fails, and that the suit must be dismissed.

In the result, in addition to the judicial strictures on Mr Armstrong's credit—which the House will by now have seen were soundly based on Mr Armstrong's own documents and evidence—there is a judicial conclusion, formed on the whole of the evidence, that Mr Armstrong subjected a fellow citizen to such threats that put him in fear for the safety of himself and his family. It is perhaps appropriate that in concluding my discussion of the evidence given by Mr Armstrong I should read five questions and answers from the second page of Mr Armstrong's cross-examination. At page 766 of the transcript the following appears:

Q. Do you claim to be a man of honour? A. I claim to be a man of my word.

Q. Do you claim to be a man of honour? A. Yes.

Q. Do you have any difficulty in understanding that question? A. No.

Q. It is quite clear you claim to be a man of honour? A. Yes.

Q. Do you claim to be a man of truth? A. Yes.

On Thursday, 20th February, 1969, I interviewed the Hon. A. E. Armstrong in my office in the Department of Decentralisation and Development, and I invited Mr Armstrong to submit his resignation, and I advised him that action could be taken to expel him from the House. Yesterday, I advised Mr Armstrong of the terms of this motion. Today, the members of the Country Party in the Legislative Council excluded Mr Armstrong from any meetings of members of the Parliamentary Country Party in the Legislative Council. This was the first meeting of the parliamentary party since the judgment was delivered last December.

In our democracy, in the parliamentary institution in the free world, it is essential that the standing of members of Parliament in the eyes of the community should be maintained at a high level. It is necessary to maintain certain standards for the very preservation of the institution of Parliament itself and in particular for the preservation of the Legislative Council of New South Wales in this case. We are members of a sovereign law-making body and for this reason the House itself is given a measure of responsibility in the control of the behaviour of its members. Should the House feel that the Hon. A. E. Armstrong is guilty of conduct unworthy of a member of the Legislative Council, then the question arises as to whether this Council has the power to expel a member and declare his seat vacant.

The Legislative Assembly has a standing order, No. 391, which reads:

A member adjudged by the House guilty of conduct unworthy of a Member of Parliament may be expelled by vote of the House and his seat shall thereupon be declared vacant.

Where no standing order of this nature exists, at the outset it is convenient to examine the powers exercised by the Imperial Parliament in regard to the expulsion of members. The basis of my comments in

regard to power to expel is an advising by the Crown Solicitor to the Attorney-General, in which the Attorney-General concurs.

Expulsion by the Commons is discussed in *May's Parliamentary Practice,* 17th Edition, at pages 105 to 108. There it is stated that the purpose of expulsion is not so much disciplinary as remedial, not so much to punish members as to rid the House of persons who are unfit for membership, and that it may justly be regarded as an example of the House's power to regulate its own constitution. Reference is made to members having been expelled, among other things, for having been guilty of perjury, of conspiracy to defraud, of corruption in the administration of justice, or in the execution of their duties as members of the House, of conduct unbecoming the character of an officer and a gentleman, and of contempts, libels, and other offences committed against the House itself. Where members have been legally convicted of offences which warrant expulsion, it is customary to lay the record of conviction before the House. In other cases the proceedings have been founded upon reports of commissions, or committees of the House or other sufficient evidence. Expulsion, though it vacates the seat of a member, and a new writ is immediately issued, does not create any disability to serve again in Parliament, if he is re-elected.

Expulsion by the Lords is dealt with in *May* at pages 108 and 192. The House of Lords, sitting on impeachment as a Court of Justice upon one of its own members, can by its sentence disqualify a Lord of Parliament from sitting in the House of Lords. This sentence passed by resolution of the House is an actual disqualification and in this way it differs from an expulsion of a member of the House of Commons. At page 192 it is stated that "a resolution by the Lords as a legislative body could not, however, exclude a member permanently". In *Chenard and Company and Others* v. *Joachim Arissol* (1949) A.C. 127 at 133, it was said:

> It has long been settled that the setting up of a colonial legislature does not vest in the legislature without express grant all the privileges of the House of the Imperial Parliament, but only such powers or privileges "as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. Whatever, in a reasonable sense, is necessary for these purposes is impliedly granted whenever such legislative body is established by competent authority."

In *Kielley* v. *Carson,* 4. Moo. P.C.63, it was held that the House of Assembly of Newfoundland did not possess as a legal incident, the power of arrest with a view of adjudication on a contempt committed out of the House but only such powers as were reasonably necessary for the proper exercise of its functions and duties as a local legislature. At page 92 it was said "They are a local Legislature, with every power reasonably necessary for the proper exercise of their functions and duties, but they do not have what they have erroneously supposed themselves to possess—the same exclusive privileges which the ancient Law of England has annexed to the House of Parliament.

In *Barton* v. *Taylor,* II App. Cas. 197, which was an appeal from the Supreme Court of New South Wales and concerned the powers of the Legislative Assembly of this State, after referring to the cases of *Kielley* v. *Carson* and *Doyle* v. *Falconer,* Lord Selborne in delivering the judgment of the Judicial Committee said at page 203:

> It results from those authorities that no powers of that kind are incident to or inherent in a Colonial Legislative Assembly (without express grant), except "such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute". Whatever, in a reasonable sense, is necessary for these purposes, is impliedly granted whenever any such legislative body is established by competent authority. For these purposes, protective and self-defensive powers only, and not punitive, are necessary.

A little further on, quoting from *Doyle* v. *Falconer,* L.R. 1 P.C. 328 at page 340, he said:

> If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House while sitting, he may be removed or excluded for a time, or even expelled. . . . The right to remove for self-security is one thing, the right to inflict punishment is another. . . . If the good sense and conduct of the members of Colonial Legislatures prove insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person excluded from the place of meeting, and to keep him excluded.

Then at page 205 Lord Selborne continued:

> But their Lordships are at present considering only those powers which ought to be implied on the principle of necessity, and which must be implied in favour of every Legislative

Assembly of any British possession, however small, and however far removed from effective public criticism. Powers to suspend *toties quoties*, sitting after sitting, in case of repeated offences (and, it may be, till submission or apology), and also to expel for aggravated or persistent misconduct, appear to be sufficient to meet even the extreme case of a member whose conduct is habitually obstructive or disorderly. To argue that expulsion is the greater power, and suspension the less, and that the greater must include all degrees of the less, seems to their Lordships fallacious. The rights of constituents ought not, in a question of this kind, to be left out of sight. Those rights would be much more seriously interfered with by an unnecessarily prolonged suspension than by expulsion, after which a new election would immediately be held.

From these judicial observations it is clear that the Legislative Council of this State does not necessarily possess powers of expulsion of members of the nature of those that exist in the Imperial Parliament. Such powers are possessed only to the extent that they have been expressly granted to the Legislative Council, or to the extent that they "are necessary to the existence of such a body, and the proper exercise of the functions it is intended to execute". As to express grant, the provisions of section 19 of the Constitution Act, 1902, as amended, do not appear to be relevant. This section provides that if, in relation to a Legislative Councillor, certain things happen "his seat in such Council shall thereby become vacant". This is an automatic vacation upon the happening of any of the events specified in the section. The Crown Solicitor has given this advising on the matter, with which the Attorney-General concurs:

> It is not a section which grants to the Legislative Council a power to expel members and I can see no basis upon which it could be suggested that the section could, in any way, curtail the exercise by the Legislative Council of any inherent power of expulsion it may possess.

That there can be inherent powers of expulsion, is clear from the above observations in *Doyle* v. *Falconer* and *Barton* v. *Taylor* which expressly mention such powers. For such powers to exist, there are two requirements: first, the powers of expulsion must be necessary to the legislative body and the proper exercise of its functions; and second, such powers must be protective and self-defensive powers only, and not punitive. As to the first requirement, there has not been so far as I have been able to ascertain, any occasion upon which the Legislative Council has expelled a member. However, there was an occasion in 1881 when a member of the Legislative Assembly was expelled by the House on the ground that he "had been guilty of conduct unworthy of a member of this House, and seriously reflecting on the honour and dignity of Parliament". In relation to the motion he had proposed to the House the Colonial Secretary, Sir Henry Parkes, said—*P.D.* vol. vi, page 1851:

> Our freedom and our privileges are closely identified with the character we maintain, and if it becomes known that members of the House have acted in the way which I have conclusively shown that Mr Baker, the Member for Carcoar, has acted, and we take no notice of it, we cannot complain of whatever other persons may say, we cannot complain if our privileges are invaded—if we become the object of scorn and ridicule to every person in the country.

Later, when speaking to the motion to expel the member, Sir Henry Parkes said:

> I maintain that the power to expel a member guilty of improper conduct—nay of infamous conduct—must be inherent in every Legislature. I then say that the way to obtain the power, if any doubt be felt as to the right to it, is to exercise it, and let the Supreme Court be appealed to by the aggrieved parties, and I have no doubt that the highest court in the colony will sustain our action in expelling a member who has been guilty of disgraceful conduct.

In my view what Sir Henry Parkes said in relation to the Legislative Assembly applies equally in regard to the Legislative Council, and in my view, for reasons such as those given by Sir Henry Parkes, it is just as necessary for the Legislative Council to have the power to expel a member who has been guilty of improper conduct as it is for the Imperial Parliament to possess those powers which I quoted earlier. As to the second, the Crown Solicitor continues:

> The exercise of a power to expel a Member is, as is stated in *May* in relation to the House of Commons, not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership. The Legislative Council has no judicial functions and an expulsion by it would not amount to disqualification as does a sentence of expulsion by the House of Lords. The Legislative Council has only legislative functions and an expulsion by it would be similar to an expulsion by the House of Commons

i.e. it would vacate the seat of the Member but it would not create any disability to serve again in the Legislative Council if he were re-elected.

Mr President, my motion is in two parts. With regard to the first part, I submit that on the evidence Mr Armstrong is guilty of conduct unworthy of a member of the New South Wales Parliament and my motion should have the support of members. With regard to the second part, it is obvious the House has the power to expel—to declare the seat vacant—and I submit that the House should take that action.

The Hon. A. E. ARMSTRONG [6.2]: I listened with interest to the long peroration of the Hon. J. B. M. Fuller, I must say mainly read out from portions of the evidence which in some cases suited him and in some cases suited me. I intend to be much shorter than the Hon. J. B. M. Fuller, but before I make my speech proper I shall by way of preamble give the House a number of details which led to the dismissal on 19th December last of the civil law suit brought against me in the equity jurisdiction in connection with my private business affairs. The plaintiff in this case was a gentleman from overseas who had found refuge in this country with his entire family from the turmoil of his native Hungary. To avoid confusion with other Bartons in the community I think I should inform the public and the House that Barton's surname at birth in his native land of Hungary was Buchhalter. Several years ago Mr Barton migrated to Australia and later he became managing director of Landmark Corporation, a public company of which I was chairman of the board at the time.

In the beginning relations between us were quite affable, but it did not take long before Mr Barton came to believe that not I, but he, should be the top man of the company. From that moment on he began a campaign among other board members to convince them of his superior ability, to which he could not give full rein, he said, because of my continued presence and, as he termed it, interference. The fact of the matter was that I had a lot of money tied up in the company and I was merely looking after my investments and those of other shareholders. Again to cut a long story short, during my absence overseas in September and October, 1966, this man conspired with other board members to oust me from the board. In my absence overseas he also managed to steal—and I repeat, steal—some of my personal private files which I kept in my office in a locked filing cabinet. In November, 1966, Barton and his allies on the board succeeded in ousting me from the chair and from the company premises.

Immediately this was done it became apparent that I had either to buy out Barton's interest in the company or he had to buy out mine. Despite the fact that, because of my no longer being actively associated with the company, major outside financial support dried up rapidly, Mr Barton refused to sell out his interest to me. His attitude and the way he was running the company into the ground led me to offer to him through Mr B. O. Smith the opportunity to buy out my interests, an opportunity which he accepted enthusiastically. I might add that negotiations were commenced long before the dates given in the transcript of evidence. The evidence of this could be easily available to honourable members but I think the first negotiations between Mr B. O. Smith and Mr Barton occurred some time early in December, 1966, not as Mr Barton lied about in court when he said they commenced on 4th January. This led to agreements which were amicably negotiated by Mr Smith in front of, I think, at least four solicitors—possibly more—and signed on 17th and 18th January, 1967.

If there were any duress in this matter it is inconceivable to me that Mr Barton would not have mentioned the fact to solicitors such as Mr Millar of Allen, Allen and Hemsley, and Mr Coleman, who were handling his affairs. It is quite inconceivable that he would not have said something to protect his interest even when he had signed the agreement. It is inconceivable that he did not say anything or do something on that occasion. We find, according to the evidence of Mr Smith and Mr Grant, who were accepted by the judge as extremely credible witnesses, that Mr Barton was enthusiastic over the conclusion of these

agreements. Proof of this was brought out in the subsequent equity case and judgment in which, on page 77, the following statements made by Mr Barton and the following witness were accepted. After the agreement was signed, Mr Barton said to Mr Grant: "Now we have got rid of Armstrong nothing will stop us." To Mr Smith he said: "I would like to congratulate you. I think this deal was a miracle." He was most happy about buying shares from me at 60c at that time. Inside a year it became clear that Barton could not meet his first instalment due to me in January, 1968. It was then that, with hindsight, he alleged that he had been forced into the agreement under duress exerted by me. His case was based on three witnesses. The first was himself, interested to the extent of a large sum of money. His second witness was a gentleman named Bovill who was a former board member of Landmark and a director. To this day Bovill owes me some $20,000 and, like Barton, would be happy to get out of paying me. The third witness was a convict named Vojinovic—two interested parties and one convict.

The Hon. J. J. MALONEY: He was not a convict at the time?

The Hon. A. E. ARMSTRONG: I do not know whether he is still in gaol but he was brought down from Boggo Road gaol to give evidence. I take grave exception to the vilification of a large number of people totally unconnected with the case. He vilified them, man and woman alike—mothers and daughters, wives and girlfriends, innocent members of the community in a manner which no Australian would ever conceive to be possible in one of our courts of law in Australia, least of all in the equity division of the Supreme Court of this State. Mr Barton, instructing his all too willing senior counsel, made many allegations of criminal conspiracy, immoral conduct, plotting and perjury against ordinary members of the community who appeared as witnesses in the case, including senior police officers. The case was heard by Mr Justice Street in the Equity Court after a record hearing of 55 days, and on 19th December, 1968, Mr Justice Street delivered his judgment. He dismissed the case against me and awarded costs to me. Much publicity has been given to certain opinions and findings that His Honour included in his judgment with regard to myself concerning only this case, and, it must be stressed, no other matter outside it.

This is an important point to which I intend to return later. However very little publicity or consideration has, until now, been given to what His Honour had to say in his judgment about Mr Barton. His Honour said this on pages 13 to 17 of his judgment:

> Mr Barton entertains a deep hatred of Mr Armstrong. It had led to some distortion and exaggeration on his part of the details and the specific events of late 1966 and 1967.
>
> . . . . . .
>
> In some important respects Mr Barton's evidence is at variance with proved facts.
>
> . . . . . .
>
> I have strong doubts regarding the propriety of a man in Mr Barton's position selling to a prospective employee . . . a large parcel of shares so far in excess of market value.

I interpose to say that this sale of shares to an employee at a price far in excess of market value was the final cause of the rift between Mr Barton and myself. In his judgment, Mr Justice Street went on to say this about Mr Barton:

> There are substantial inaccuracies in Mr Barton's freely expressed account of the negotiations . . . great care must be taken in accepting Mr Barton's uncorroborated testimony.
>
> . . . . . .
>
> I have grave doubts about the reliability of Mr Barton's evidence on that part of the case which concerns Detective Sergeant Wild and Detective Constable Follington.
>
> . . . . . .
>
> He was confronted in January, 1968, with a personal financial disaster . . . in this situation he contributed to the events of December, 1966, and January, 1967, a significance that they did not have for him at the time when they occurred.
>
> . . . . . .
>
> There are many other points in the mass of evidence casting doubt upon the reliability of Mr Barton's testimony.

In his judgment, preceding his decree dismissing the case, His Honour included many views and opinions on the character and credibility of witnesses, particularly myself. That is why I stand here. But it

should be borne in mind that the conclusions, opinions and findings were formulated by His Honour for the sole purpose of making the decree in the case before him, and not in any other matter or for any other purpose whatsoever. His Honour's conclusions, opinions and findings, as contained in his judgment of this particular case, cannot and must not be construed by any means to have been included in his judgment as observations for general consumption *pro bono publico*. Although His Honour's judgment and everything in it is a privileged public document, it is a privileged public document only as it pertains to the exclusive context of the court case to which it applies. It applies to nothing else—nothing.

One of the chief allegations Mr Barton levelled against me in court was that I had coerced him into signing the agreement of 17th and 18th January, 1967, and of having plotted with men like Hume and Novak to have him murdered by Vojinovic. In his decree Mr Justice Street absolved me from the duress charge. In his judgment, on page 86, His Honour said he could not find as a proven fact "that Mr Armstrong either originated or was a participant in a specifically identifiable activity adverse to Mr Barton on the part of Mr Hume or on the part of Novak or Vojinovic." At pages 88 and 89 of his judgment His Honour said:

> Even after putting on the scales every scintilla of evidence tending to associate Mr Armstrong with some activity adverse to Mr Barton through the agency of Mr Hume . . . I am not satisfied that I should make a judicial finding that Mr Armstrong was implicated through Mr Hume either in a plot as alleged in the pleadings, to have Mr Barton killed or injured, or in some other identifiable plot adverse to Mr Barton.

An earlier part of His Honour's judgment that caused much adverse comment about me was the section, on pages 8 and 9, in which another distinguished honourable member of this House, namely, the Chairman of Committees and Liberal leader, was implicated with me. I must say that I do not wish to refer in great detail to this matter, although the Minister apparently delighted in drawing attention to it. I shall try to keep the references to this matter as short as possible, but I am afraid that a small amount of time must be devoted to it. His Honour referred to him as an associate of mine, and said:

> It seems that an associate of Mr Armstrong's was the respondent in proceedings brought by his wife in the Matrimonial Causes Jurisdiction seeking dissolution of marriage in 1962.
>
> He was anxious that his wife should obtain a divorce and he approached Mr Armstrong to help him provide his wife with evidence of adultery . . .
>
> . . . . .
>
> Mr Armstrong . . . complied with this request of his associate.

Referring to one of my personal and private notes, which Mr Barton had illegally obtained and entered as evidence, Mr Justice Street said:

> Mr Armstrong, by his own document, is implicated in what can only be regarded as an arrangement to procure evidence for the Divorce Court.

He did not say false evidence. Neither of the persons who gave evidence in the divorce court gave evidence before Mr Justice Street. How, then, can it be said that I arranged to procure false evidence? The judge did not say false, but people appear to assume what the judge did not find. I think that amply deals with this unfortunate matter.

Also connected with this divorce case, much fuss was made over another of my stolen personal, private writings of 1962, which is seven years ago. That is the piece of paper on which I had written, "Can we attack or bribe Mr Justice Dovey?" Cross-examined on this note, I tried to convince the court, to the best of my ability, that in writing down such a weird thought, I did not seriously contemplate, or even remotely consider, such a way-out possibility in the practice of everyday life. Such a thought may pass through the head of anyone who watches television programmes these days. But I admit that hardly anybody else would be as childish as myself to commit such a passing thought to paper—the more as it never had any relation to any action whatever. Was it not similarly odd when Mr Barton alleged that Detective Follington said I had stolen jewellery in my house—said to be my wife's diamond ring among other stolen jewels? No one in court took that ridiculous allegation seriously, and this

statement of Mr Barton's was firmly denied by Detective Follington. How could anyone take seriously the thought that a Supreme Court judge could be bribed? It is a ridiculous statement and could not be taken seriously. If mere thoughts were punishable, almost our entire population would be in gaol.

I wish to make a few more factual points about this unfortunate case. I think that these points should be given very careful consideration when you are weighing the matter. Being almost completely without funds, by his own admission in court, Mr Barton had everything to gain and nothing to lose by bringing this case against me. Although the suit was dismissed and costs awarded against him, there is no chance of recovering a penny from him; he simply just has not got it. I would like to say that I have never used my parliamentary position in any way in this affair, or, for that matter, in any other matter not concerned with this House. The case was a civil law suit in a private business matter, and any comments made in the judgment pertained to that particular suit only and cannot be taken as a general picture of my reputation and character outside the suit, because outside the suit there would be literally hundreds of witnesses who could speak more highly of me that those produced during the case.

Finally, I want to make this point very strongly. I would say to this House—and particularly to my accuser the Minister—that it is not sufficient to read through the 95 pages of Mr Justice Street's judgment and to do as the Minister has done—pick out some portions of the evidence that suit his case. I am surprised that the whole judgment has not been reprinted and made available to members of this House. I submit that, if justice is to be done, this House must have before it all the material that the learned judge had before him—not only the 2,200 pages of evidence, but also the opening and closing addresses of both counsel. I say this advisedly. I think the Minister should have read the lot or none. He might have made an original speech instead of reading the transcript.

With your indulgence, I shall begin my speech proper. I am sorry if I am taking up a lot of time, but to me, and I think to this House, it is esssential that no innocent member should be unjustly dealt with. This is indeed a grave matter. Therefore, I stand before you now not as a politician, but as an ordinary man—not to defend myself, but to accuse. This is not our finest hour; it is our darkest. I accuse my accusers. I accuse the righteous. I accuse those among us who are all too willing to cast the first stone. Ours is a country that has always held high the freedoms of the individual. Ours is a country where a man is free. This, we say, is our way of life, our heritage, and our tradition. This is what Australia stands for. Yet, right here in the Parliament of this State, there are those on my own side of the House who, without proof and on the mere expression of the opinion of others, want to deprive me of my right to sit in this Chamber, a right that I have won by free election in a free country.

I do not pretend to be a knight in shining armour. Who is, these days? But I do say, here and now, and loud and clear, that I have always done my best by this House, by this State, and by our Commonwealth. I say emphatically that I have not brought disrepute on this House. But this House is bringing disrepute upon itself by accusing me. It is alleged that I have wronged this House through an equity court case in respect of my private business affairs. Yet I did not bring that case. I did not even lose it. I won it. How wrong can I have been if even the judge, who had so few, if any, nice things to say about me, in the end had to find in my favour and to dismiss the case of my accusers? Where are the freedom and justice on which we pride ourselves? Where is this freedom when a man, after a record long hearing in a court of law can win a case, and when that same man, without any hearing at all, in Parliament, should lose it? It is not so simple. There is no freedom from fear here.

Days ago I was asked to resign from this House because of the case. Days ago I was told that unless I resigned there could be committees and votes, and even inquiries—nay, perhaps inquisitions. Is that freedom

from fear? Is that what this House stands for? Or is it indeed politics at their lowest ebb? Could it be that this is not an affair of State but a personal vendetta? Could it be that the motives of those who wish me now removed are not so pure and altruistic? Many questions come to one's mind when one suddenly finds oneself without friends in a place where one has worked, not for personal gain but for service, not for self-enrichment but for the enrichment of the community.

As all honourable members know, I am not a poor man. I am not here for empty reasons of pride or self-promotion. I do not need that sort of thing; I do not go in for that sort of thing. I am here purely because I have always had a sense of duty to my country and, being in the position in which I am and always have been, I could well afford to give of my time and effort to serve in this House unselfishly and without ulterior motives wishing only to put in my bit towards the progress and the development of my home State—the home State of my parents and that of generations of my family.

I have always been a man of the land, a man of business, a builder and a creator, not a destroyer. I have never been a knocker, nor have I been a man accustomed to being dragged through the courts. In fact, as many honourable members may have read in the press, I do not cut such a good figure in court. I stand in the box and I give answers to questions to the best of my ability. There is no time to be shrewd. It is easy for others after the event to criticize and say, "Why did he not say this, and why did he not say that?" When a man is on oath and is being cross-examined by those whose profession it is to cross-examine others, he is at a distinct disadvantage. We all know that. When a man is in the habit of making notes of his innermost thoughts, private notes of ideas, ideas and thoughts that pass through his head from time to time, if such intimate and private writing is illegally acquired by others, publicized and quoted out of context, then this is a foreign invasion of a man's innermost privacy, of a man's heart, and of a man's soul.

The Hon. A. E. Armstrong]

We have all had dark thoughts from time to time in our lives, or weird thoughts, ideas or notions. None of us is all pure. Only very few of us, however, have my habit of writing down most of the things that we think and do. Even mere ideas and thoughts and notions that occur to me, ideas without rhyme or reason, often without practical value or application, all of these appear in my notes. I have written down these notes ever since my boyhood days, for myself, for nobody else, for none other than my own eyes should I ever want to look at them. Certainly I did not write these notes to be illegally and indecently acquired by others without my consent for use against me, purporting to be facts and plans and schemes. None of this writing of mine is necessarily factual. Much of it, as I have said before, consists of merely passing thoughts triggered off by all manner of events, occurrences and influences. Ever since I was a boy no one has ever read my notes, no one, until some person of ill intent, who came to us, as I said, to seek refuge here as a guest from the turmoil of his own land, who was granted this refuge, to whom I gave a job—and a good one—took it upon himself to transgress the bounds of decency and to take these notes when my back was turned, to copy them and to use them against me.

In one of these notes, I have told you, there was the weird thought on the possibility of bribing a judge. I was cross-examined at length over this allegedly dirty thought. Nobody, it was said, except that wicked, wicked Armstrong could ever have had such a thought. Nobody cared to note that every day of the week there are television programmes on the screens in our living rooms which deal with bribery and corruption, with murder and hatred, with rape and robbery, involving judges and politicians, doctors and lawyers, men, women and children. Nothing is sacred on television. Nothing is sacred in modern theatre or art, but my mind, as a member of the Legislative Council is supposed to be pure at all times. I am supposed never to have an untoward thought. I am supposed never to have a peculiar idea passing

through my mind. Because I am a member of the Legislative Council I am supposed to be all white, complete with halo. Show me your halos, you who want to judge me, you who are so pure that you want to sit here and remove me from your midst.

It was said that I am a conspirator. It was said that I am a hirer of murderers and of thugs, of bashers and of intimidators. Yes, it was said. I have denied it. What else can I do? And nobody who said it could prove it. Is it not a fact that in our kind of justice a man is innocent until he is proven guilty? Is this not a fact? Have I been proven guilty? Or are my Government colleagues trying to prove me guilty now by word of mouth rather than by evidence; by rumour rather than by fact; by ill-will rather than by the spirit of loyalty and goodwill which should prevail in a lofty place such as the supreme legislative body of this State? Is it not below the dignity of honourable members and below the dignity of this Parliament to have me stand here and remind you that we have fought three, nay four, wars for the preservation of the freedom of the individual, for the preservation of justice, for the preservation of freedom from fear, freedom of thought, and all the other freedoms? Are my Government friends preserving them, or are they about to throw them overboard for the sake of that one, brief, glorious moment of throwing out Alex Armstrong from the precincts of this House?

No, Mr President, I do not defend myself. Instead, I accuse. I accuse my accusers of violating the basic human freedom of one of its members, of violating his basic freedom to be deemed innocent until proven guilty, of violating our basic Australian freedom to be free from fear, from intimidation, and from persecution. I am standing before you, not bitter, but sad. I am sad in my heart and deeply disappointed that the day should have dawned in New South Wales when a parliamentarian, a member of the Legislative Council, should stand up in his own Chamber on trial by rumour, on trial by hearsay, on trial by gossip. Is that fair play? Is that Australian justice?

I ask the House to think again. I ask this House to weigh again the sum total of the sensational accusations against me, the dirty words and dark allegations spoken under the shield of privilege in the court room and printed under the shield of privilege in the press. I ask the House to weigh these protected profanities against the career and reputation of one of its own number. Weigh carefully, for this can happen to any man—to anyone even in this House—if blind hatred of another, with nothing to lose, is allowed to be unleashed and to run riot. I say again that it can happen to anyone here or anywhere. You see, my victory in court was really a pyrrhic victory. Am I not now about to lose everything after winning the decree in court? Weigh carefully whether you really want to sit in judgment saying "Guilty" when the decree of the court was "Not guilty".

As all honourable members know, I am not the only one here to be implicated in this affair. I do not want another or others to suffer my fate. Mr President, whatever you and others may think of me, yours are still only thoughts. But I know—I know positively—and I declare in all honesty before this Parliament, that I have done no wrong. Therefore I oppose the motion most strongly. I feel confident that honourable members of this House will end this unfortunate matter by rejecting the Minister's motion. Thank you.

[*The President left the chair at 6.31 p.m. The House resumed at 7.52 p.m.*]

The Hon. R. R. DOWNING (Leader of the Opposition) [7.52]: I move:

That the Question be amended by the omission of all words after the word "evidence" with a view to the insertion in their place of the words, "in the case of *Barton* v *Armstrong and Others*, No. 23 of 1968, in the Supreme Court in Equity, and in particular the evidence given in that case by the Honourable Alexander Ewan Armstrong and the comments in the Judgment delivered by Mr Justice Street on 19th December, 1968. That such evidence and Judgment be referred to a Select Committee for consideration and report, with leave to sit during any adjournment of the House, and power to take evidence, and to send for persons and papers, and to make visits of inspection to places within the State, to examine witnesses, and to take evidence thereat.

That such Committee consist of the following Members, viz.: The Hon. H. D. Ahern, the Hon. C. A. F. Cahill, the Hon. Sir Hector Clayton, the Hon. W. R. Coulter, Major the Hon. H. P. FitzSimons, the Hon. J. B. M. Fuller, the Hon. J. H. Gardiner, the Hon. J. J. Maloney, the Hon. J. N. Thom, and the Mover."

At the outset may I point out that the proposed select committee would consist of five Government and five non-Government members. I am sure that honourable members will agree that it could not be said that the committee is loaded one way or the other. I am concerned about the reputation of this House. This is something that Government members have sought to maintain at times when I and my colleagues have been critical of this Chamber and its actions. I want to be quite dispassionate about this. So that there will not be any misunderstanding of the position, I make it clear that probably I as a member of the proposed select committee will reach the same conclusion as the Minister on the action that should be taken. I am being completely impersonal. I am not aiming my remarks at the honourable member for whose expulsion the Minister has moved. I have with me a copy of the transcript of the proceeding in *Barton* v. *Armstrong and Ors,* consisting of 2,303 pages. The Minister was correct in saying that one of his secretaries rang me last Friday.

The Hon. J. B. M. FULLER: It was last Friday week.

The Hon. R. R. DOWNING: That is correct. As I understand it, the telephone call was on that Friday at about 3 p.m. or 4 p.m. I understood that the secretary said that a copy of the judgment was available. I replied that I had no one to go for it at that time, but I would have it picked up on the Monday. On that day, at my request, a fellow came struggling around from the office of the Minister of Justice with this large bundle of transcript. I am being quite serious about this. I have no objection to the motion that the Minister has moved, but my point is that this Chamber could ruin its reputation by acting with undue haste.

Had the Minister announced publicly that he intended to move for the expulsion of the Hon. A. E. Armstrong, honourable members could have made their own investigations and reached their own conclusions on what should be done. Thus justice would not only be done but would also appear to be done. That might not be the situation as a result of this motion. I have had some little experience in reading transcripts. Usually, I make an index of a transcript so that I may refer readily to various parts of it later. I do not claim that I am as fast as the Hon. B. B. Riley in reading transcipts, but at a conservative estimate I should say that if I worked for ten hours a day in the eight days that I have had these documents I should probably not have completed my consideration of them. I should have to spend a considerable time indexing the transcript and then I should be able to turn from one reference to the Hon. S. L. M. Eskell on page 873 to another on page 950, and still another on page 2200. I would thus be able to keep the whole picture in perspective.

My amendment is moved solely for the purpose of referring to the proposed select committee the question of whether the Hon. A. E. Armstrong should or should not be expelled from this House. I say deliberately that I feel the Minister moved his motion for only two purposes. The first of them was to save the Government the embarrassment of any inquiry into the conduct of the leader of the Liberal Party in this House, Major-General the Hon. S. L. M. Eskell. It is all very well to say, as the Minister did, that he had obtained the opinion of a Queen's Counsel that Major-General the Hon. S. L. M. Eskell has committed no offence for which he could be charged. Likewise the Hon. A. E. Armstrong has committed no offence for which he could be charged so far as I can see. But as to the judge's comments and the transcript of the evidence, in the short time that I have been able to read through it, the judge's view is at least as derogatory of the conduct of Major-General the Hon. S. L. M. Eskell as it is of the conduct of the Hon. A. E. Armstrong. But His Honour did not find it necessary to deal with that matter in the length that he needed to deal with it in respect of the Hon. A. E. Armstrong.

I do not want to go through the judgment and the transcript in as much detail as the Minister. I do not feel that this is a place where one can or should do it. The proper place is before a select committee where, in calm deliberation, members can go through the evidence and reach a decision. Perhaps that decision will be correct in regard to what the judge said about Major-General the Hon. S. L. M. Eskell. This is what the judge had to say on this point:

> It seems that an associate of Mr Armstrong was the respondent in proceedings brought by his wife in the Matrimonial Causes Jurisdiction seeking dissolution of marriage. He was anxious that his wife should obtain a divorce, and he approached Mr Armstrong to help him provide his wife with evidence of adultery.

It is clear to me that this request to the Hon. A. E. Armstrong was directed at obtaining false evidence in the form of a false confession. Nowhere in the judgment does the judge suggest that this was not what he meant; he was convinced that Major-General the Hon. S. L. M. Eskell had approached the Hon. A. E. Armstrong to obtain false evidence in the form of a false confession. Indeed this is what the judge said on that point:

> I have no doubt that it was in this sense that he made the request and Mr Armstrong acceded to it. In fact, Mr Armstrong complied with the request of his associate.

It is not true, as the Minister said, that the judge says that he does not believe this happened. All that he says is, "I want to put on record that they did not have an opportunity to speak in their defence". The Minister's speech tonight was mostly taken up with the account of these allegations against the leader of the Liberal Party in this House, to try to raise a smokescreen with the public by expelling the Hon. A. E. Armstrong and letting the whole thing be forgotten. I think both members should run the gamut of a select committee. The remarks of the judge in this matter, the evidence and the transcript concerning the member and the Liberal Party member ought to go before a select committee to be examined in detail. If the conclusion of the select committee is that one or both have been guilty of conduct unbecoming a member of this Chamber, then the appropriate action should be taken.

I want to be brief about a further matter. As I understand it, the rumours go that the Hon. A. E. Armstrong is to be expelled to make way for a prominent official of the Australian Country Party. That is the talk that is going around. Whether or not that is pure coincidence, I do not know.

The Hon. J. B. M. FULLER: I do not know who started the story.

The Hon. R. R. DOWNING: The story is current that a person who holds the position in the Country Party similar to one the Minister had is to be the candidate in the Hon. A. E. Armstrong's place. Let me tell the House the basis of the story. At the next triennial elections the Government cannot get all its members back and has no chance of getting another member in. This is a heaven-sent opportunity to do two things—cover up as far as Major-General the Hon. S. M. L. Eskell is concerned and make a position for this prominent official of the Country Party.

The Hon. A. E. ARMSTRONG: You could not be more right.

The Hon. R. R. DOWNING: I did not get the story from the honourable member. This must be as distasteful to the Government as it is to me. Once the Government takes this action it must accept that we shall be critical of the action, and reasons that lie behind it. It is obvious why a select committee was not considered by the Government. Major-General the Hon. S. L. M. Eskell would have been involved in any consideration of this case by a select committee. As I said, a large part of the Minister's speech was a defence of Major-General the Hon. S. L. M. Eskell and not a condemnation of the Hon. A. E. Armstrong. The latter part of his speech was devoted to this. As I said, I stand in neither corner. If these gentlemen have done the wrong thing, let us sit down impartially with a select committee and consider it—not deal with it because it is in the interests of the Government to get rid of an embarrassment and get rid of the Hon. A. E. Armstrong

so that the public might forget what was said about Major-General the Hon. S. L. M. Eskell in these proceedings.

If I thought that this motion were the only thing needed to clear up the situation I should be inclined to support it but it leaves in the air the other things that I have mentioned. The Minister made a lengthy speech in which he made considerable reference to the transcript. I have here a copy of the transcript. I must confess that an index has been prepared by the judge or his associate but anyone experienced in these matters would know that to examine the transcript from a legal point of view would mean that one would have to go through it himself. I started to go through the transcript but it is a complete impossibility for me in one week, with other duties to perform, even to attempt to do anything other than glance at some parts which could be referred to in the index. Quite probably, I have overlooked some parts which were referred to later on.

The committee that I have suggested cannot be accused of being loaded. I do not ask the Government to accept on the committee more Opposition members than Government supporters. I have deliberately suggested that the members of the committee should include the Minister, Colonel the Hon. Sir Hector Clayton, and other honourable members who I thought would represent a cross-section of Government supporters, together with my own colleagues. This is the point: if the House wants to preserve its reputation—if it ever had one—for impartiality in these matters and if it wants to try to maintain, uphold, or suggest it is thus preserving its reputation, the only thing it can do is to agree to the amendment. Then this whole matter could be considered in the proper perspective. The Minister has said that Queen's Counsel has advised that Major-General the Hon. S. L. M. Eskell has not committed any offence. That may be true. I am not sure about Commonwealth divorce law, but I understand that the federal Attorney-General may intervene—and I think the State Attorney-General may do so—when he thinks some attempt has been made to bring false evidence, as it is suggested by Mr Justice Street, before the divorce court.

The Hon. R. R. Downing]

The whole point that the Minister made is that there is opinion of Queen's Counsel that there is no charge against Major-General the Hon. S. L. M. Eskell. There is no charge against the Hon. A. E. Armstrong. But there are the derogatory remarks against Major-General the Hon. S. L. M. Eskell, where the judge says:

> It is to my mind clear that his request to Mr Armstrong was directed to obtaining false evidence in the form of a false confession. I have no doubt that it was in this sense that he made the request and Mr Armstrong acceded to it.

The Minister will get up and start to quote pages of the transcript and other parts of the judgment to say that this is watered down elsewhere, but is this the place and the forum in which to consider this type of argument? Is not the proper place and forum before a responsible committee of this House, given plenty of time and the opportunity of assistance from the clerks? Such a committee could examine the transcript of these proceedings and come to a calm and deliberate decision so that justice will not only be done but, indeed, appear to be done. I know that honourable members on the Government side may suggest that I hold a brief for the Hon. A. E. Armstrong. I could not care less what happens to him, any more than I care personally what happens to Major-General the Hon. S. L. M. Eskell. I am concerned that the matter is investigated properly and dealt with in a proper manner so that the House has an opportunity to hear the report of the committee.

Important matters were raised in the debate. This is another aspect that disturbs me. You, Mr President, were asked for a ruling whether this matter was *sub judice*. I think it was a matter for you and you alone, and I do not think it was such a case as to warrant your inviting debate. In your discretion you did so and this is purely within your province. I am surprised that the Hon. B. B. Riley, who said he had previously acted as counsel for Mr Barton in other matters, should come along with a prepared brief, with cases to quote and pages from *May*, already prepared to submit to you, sir, why this matter is not

sub judice. It may be all right professionally, as the Hon. B. B. Riley says, for him to take a case and dispose of it, but a lay person—a person outside—takes a different view from the one that the Hon. B. B. Riley and possibly I would take. If I appear for a person today and then am asked to appear against him tomorrow, I should say that as he has been a client of mine I cannot accept the brief. In this case the Hon. B. B. Riley cannot get away from the fact that the public outside must feel disturbed and have some disquiet that a man who has been Barton's counsel should come to this House and put this proposition in support of your ruling.

I do not want to repeat what I said, but I think it is clear that, if you attempt to go through these 2,000 odd pages—1,500,000 words according to the Minister—there cannot be a proper deliberation by honourable members of this House. I suggest again that this is done for two reasons which stand out clearly; they are the two reasons I suggested originally: first, that the Government wants to hide its embarrassment arising from the comments of the judge concerning Major-General the Hon. S. L. M. Eskell, by putting a lot of the publicity on the expulsion of the Hon. A. E. Armstrong; secondly, if the other story is true, to make way for this prominent member of the Country Party, whom they would be unable to get in at the next triennial election.

In conclusion, I submit that this House should give careful consideration to this matter. There are plenty of derogatory remarks in the judgment about the Hon. A. E. Armstrong and plenty of things that would probably justify the action against him. But, for God's sake, let us consider it, and do not let one person escape because he happens to be the leader of the Liberal Party in this Chamber. Do not let him go. This is what it is done for. Let us do it decently, and not play favourites. When deciding whether one person is guilty of conduct unworthy of a member of this House, let us not let go unchallenged another member whose conduct, as contained in the judge's report, gives rise to at least a grave suspicion that it is not the conduct to be desired.

The Hon. A. E. ARMSTRONG [8.11]: Mr President, I should like to say, very briefly, that if the House decides to appoint a select committee, it will not need to expel me. If the select committee decides that I should be expelled, I shall be happy to resign.

The Hon. C. A. F. CAHILL [8.12]: I wholeheartedly support the amendment moved by the Leader of the Opposition. I am handicapped to some extent in this matter by the fact that the first I knew of the proposed motion put by the Minister was shortly after 4.30 p.m. today. I am not alone in that regard. Whatever the members of the Country Party and Liberal Party were advised so far as I am aware, members on this side were not informed.

The Hon. F. M. HEWITT: Your leader was told.

The Hon. C. A. F. CAHILL: When was my leader told?

The Hon. F. M. HEWITT: He can tell you that.

The Hon. C. A. F. CAHILL: The Minister says that my leader will tell me whether it is true or not. But seeing that the Hon. A. E. Armstrong was not informed until yesterday, according to the Minister who moved the motion, it seems a remarkable thing——

The Hon. J. B. M. FULLER: That is not correct. I said in my speech that last Thursday I had informed the Hon. A. E. Armstrong. Please get your facts right.

The Hon. A. E. ARMSTRONG: That is correct, Mr Minister.

The Hon. C. A. F. CAHILL: This is Tuesday. Last Thursday, you say, you informed the Hon. A. E. Armstrong, and before that apparently—and you can confirm it if you can—the leader and members of this side of the House were not informed. However, let that be as it may. The Minister has for some considerable time had the judgment and the transcript in this matter, and he has known what he and the Government proposed to do about it. He kept this a very close secret. The transcript was

made available to the Leader of the Opposition, not three weeks or a month ago, but a little over a week ago.

The Hon. R. R. DOWNING: That is not fair to other members. Other members ought to see it if they want to do so.

The Hon. C. A. F. CAHILL: Presumably it is intended that, when a serious charge like this is made, members should find out for themselves, from the Minister's speech, what the facts are—that they should regard that as the evidence on which they should decide. Let me make it clear that I hold no brief whatsoever for the Hon. A. E. Armstrong, who is a member of the Country Party and in no way associated with me except, as with every other member, as a fellow member of this Chamber. I hold no brief whatsoever for him.

A select committee would have the opportunity fully and calmly to consider the facts and to come to a conclusion. But let us look back a little. Of course, I can speak only on newspaper reports when I deal with the alleged facts of this case; I can speak with no other knowledge. Some matters that emerged—and I speak from newspaper reading—during the hearing of this particular case were obviously highly embarrassing to the Government. It was highly embarrassing to have it appear that one of their members, in company with other officials of the Liberal and Country parties, was going round, it is alleged, seeking to influence votes by some minor form of bribery in some country electorate. The Government was much more embarrassed, of course, when the leader of the Liberal Party in this House was referred to; the allegations that were made in relation to him were very serious indeed. They were seriously embarrassed, not only by a Liberal Party member, but also by these allegations being made against a member of the Country Party. In this way the coalition is involved.

However, we find that the less important of the two is the subject of this motion tonight. We find that, in spite of what the Hon. R. R. Downing has read out from the judgment of Mr Justice Street, it is not intended to make the slightest inquiry into the activities in the divorce proceedings of the leader of the Liberal Party in this House. It is hoped, no doubt, that by avoiding a careful investigation of the evidence and the judgment by members of this House or by a committee of this House, Major-General the Hon. S. L. M. Eskell will be forgotten.

This is the first night for a long time that I remember this House sitting beyond 6.30 p.m. on the first day after the Christmas recess. It is obviously the intention of the Government to push this matter through very fast, to get rid of the embarrassment that has been occasioned to it by the alleged activities of two of its members. But other aspects of this matter are seriously disturbing. I repeat that I have not the slightest brief in any way for the Hon. A. E. Armstrong, but I am interested in the procedures of this House and in this House being above reproach. I am interested in the reputation of this House being such that members of the community will know that we act fairly and with deliberation, consideration, and responsibility. I am concerned about those matters. Here we have a most serious charge levelled against a member of the House. The House is informed, and without question many honourable members did not know what the motion would be until shortly before 5 o'clock today. The Minister has been most tight-lipped about it. What are we expected to act upon?

The Hon. Sir HECTOR CLAYTON: Who is "we"?

The Hon. C. A. F. CAHILL: Honourable members in this Chamber. I trust that the Hon. Sir Hector Clayton does not object?

The Hon. Sir HECTOR CLAYTON: I thought you meant the members of the Opposition.

The Hon. C. A. F. CAHILL: I misunderstood the honourable gentleman. In a court of justice a person at whom a serious charge is levelled is given adequate notice of it and is allowed to appear with the help of counsel. The onus is on the prosecutor to establish the case with evidence. The person accused has a full opportunity to deal with that evidence, not inexpertly as a layman, but with the assistance of a qualified

lawyer, assistance to which he is undoubtedly entitled. There is no indecent haste in court proceedings. Ample time is allowed for the preparation of the defence. All relevant facts are available to the jury and ample time is allowed for consideration of its verdict. What has happened here is that a charge has been made, and the prosecutor has read out selected passages from the judgment and from the evidence. The vast majority of honourable members have not seen the evidence or the judgment, and yet they are expected to determine this important issue on the say-so of the prosecutor, the prosecutor being one of the members of a Government embarrassed by all these disclosures.

So far as careful consideration and impartiality are concerned—and I might say that these observations are directed to the reputation of this House—select committees have been appointed consisting of honourable members from both sides of the Chamber. By way of illustration I mention the Select Committee on Subordinate Legislation, of which I have the honour to be chairman. That committee has brought down recommendations advising the disallowance of Government regulations. A committee of honourable members of this House can be relied upon to consider evidence and to act impartially, irrespective of the party to which they belong. Here, however, the charge is brought on with indecent haste. It is obviously a matter to be disposed of today to rid the Government of any further embarrassment.

Undoubtedly the Minister feels that he can have this motion carried on the numbers. So before the resolution is moved the jury has predetermined the matter without listening to the evidence. When it comes to a vote it will be seen whether or not that is the position. Before the charge was levelled in this House a majority of the jury had predetermined the guilt or innocence of the person charged. If honourable members vote against this motion for the appointment of a select committee to inquire fully into all the circumstances of this case, they will leave a blot on the reputation of this House.

I have not had an opportunity of reading the judgment in full, but what is significant in the extracts that have been read is that some of the remarks are directed against the leader of the Liberal Party in this House. As I understand the Minister who moved the motion, one of the specific grounds put in support of it and in support of his argument seeking the approval of honourable members, is that the Hon. A. E. Armstrong was a party to procuring false evidence in divorce proceedings. But who were the other parties? If there was a conspiracy to procure false evidence, more than one person would have to be involved. However, it is as clear as daylight from the extract read from the judgment that reliance is placed on a specific allegation. The Minister puts it even higher, as being the finding of a judge. The specific allegation is that the Hon. A. E. Armstrong was a party with Major-General the Hon. S. L. M. Eskell to procuring false evidence in divorce proceedings. The Minister left out who it was the Hon. A. E. Armstrong was alleged to conspire with.

If that is a ground on which to move for the expulsion of one honourable member, it is a ground upon which to move for the expulsion of another honourable member, however, highly placed he may be in the hierarchy of the Liberal Party. If that charge were proved on proper inquiry, it would amount to a conspiracy to pervert the course of justice and would involve perjury. That applies equally to Major-General the Hon. S. L. M. Eskell and to the Hon. A. E. Armstrong. I ask again, if that charge is levelled against one honourable member, why is it not levelled against the other honourable member? The fact that it has not lends strong support to the views expressed by the Hon. R. R. Downing to the effect that the Government is anxious to bury this matter as quickly as possible by bringing this charge against the less important member of the Government team.

The Minister referred to a written opinion that he had received from Mr Slattery, a Queen's Counsel. As my leader has pointed out, no charges could be levelled in any court against Major-General the Hon. S. L. M. Eskell and, so far as I am aware,

against the Hon. A. E. Armstrong. However we are not told, although I submit that we should be if we are to give this matter the full and careful consideration that it should receive, the terms of reference to Mr Slattery. Neither were we given his opinion in full. If the House agrees to the motion as amended, the proposed committee should demand that his opinion be made available for its consideration.

Ample reasons can be given for the appointment of a select committee. Among them is that there are real doubts on the powers of this House to pass a motion in the terms moved by the Minister. With great respect to him, the fact that the Legislative Assembly has a Standing Order 391 dealing with the matter is quite irrelevant, because we have no such standing order in this House. The name of the case escapes me but I recall that it is pointed out in it that the powers of a House such as this do not contain any punitive provisions, and that the powers are to regulate the procedure and conduct of members. It is a moot point whether this is confined entirely to conduct within the Chamber or whether it extends to conduct outside the Chamber.

The Constitution Act, which no doubt was passed after due deliberation, provides specific grounds for the expulsion of members. A place here is automatically vacated if a member commits certain crimes. If a member becomes bankrupt or takes an office of profit under the Crown, automatically he vacates his seat. However, the situation dealt with by the motion certainly is not covered by the Constitution Act or by the standing orders. It is doubtful whether we have this power but, given the time so graciously provided by the Minister—something less than an hour or two—in which to consider the matter, I must point out that I have not had an opportunity to check on that case or on the constitutional position. That, too, should be the subject of a careful inquiry, and I have no doubt that this will be done by a committee of members.

I am sure that this House would not want to exceed its powers, whatever the situation might be. Perhaps it is a pity that the Minister did not take the advice so earnestly given to him by the Hon. B. B. Riley, whose advice in regard to evidence was: "Do not worry about the judgment. Let us examine the facts." The Minister relied extensively on the judgment and on the judge's comments. It would indeed be a sorry day for this Parliament and for the community if members could be expelled because of the finding of a judge. I remind honourable members that many judges have made wrong decisions on fact and in law. Proof of this fact may be found from day to day. The findings of many judges are overruled in courts of appeal on questions of fact and of law.

As the Hon. B. B. Riley pointed out, the Government should look not to the judgment but to the evidence. This Parliament should decide a matter like this for itself on the evidence. In this instance, that evidence is contained in a very large bundle of documents. If any member can read it before this debate finishes or gain more than the slightest inkling of what it is all about in that time, he is a genius.

The Hon. R. R. DOWNING: The record covers fifty-five days of evidence.

The Hon. C. A. F. CAHILL: That is so. I express no views on the merits or demerits of the motion. I feel—and I am sure that other members must feel the same—that this House has not been able to consider this matter fairly. After all, the House has only had placed before it such facts and such extracts from the judgment as it has suited the prosecutor to place before the House. There is only one way to remedy this situation and maintain the reputation of this House; there is only one way to avoid people in the street referring to hill-billy justice in this House, and that is to refer the matter to a select committee.

Colonel the Hon. Sir HECTOR CLAYTON: A ten-man hill-billy committee.

The Hon. R. R. DOWNING: The honourable member is to be one member of the committee.

Colonel the Hon. Sir HECTOR CLAYTON: That is so.

The Hon. C. A. F. CAHILL: I hesitate to use that expression in regard to Colonel the Hon. Sir Hector Clayton, but if the cap

fits no doubt the honourable colonel will wear it. If this matter were referred to a select committee it could investigate the very serious charge. The House having, as I know it has, every confidence in a committee of members of this House, would be assisted greatly by the views and recommendations of the committee. But do not let it ever be said that we in this House did not deal with the matter conscientiously, fairly, fully and with a complete knowledge of the facts.

The Hon. J. J. MALONEY (Deputy Leader of the Opposition) [8.39]: Our experience tonight is indeed a sordid one. I am sure every honourable member feels as I do, great shame that this House should be called upon to consider the matters contained in the motion. In presenting the Government's case for the expulsion of the Hon. E. A. Armstrong, the Leader of the Government quoted extensively not from His Honour's remarks but from the evidence given in court by the Hon. A. E. Armstrong.

The Hon. A. E. Armstrong has spoken here tonight. How he has the effrontery to do so, I do not know, but he delivered a nicely prepared speech. Not one word of it was a denial of anything in the evidence that he gave. Rather he avoided that issue by accusing the House in general and excusing himself. This House would be recreant in its duty if it did not do everything possible to maintain the prestige and good name of every member of this Chamber, but for the life of me I cannot see how the motion for the expulsion only of the Hon. A. E. Armstrong can achieve that purpose. The motion is based on the evidence by the person whom it is proposed exclusively to expel and it deals with three vital parts of that evidence. These three vital parts have nothing to do with the case of *Barton* v. *Armstrong and Ors,* any appeals that might be arising from that suit, or any further legal cases or action that might be taken against newspapers. The matter on which we are considering whether the honourable member is deserving of expulsion, is his own evidence which he has had the opportunity tonight to deny. He has made no attempt to deny that evidence but rather has attempted to place every member of this Chamber—should they agree to the motion—in the position of denying to him and everyone else British justice.

What were these three vital parts of the evidence? I may not have them in their proper order but one part of his evidence concerned material which he has admitted is in his own handwriting. He has attempted to explain it away by saying that someone stole the document; he does not deny it is in his handwriting. He made admissions in relation to suggestions of bribery of a judge of the court. That is one matter. Another part, again covered in a document in his own handwriting, concerns a matter where he had been a party to obtaining false evidence on behalf of Major-General the Hon. S. L. M. Eskell in divorce proceedings. Those are the matters on which we are asked tonight to judge him. We are not called upon to judge in the Barton-Armstrong case; that is a matter for the court.

I wondered, when this case finished in the court, why the Government did not order a Royal commission into the matter. A Royal commission possibly would have been more satisfactory to honourable members of this House than sifting out the judgments ourselves. The Government for its own reasons—possibly on legal advice; I do not know—failed to order a Royal commission. This is despite the fact that a most serious offence in criminal law is concerned—that disclosed by the documents of the Hon. A. E. Armstrong himself in which he had been a party to a conspiracy to falsify evidence for the obtaining of a divorce for Major-General the Hon. S. L. M. Eskell. Why was Major-General the Hon. S. L. M. Eskell not joined in these proceedings as well? He has sat in this Chamber from the time this debate began but at no time during the debate has he made any attempt to clear his own name or to deny the statements that came out in evidence in the Barton-Armstrong case. I suggest that any honourable member of this House who had his name and character blazoned through the press of this State as Major-General the Hon. S. L. M.

Eskell's have been as a result of these proceedings, would have taken the first opportunity to make a personal explanation in this House. The opportunity is always available.

I should also expect that a man who was by the evidence of another man linked to a conspiracy to give false evidence would have made his first action an attempt to clear his own character. I do not think I am wrong in saying that the honourable member could have briefed counsel and sought leave to intervene in that case to clear his own character against charges that came out of the Hon. A. E. Armstrong's evidence. Yet he sits here silent. Is he guilty or not guilty? If we carry a motion for the expulsion of the Hon. A. E. Armstrong where does the other honourable member stand? I, as an outsider, would take it as an indication that this House blamed the Hon. A. E. Armstrong but not Major-General the Hon. S. L. M. Eskell. This is the most serious charge that I can see in those documents. Consequently I believe it would be in the interests of the House had Major-General the Hon. S. L. M. Eskell's name not been mentioned in this at all, had the evidence in the Barton-Armstrong case not brought out the facts—or the allegations in the Armstrong diary—of what he had been guilty of. Had no reference been made to this I should have been 100 per cent behind the motion for expulsion on the grounds of the other matters.

I do not think that this House or any parliamentary institution can afford to have within its ranks, people who are not of the highest possible character. All sorts of allegations were made. All sorts of people are hurt in inquiries of this nature. I believe it would be wrong for this House merely to carry a motion for the expulsion of the Hon. A. E. Armstrong and do nothing about Major-General the Hon. S. L. M. Eskell. I suggest in all seriousness that if this House appoints a select committee as suggested in the amendment moved by the Hon. R. R. Downing, then all of those who up to date have refrained from denying any of the allegations will have an opportunity to confirm or deny them.

The Hon. J. J. Maloney]

Acceptance of the Hon. R. R. Downing's amendment will give the House the opportunity to have the report of the select committee on both the individuals who are mixed up in this sordid affair. In conclusion, I seriously regret that this House has had the occasion or the necessity, through the actions of a member or members of the Chamber, to discuss such subjects as have been debated tonight. I am not condemning the fairness of the Minister or the fairness of the way in which he put his case. I think it was based solely upon the evidence of the Hon. A. E. Armstrong and not on the comments of the judge.

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [8.51]: The Hon. R. R. Downing has moved for a select committee. All the evidence and the judgment by Mr Justice Street would be referred, on the Hon. R. R. Downing's wording, to the committee for their consideration and report, with leave to sit during any adjournment of the House, with power to send for persons and papers, to make visits of inspection to places within the State, and to examine witnesses and take evidence. The evidence referred to by the Hon. R. R. Downing is the evidence that has been given over fifty-five sitting days.

The documents in the Hon. A. E. Armstrong's handwriting have been the subject of evidence, and there was cross-examination by leading counsel—the Hon. C. A. F. Cahill was suggesting that this did not occur—at a hearing presided over by a Supreme Court judge. Does the Hon. R. R. Downing suggest that a select committee of this House should take the same evidence again, that the witnesses be cross-examined again, and that the committee endeavour to carry its activities further afield? This is what I suspect the Hon. R. R. Downing really has at the back of his mind. Does he suggest that this should be done by this committee, presided over by what the Hon. C. A. F. Cahill referred to as a lay head from the Legislative Council? He said that the chairman would not be trained.

At the court hearing to which I referred a Supreme Court judge presided and leading counsel conducted all the cross-examination and produced the evidence in the case. Does the Hon. R. R. Downing suggest that the opinions formed by a Supreme Court judge, used to weighing and assessing evidence and adjudging people, can be bettered by a select committee? The Hon. A. E. Armstrong's own document and evidence are the subject of my motion today, and I suggest that the Leader of the Opposition, in proposing this amendment, is attempting to go on a political fishing expedition.

The Hon. C. COLBORNE: You are looking after your friends.

The Hon. R. R. DOWNING: This is a political motion to protect your friends.

The Hon. J. B. M. FULLER: I have had the sort of response that I expected to get. I can see that I have touched the Leader of the Opposition on a nerve that is very close to the top. He thinks that in this case he is going to do something that may fish up something else out of which he can make political capital. I suggest that his interest and the interest of the Hon. C. A. F. Cahill in this subject is solely on that basis. On the other hand, I thought the Hon. J. J. Maloney made a reasoned and considered speech. I congratulate him on his approach.

The Hon. J. A. WEIR: He won you over?

The Hon. J. B. M. FULLER: The Hon. J. J. Maloney always writes his own speeches, unlike some other people I know.

The Hon. J. A. WEIR: Name those people, please.

The Hon. J. B. M. FULLER: Honourable members on the other side of the House—and possibly on this side of the House, too—would be embarrassed. Therefore, we shall let the discussion end. The Leader of the Opposition said—and I think I wrote his words down correctly—that he has no objection to the motion that I have moved, but he proposes a select committee. I have suggested why he adopts this view. He said that the select committee could give calm deliberation to the evidence. I wonder what the Leader of the Opposition thinks a Supreme Court judge did for fifty-five sitting days but give calm deliberation to the evidence produced before him. This is the Supreme Court judge who produced a considered judgment, brought down in due course after he had time to consider it.

I was disturbed, also, that the Leader of the Opposition should hear rumours about the place referring to the possibility that this action was being taken so that Mr Hunt, the present chairman of the Country Party in New South Wales, could have the seat. I hope the Leader of the Opposition does not confine his thinking to that sort of approach, but I can assure him that Mr Hunt has not been considered for nomination for this Council at any time; and, so far as I know, Mr Hunt is not in the slightest bit interested in entering State politics as a member of Parliament in New South Wales.

The Leader of the Opposition had quite a lot to say about Major-General the Hon. S. L. M. Eskell. I think the Leader of the Opposition is doing his utmost to try to prove a case in which he did not take much interest when he was Attorney-General. After all, these divorce cases were disposed of when he was Attorney-General.

The Hon. R. R. DOWNING: I did not know of the allegation, or I would have.

The Hon. J. B. M. FULLER: It was referred to when Mr Justice Dovey expressed that he had some doubts. The only changed condition since then is that the Hon. A. E. Armstrong has given certain evidence. However, the Hon. R. R. Downing took no action, and possibly thought that there were no grounds for action. He may have done what the Government has done and asked outside counsel's opinion on whether any action should be taken. In that regard, I lay upon the table the brief to advise from the Crown Solicitor to Mr J. Slattery, Q.C., and the opinion that the Attorney-General has received from Mr Slattery. Incidentally, for the benefit of the Hon. C. A. F. Cahill, in that opinion Mr Slattery says—as I have no doubt the former Attorney-General was

advised—that no evidence is shown to found a charge of perjury against Major-General the Hon. S. L. M. Eskell.

Also, the opinion states, the evidentiary matter in the brief for opinion does not disclose evidence of conspiracy to abuse or pervert the due course of justice on the part of Mr Armstrong, Mr Eskell or Mrs Cleary. My charge is not that the Hon. A. E. Armstrong was engaged in a conspiracy to procure false evidence. It is, in essence, that he participated in what he believed to be an arrangement to procure false evidence. There may not have been such an arrangement, but he thought there was. To me, that is the basis of the difference.

The Leader of the Opposition has suggested that a select committee of this House should inquire into this matter, and that would mean that everyone—I think he or the Hon. C. A. F. Cahill mentioned the people in the street—would be happy and satisfied that justice had been done. Obviously the Leader of the Opposition is a little out of touch with what has been happening over the past few years in respect of public comments when it has been suggested that the police force should have a look at the police force.

I personally feel that there is a little antagonism among the public towards members of the police force investigating alleged crimes by other members of the police force. I do not think that the select committee referred to in the amendment moved by the Hon. R. R. Downing would have the result that he suggests. If the motion that I have moved is carried, the public will see that this House, having been convinced that action should be taken, took direct action and did not, in effect, try to whitewash the matter or put it by in the hope that something else would happen. That is the vital difference. I am convinced that this House should accept the motion I have moved. I am certain that it is the correct move. If any other honourable member at any time can produce evidence that members of this House have acted in a manner that is unworthy of members of the Legislative Council, I hope that similar action will be taken.

The Hon. J. B. M. Fuller]

Question—That the words proposed to be omitted stand—put. The House divided:

AYES, 29

Mr Ahern	Mr Kenny
Mr Boland	Mr McIntosh
Dr de Bryon-Faes	Mr Manyweathers
Mr C. J. Cahill	Mr O'Connell
Sir Hector Clayton	Mr Packer
Mrs Davis	Mr Paterson
Major-General Eskell	Mrs Press
Mr Falkiner	Mr Riley
Major FitzSimons	Mr Shipton
Mr Fuller	Mr Spicer
Mrs Furley	Mr Vickery
Mr Gardiner	Sir Edward Warren
Mr Gleeson	*Tellers,*
Mr Hewitt	Mr Keighley
Mr Asher Joel	Mr McKay

NOES, 28

Mr Alam	Mr Maloney
Mr Armstrong	Mr Marsh
Mrs Barron	Mr Murray
Mr Bowen	Mr North
Mr C. A. F. Cahill	Mr Peters
Mr James Cahill	Mrs Roper
Mr Colborne	Mrs Rygate
Mr Coulter	Mr Schofield
Mr Dalton	Mr Sutherland
Mr Downing	Mr Weir
Mr Erskine	Mr Wright
Mr Geraghty	
Mr Gordon	*Tellers,*
Mr Jackson	Mr Cockerill
Mr McPherson	Mr Thom

Question so resolved in the affirmative.

Amendment negatived.

Motion agreed to.

Whereupon, the President directed the Usher of the Black Rod to escort Mr Armstrong from the House and its precincts.

CORONER'S (AMENDMENT) BILL

FIRST READING

Bill received from the Legislative Assembly and, on motions by the Hon. F. M. Hewitt, read a first time and ordered to be printed.

TRUSTEE COMPANIES (AMENDMENT) BILL

FIRST READING

Bill received from the Legislative Assembly and, on motions by the Hon. J. B. M. Fuller read a first time and ordered to be printed.

ABORIGINES BILL

FIRST READING

Bill received from the Legislative Assembly and, on motions by the Hon. F. M. Hewitt, read a first time and ordered to be printed.

JUDGES' PENSIONS AND EQUITY (AMENDMENT) BILL

FIRST READING

Bill received from the Legislative Assembly and, on motions by the Hon. J. B. M. Fuller, read a first time and ordered to be printed.

SUPREME COURT AND CIRCUIT COURTS (AMENDMENT) BILL

FIRST READING

Bill received from the Legislative Assembly and, on motions by the Hon. J. B. M. Fuller, read a first time and ordered to be printed.

CITY NIGHT REFUGE AND SOUP KITCHEN INCORPORATION (AMENDMENT) BILL

PETITION

The Hon. T. S. McKay presented a petition from the Council of the Sydney City Mission praying for leave to bring in a bill to place the control and management of the City Night Refuge and Soup Kitchen under the control of the Sydney City Mission; to confer and to impose on the council the powers, duties, rights and liabilities formerly held by the General Committee of the City Night Refuge and Soup Kitchen; to vest in the Sydney City Mission the property of the City Night Refuge and Soup Kitchen in New South Wales and for purposes connected therewith.

Petition received on motion by the Hon. T. S. McKay.

SUSPENSION OF STANDING ORDERS

Suspension of certain standing orders agreed to, on motion by the Hon. T. S. McKay, as a matter of necessity and without previous notice.

FIRST READING

Bill presented and, on motions by the Hon. T. S. McKay, read a first time and ordered to be printed.

SELECT COMMITTEE

Motion (by the Hon. T. S. McKay) agreed to:

(1) That the City Night Refuge and Soup Kitchen Incorporation (Amendment) Bill be referred to a Select Committee for consideration and report; with leave to sit during any adjournment of the House and power to take evidence and to send for persons and papers; to make visits of inspection to places within the State, to examine witnesses and take evidence thereat.

(2) That such Committee consist of the following, viz.—Mr Fuller, Mr Coulter, Mrs Davis, Mr Keighley, Mr Maloney, Mr O'Connell, Mr Paterson, Mr Shipton, Mr Vickery and the Mover.

ADJOURNMENT

BUSINESS OF THE HOUSE

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [9.30]: I move:

That this House do now adjourn.

I might say, for the benefit of honourable members, that we have only just received business from the other House. However, I suggest that the first and most important business might be the Aborigines Bill, on which we can get started tomorrow.

The Hon. R. R. DOWNING: Will the House be sitting after dinner?

The Hon. J. B. M. FULLER: No.

Motion agreed to.

House adjourned at 9.31 p.m.