

the firewall of the Falcon body was non-existent. This is due to faulty spot welding and probably due to incorrect spot welder timer operation and/or faulty spot welder point pressure. The use of rust resistant paint or compound at this joint may have been a contributing factor. At the time of separation of the Falcon into two parts, the driver would have no control at all over either part of the car.

Summing up, I should like to see the Minister call upon his officers in the Department of Motor Transport further to inspect the vehicles and to try to reconstruct how the accident occurred. I should like him to ascertain who stopped the obtaining of the expert spot welder's opinion asked for by Mr LeGrice, I ask the Minister to check the departmental files to ascertain whether any other Ford Falcons have suffered similar fates and whether any of those accidents have any pertinent features similar to this one. The Minister might call on the Ford company to check all Falcon models with reference to this treatment in manufacture. He might check, too, to see whether these sections could be bolted and spot welded rather than simply spot welded. If the Ford organization is at fault through faulty manufacture, the company should receive the same treatment as a careless driver. The relatives are most concerned with this matter and would like to know more about it.

Mr MORRIS (Maitland), Minister for Transport [10.18]: The matter raised by the honourable member for Waratah is a serious one. I know something of this tragic occurrence. The accident occurred not far from my home. The honourable member for Wallsend knows well the McDonald family—Miss McDonald and her family. Late last year I discussed the tragic occurrence with him.

I saw the vehicle at the Maitland police station and discussed its condition with the police officers who had the vehicle taken there. I am aware that officers of the Department of Motor Transport visited Maitland to undertake an examination of the vehicle. I shall do what the honourable member requests, namely, confer with the Minister of Justice on whether or not new evidence is available to justify further

reference to the coroner. I shall also inquire from the department, now that the coronial inquest is completed, when the very extensive report which is being prepared for me in this matter might be available.

Motion agreed to.

House adjourned at 10.20 p.m.

Legislative Council

Thursday, 6 March, 1969

Credit Union Bill (third reading)—Evidence (Reproductions) Amendment Bill (third reading)—Horticultural Stock and Nurseries Bill (third reading)—Child Welfare (Amendment) Bill (first reading)—Rural Bank of New South Wales (Amendment) Bill (first reading)—Questions without Notice—Major-General the Hon. S. L. M. Eskell, Chairman of Committees—Special Adjournment—Adjournment (Business of the House).

The PRESIDENT took the chair at 4.28 p.m.

The Prayer was read.

CREDIT UNION BILL

THIRD READING

Bill read a third time, and returned to the Legislative Assembly with amendments, on motions by the Hon. F. M. Hewitt.

EVIDENCE (REPRODUCTIONS) AMENDMENT BILL

THIRD READING

Bill read a third time, and returned to the Legislative Assembly without amendment, on motions by the Hon. J. B. M. Fuller.

HORTICULTURAL STOCK AND NURSERIES BILL

THIRD READING

Bill read a third time, and returned to the Legislative Assembly without amendment, on motions by the Hon. J. B. M. Fuller.

CHILD WELFARE (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.

RURAL BANK OF NEW SOUTH WALES (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.

QUESTIONS WITHOUT NOTICE**PORT MACQUARIE MUNICIPAL COUNCIL**

The Hon. J. L. KENNY: I wish to ask the Vice-President of the Executive Council a question without notice concerning Port Macquarie council. Has there been a continual rise in general council rates over the years? Has the council become financially embarrassed through repeated mistakes in laying sewer pipes? Has there been evidence of gerrymandering and, if so, have subdividers found themselves involved? Did the council offer any opposition to the removal of the Valuer-General's Department to Port Macquarie? If the answer to the foregoing is in the affirmative, will the Minister confer with the Premier with a view to setting up a departmental inquiry to see that the people of Port Macquarie receive justice?

The Hon. J. B. M. FULLER: There is no possible chance of my being able to answer that question off the cuff. I suggest that the honourable gentleman put his question on the notice paper, and I shall discuss the matter with my colleague the Minister for Local Government.

PARKING METERS: SYDNEY AIRPORT

The Hon. J. B. M. FULLER: On 20th November last the Hon. H. D. O'Connell asked me a question about car parking facilities at Sydney (Kingsford Smith) Airport. I have been in touch with the federal

Minister for Civil Aviation, the Hon. R. W. Swartz, who has supplied a lengthy answer about the provision of parking meters and taxis at Sydney airport. It reads:

Minister for Civil Aviation
Parliament House,
Canberra, A.C.T. 2600
March, 3, 1969.

My Dear Minister,

I refer again to your personal representations of 20th November, 1968, to the Hon. M. A. Morris, M.L.A., about car parking facilities at Sydney (Kingsford Smith) Airport.

As you are no doubt aware, car parking in close proximity to the airport terminals is very limited. It is therefore necessary to impose restrictions on the use of this space. If motorists were permitted to park for unlimited periods the car parking area would soon reach saturation and vehicle traffic within the airport would be impossible to control.

The parking meters at Sydney Airport are situated in the prime positions. To ensure the maximum use is made of these positions, the parking fee is computed by the quarter hour—to encourage quicker turnover of the available space. As you will know, the meter parking fee is 5c. per 15 minutes. It is some 9 years since the introduction of the 15 minute charge at Sydney Airport and the Department has found a general acceptance by air travellers of this method of charging.

You also suggested that consideration be given to a twenty-four hour parking charge of \$1 at the airport. Because of space problems it is necessary to discourage long term parking in the main car parks at the airport to ensure sufficient convenient parking space is available for short term parkers. Should an air passenger require long term car parking at the airport he can obtain this at the valet car parking service. Parking is available for 40c. per day. Valet parked cars are removed from the special reception area in the main car park to a remote secure area and are delivered to the owner on his return to the airport. A charge of 50c. is made for this service.

Within the space limitations to which I have referred, I can assure you every consideration is given, and will continue to be given, to the car parking needs of air travellers using Sydney Airport.

Yours sincerely,
R. W. Swartz

Hon. J. B. M. Fuller, M.L.C.,
Minister for Decentralisation and
Development,
Parliament House,
Sydney, N.S.W. 2000.

MAJOR-GENERAL THE HON. S. L. M. ESKELL, CHAIRMAN OF COMMITTEES

The Hon. R. R. DOWNING, Leader of the Opposition [4.41]: I move:

That Major-General the Honourable Stanley Louis Mowbray Eskell, Chairman of Committees of the Whole House be removed from such office.

I have felt compelled to move this motion as I believe that the honourable member no longer holds the confidence of other members of this Chamber. I base my belief on a number of things, not the least of which are expressions of private opinions by members from both sides of the House. I hope to deal with this matter dispassionately and to show that in the interests of this Chamber the motion should be agreed to. I intend to show also that certain events in relation to the honourable member have caused public disquiet. The first thing was the silence of the honourable member during the proceedings of what might be called the Armstrong case. Of course, it may well be said that at that time the honourable member had no right to go before Mr Justice Street and make submissions or denials. However, with deliberation I say that any honourable member of this Chamber about whom allegations of this nature were made in court proceedings, would have raised holy hell to try and get his point of view put as a denial to the allegations made against him. In my view a member would have done so by seeking, even though it might have been a futile effort, to appear before Mr Justice Street to deny the allegations. That was the first thing about this matter that disturbed the public. It caused considerable concern and comment not only among people in public office but among the public generally. That, I think, was the start of this matter which has culminated in a situation where it is imperative that this House should express its lack of confidence in the honourable member.

I felt that an indication of that lack of confidence could best be achieved by my moving this motion. That lack of confidence apparently was not only in the public mind but it was reflected in the thinking of the Honourable the Premier and Treasurer. According to what I understand to

be reliable press reports, Major-General the Hon. S. L. M. Eskell had been elected by ballot as leader of the Liberal Party in the Legislative Council. It was reported that he had polled almost twice as many votes as the Hon. F. M. Hewitt. The public disquiet that occurred following the Armstrong case was apparently shared by the Premier who overlooked the honourable member who had been chosen by the majority of the members of the Liberal Party in the Legislative Council as their leader, when he appointed a new Minister.

This is a serious position. Apparently the Premier thought that public disquiet was such he should not appoint Major-General the Hon. S. L. M. Eskell to ministerial rank. I know it may be said that the Premier is entitled to appoint as a Minister of his Cabinet anyone he wishes, and there is no provision for an election of Ministers by caucus or otherwise. However, I am sure that the Premier must have been influenced by the disquiet he felt and which was reflected in the public view. According to a well-informed political writer—and I concede that there has been some contradiction of this in the press—Major-General the Hon. S. L. M. Eskell has been deposed or has resigned from the chairmanship of the Liberal Party in this House. That further indicates the lack of confidence in him held by his own colleagues. I take it that if the honourable member resigned he did so because he felt that lack of confidence and if as reported in one newspaper, he was defeated in a ballot by five votes to seven, that indicates a complete lack of confidence in him by members of his own party.

The next thing, and I think this is what shocked honourable members more than anything else, was the complete silence of the honourable member during the debate on the resolution that was moved for the expulsion of the Hon. A. E. Armstrong. I ask for the indulgence of the House so that I may deal with this matter at some length. I think this is necessary and I crave the further indulgence of the House while I attempt to go through, as briefly and as quickly as possible and without in any way doing any injustice to the honourable member, the various matters raised in

the course of the Armstrong case. I shall read extracts from the judgment of Mr Justice Street so there will be no doubt in the minds of honourable members as to what were His Honour's views of the evidence given by Mr Armstrong about his association with Major-General the Hon. S. L. M. Eskell.

As honourable members are aware, there is a background to this matter. At one time it was common knowledge in this House that the Hon. A. E. Armstrong and Major-General the Hon. S. L. M. Eskell were close, bosom pals. They were joint directors of Australian Factors Limited and associated personally as well as in business. In fact, they had a very close relationship and I am sure that would not be denied by any member of this Chamber who was here at that time. I now wish to refer to the judgment delivered by Mr Justice Street. I understand that copies of this judgment have not been available to all honourable members.

The Hon. J. B. M. FULLER: The judgment in *Barton v. Armstrong and Others* has been available to all members. It is in the office.

The Hon. R. R. DOWNING: As far as I know many honourable members on this side of the House were not aware that it was available. However, at the expense of wearying those who may have read these passages, I must refer to it. I intend to comment on passages in the judgment and I shall indicate where I depart from the judgment so that honourable members will be aware of what I am doing. Mr Justice Street said:

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 hand-

writing. 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. This is a justifiable claim and I have given it due weight in determining whether to accept Mr Armstrong's evidence on particular topics.

Whilst there are many matters of detail to which reference might be made, I shall mention the more significant topics which demonstrate Mr Armstrong's unworthiness to be regarded as a reliable witness. He was cross-examined at some length upon 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.

Mr Justice Street goes on to say:

It seems that an associate of Mr Armstrong's—

There is no doubt in anyone's mind that the associate was Major-General the Hon. S. L. M. Eskell.

—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 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.

It is clear that the judge concluded that Mr Armstrong when giving evidence on matters that he knew were covered by notes in his handwriting in the possession of counsel for the plaintiff, told the truth. Apparently the judge came to the conclusion that Major-General the Hon. S. L. M. Eskell requested Mr Armstrong to obtain false evidence in the form of a false confession. His Honour goes on in his judgment:

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.

The Hon. B. B. RILEY: What is the honourable member's understanding of the words in the judgment "providentially, the plan went astray"?

The Hon. R. R. DOWNING: It takes careful reading of the transcript to come to any conclusion on this point, but it seems that at about this time of the honourable member's divorce case, another divorce action began, that by Mr A. E. Armstrong. The same lady was involved in both cases. I understand that this is the providential matter to which Mr Justice Street refers. I know that the two cases were at about the same time. One was commenced about twelve months before the other, but the proceedings in the second case commenced at about the same time as the first divorce case was being heard.

The Hon. B. B. RILEY: Apparently it was the Eskell case to which the judge was referring?

The Hon. R. R. DOWNING: Yes. His Honour said that providentially the plan went astray.

The Hon. B. B. RILEY: In what way?

The Hon. R. R. DOWNING: I shall read on. His Honour said:

Mr Armstrong prevaricated when first asked about the part he played in connection with this divorce. His prevarication is perhaps understandable having regard to the very real basis for his entertaining some concern by reason of his own complicity in what had taken place. The factual account is, however, sufficiently set forth—

The judge accepted that factual account, but he goes on to say:

—in some contemporary notes dated 30th June, 1962, prepared by Mr Armstrong, some five days after the hearing before Dovey, J., on 25th June, 1962. The narrative appears in the following extract:

"(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 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. There is evidence to which I need not refer which renders it, to my mind, improbable in the extreme that Mr Armstrong believed that the woman concerned would commit or had in fact committed with his associate the adultery that she confessed to in her signed confession in February, 1962.

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.

The judge does not say that he does not believe Mr Armstrong. The only comment that he makes—and it appears to be fair comment—is:

In fairness to his associate and the woman concerned—

He means Major-General the Hon. S. L. M. Eskell and the woman concerned.

—I should record that their version of the events has not been heard.

His Honour does not say that he does not believe Mr Armstrong on this matter.

The Hon. B. B. RILEY: About their confession?

The Hon. R. R. DOWNING: That is so. It is clear that His Honour has not said that he does not believe Mr Armstrong's evidence. It will be recalled that earlier the judge expressed the view that when Mr Armstrong was being cross-examined on matters covered by notes that he believed

were in the possession of the plaintiff's counsel, he told the truth. His Honour goes on in his judgment:

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. I am concerned, however to evaluate the degree of reliability that can be placed upon Mr Armstrong's evidence in this Court. And the part played by him in this whole shabby affair exposes him as a man upon whose evidence little weight can be placed.

Mr Justice Street goes on to deal with publicity given to Mr Justice Dovey's criticism of the evidence before him. In fairness to Major-General the Hon. S. L. M. Eskell, I shall read this part of His Honour's judgment:

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:

Perhaps I had better read the questions to which His Honour refers. They are as follows:

"(1) What was 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?

The remainder of the cross-examination was on the question in Mr Armstrong's notes, "Can we attack or bribe Dovey". However, I do not feel that this has any particular bearing on Major-General the Hon. S. L. M. Eskell. One thing about this part of the evidence, which was given wide publicity, disturbs me. So far as I can recall, no inquiries were made by the police about

these allegations. This is the normal procedure when such allegations are made in any case concerning a matter in another jurisdiction. I have always understood that the normal practice when an allegation of collusion in a divorce case is made in other proceedings is to institute police inquiries immediately to ascertain whether the allegations are correct. It is significant that no such inquiries were made. So far as I know, the police did not make any inquiries of Mr Armstrong—he did not say so the other night—or of Major-General the Hon. S. L. M. Eskell or the lady concerned. That seems to be an unusual departure from the normal practice. In the days when there was a State Matrimonial Causes Act, immediately such allegations were made, they were referred to the State Crown Solicitor for the purposes of investigation.

It is important to note that Mr Justice Street said that he felt Mr Armstrong, when confronted with these notes, had told the truth. The Government was apparently somewhat concerned about this aspect: it took the course of submitting the matter to Mr Slattery, Q.C., for his opinion. I have here a copy of the matter submitted for his opinion, together with his opinion. This document was made available by the Minister, and I understand it has been ordered to be printed, but I do not know whether it is in the possession of honourable members.

The Hon. J. B. M. FULLER: Some copies are available, but every member has not a copy.

The Hon. R. R. DOWNING: It is important to understand the nature of the question submitted to Mr Slattery, Q.C.

The Hon. J. B. M. FULLER: There are copies on the table if any member wants them.

The Hon. R. R. DOWNING: I must put to the House the question put to Mr Slattery so that members will be able to consider his opinion in its proper perspective and evaluate it. This was put to Mr Slattery by the Crown Solicitor.

On 19th December, 1968 Judgment was given by Street, J. in *Barton v. Armstrong and Ors*, No. 23 of 1968 in the Supreme Court of New South Wales, In Equity.

In relation to the defendant Alexander Ewan Armstrong, Street J., said in the course of his judgment that a strong and sustained attack had been made upon Mr Armstrong's credit and that after hearing Mr Armstrong cross-examined over a period of some days he could not treat his evidence as reliable. The Judge then continued, "But I think so little of 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 to do so, to give false evidence." As one of the matters that led him to his conclusion Street, J. dealt at some length with the part that had been played by Mr Armstrong in the obtaining of evidence in a divorce suit in which an associate of Mr Armstrong had been the respondent. The divorce suit referred to was that of Eskell v. Eskell (In the Supreme Court in Divorce No. 2850 of 1961) in which Stanley Louis Mowbray Eskell was the respondent.

Let me pause there. That passage, though derogatory of Mr Armstrong, was qualified by the judge's remark that he felt Mr Armstrong had told the truth when questioned on his written documents. That, to my mind, is somewhat significant. The document continues:

Having said that Mr Armstrong was implicated in an arrangement which was "one which, in Mr Armstrong's belief, was to procure false evidence", Street, J. continued—

"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 (sic) do not necessarily establish the truth as against these other two persons."

The woman referred to was Mrs Margaret Cleary who is now the wife of Alexander Ewan Armstrong.

Briefed herewith are copies of—

- (a) Judgment of Street, J. in *Barton v. Armstrong & Ors.*
- (b) Transcript of Evidence in *Barton v. Armstrong & Ors.*
- (c) Transcript of Evidence before Dovey, J. in *Eskell v. Eskell* on 25/6/62.
- (d) Judgment of Dovey, J. in *Eskell and Eskell* on 25/6/62.

I emphasize the question put to Mr Slattery, Q.C.:

Counsel is asked to advise whether the documents briefed herein contain material that would justify the institution of criminal proceedings against Alexander Ewan Armstrong, Stanley Louis Mowbray Eskell and Margaret Cleary, or any one or more of them, and if so the nature of such proceedings.

The Hon. R. R. Downing]

One significant omission from this, which I feel members will appreciate when they read Mr Slattery's opinion, is that he was not asked whether, in the light of the evidence, he thought further inquiries should be made. He was asked flatly whether he felt that on the evidence criminal proceedings would be justified. He was not asked whether, in the light of the evidence, further investigations should have been made or ought to have been made, or whether he considered them to be justified. This would have been the normal thing when allegations concerning divorce proceedings were made, such as those in the Armstrong case. Mr Slattery, Q.C., was not asked that question. Members must fully understand the specific question directed to him. I do not know whether they have seen Mr Slattery's opinion. I believe the Minister moved that it be printed, but I am not aware whether it is available as yet.

The Hon. J. B. M. FULLER: It is on the table.

The Hon. R. R. DOWNING: It is on the table today, but as far as I know this is the first time that it has been generally available.

Colonel the Hon. Sir HECTOR CLAYTON: I got it a fortnight ago.

The Hon. R. R. DOWNING: I understand that at the Minister's behest it was ordered to be printed the other day, but only a few copies are available. Mr Slattery said in his opinion:

In this matter my attention has been directed to certain matters arising from the cross-examination of Alexander Ewan Armstrong in the suit of *Barton v. Armstrong & Ors.* (No. 23 of 1968 in the Supreme Court in Equity). I am asked to advise whether certain documents briefed contain material that would justify the institution of criminal proceedings against Alexander Ewan Armstrong, Stanley Louis Mowbray Eskell and Margaret Cleary or any one or more of them and, if so, the nature of such proceedings.

The following material was briefed:—

- (a) The transcript of evidence in *Barton v. Armstrong & Ors.* (Suit No. 23 of 1968 in the Supreme Court of New South Wales in Equity);
- (b) The judgment of *Street J.* in *Barton v. Armstrong & Ors.* (No. 23 of 1968);

(c) The transcript of evidence before *Dovey J.* in the matrimonial cause of *Eskell v. Eskell* (No. 2850 of 1961), taken on 25th June, 1962; and

(d) The judgment of *Dovey J.* in the matrimonial cause of *Eskell v. Eskell* (No. 2850 of 1961) delivered on 25th June, 1962.

I have read the whole of the transcript of evidence (p. 1 to p. 1618) and the judgment of *Street J.* (p. 1 to p. 95) as well as the transcript of evidence (p. 1-p. 8) and the judgment of *Dovey J.* (p. 1-p. 4) in the matrimonial cause of *Eskell v. Eskell* (No. 2850 of 1961). The additional material available to me was the Supreme Court file in *Eskell v. Eskell* (No. 2850 of 1961). Except in so far as they are referred to in the transcript of evidence, I have not considered the exhibits in the suit of *Barton v. Armstrong & Ors.* My reading of the above mentioned material—

I emphasize this again—

was directed towards ascertaining whether there was any evidence of a criminal nature on the part of the abovementioned persons arising from the cross examination of Alexander Ewan Armstrong.

It seems to me that the relevant matters for consideration are:

- (i) Whether there was any conspiracy between Alexander Ewan Armstrong, Stanley Louis Mowbray Eskell and Margaret Cleary or any two of them to abuse or pervert the due course of justice in the matrimonial cause of *Eskell v. Eskell*;
- (ii) Whether there was any evidence of perjury on the part of Stanley Louis Mowbray Eskell and/or Margaret Cleary in the matter of *Eskell v. Eskell*.

Although it is not strictly relevant to the advice sought, I would add that, during my reading of the transcript of evidence, I had regard to whether there was any evidence of a conspiracy between Alexander Ewan Armstrong, Frederick Hulme, Alexander Vojinovic and Michael Novak to kill or injure Alexander Barton. This question was an important issue in the suit and received the very careful attention of *Street J.*, especially at p. 88-90 of the judgment. I am informed that His Honour's orders in the suit are now the subject of an appeal to the Court of Appeal of the Supreme Court of New South Wales. With respect to His Honour, I do not find it necessary to add further to what His Honour has said on this matter.

I turn now to the question whether the documents referred to above contain material that would justify the institution of proceedings against Alexander Ewan Armstrong, Stanley Louis Mowbray Eskell and Margaret Cleary or any two of them for conspiracy to abuse or

pervert the due course of justice, e.g. to give false evidence in the matrimonial cause of *Eskell v. Eskell*.

Then Mr Slattery sets out the law relating to conspiracy between two persons. Mr Slattery was asked whether in the file submitted to him there was any evidence justifying the institution of criminal proceedings. I read now from the bottom of page 3 of Mr Slattery's opinion:

In the matrimonial cause of *Eskell v. Eskell*: Dunn-co-respondent and Cleary-co-respondent heard before *Dovey J.* on 25th June, 1962, the following persons gave evidence:

- (i) Mrs Denise Rachael Eskell;
- (ii) Stanley Louis Mowbray Eskell;
- (iii) Margaret Cleary; and
- (iv) Mrs Nan Elizabeth Dunn.

I think I had better read this, though I do not like doing so. The document states:

In evidence, Mrs D. R. Eskell stated that her husband, after a short period away from the matrimonial home at an army camp, had removed some of his clothing and personal items therefrom on 4th March, 1961. She deposed that from about 1956 she and her husband had drifted apart; her husband went on various business trips and holidays without her. After 4th March, 1961, Mrs Eskell had her husband watched and this was followed by a petition being issued against him on the grounds of his adultery with Mrs N. E. Dunn. Mrs Eskell stated she then had no information concerning her husband's association with Mrs Margaret Cleary though she had heard her name mentioned on various occasions, e.g., social functions. After the issue of her original petition against her husband and about six months before the hearing of her divorce petition, Mrs Eskell took out a supplemental petition joining Mrs Margaret Cleary as a co-respondent. The supplemental petition was based upon a written confession of adultery signed by her husband and by Mrs Margaret Cleary. Mrs Eskell stated in evidence before *Dovey J.* she had never met Mrs Cleary. In evidence Mr S. L. M. Eskell told *Dovey J.* that in view of the circumstances in which his wife had filed a petition he felt he should confess the truth of his adultery with Mrs Cleary; he stated that he volunteered his adultery with Mrs Cleary to his wife. Mrs Margaret Cleary gave evidence that she was divorced in 1954 on the grounds of adultery. When asked by his Honour how she came to make a confession of adultery, she said:

"Mr Eskell came to me and told me that he had confessed adultery to his wife, with me, and that she was divorcing him and naming me as co-respondent, so I agreed. I said it is right that I had done so and I could not do anything else but admit it." (See p. 6 of the transcript in *Eskell v. Eskell*.) When asked

by his Honour what prompted her to confess to the world that she had committed adultery for the second time, Mrs Cleary said:

"Mr Eskell said that he told his wife about our association. There was nothing else for me to do but to agree that I had done so, so I thought it was correct that I did so." (See p. 7 transcript of evidence in *Eskell v. Eskell*.) In her confession of adultery, Mrs Cleary stated that she had met Mr Eskell at a party in 1955 and at various social functions from that time up till 1958. She further stated that, in March, 1958, she had committed adultery with Mr Eskell at Frenchs Forest and that from time to time until his departure for New Guinea in September, 1958, they had committed adultery in and around Sydney on numerous occasions.

In her evidence before Dovey J. in *Eskell v. Eskell*, Mrs N. E. Dunn denied the allegation of adultery with Mr Eskell.

In his judgment, Dovey J. described the case as a most unusual one. After hearing from all the parties to the suit, his Honour said:

"The respondent (Mr Eskell) and the woman Cleary have both given evidence on their oath admitting adultery. The respondent (Mr Eskell) and Mrs Dunn have given evidence denying the adultery charged against them and each of them has sworn that this evidence has not been given as the result of any arrangement or in any attempt to deceive the Court or bring about a perversion of justice." (See p. 3 of the judgment.) His Honour stated he was satisfied that there was adultery committed by Mr Eskell and Mrs Cleary and in making his finding his Honour said:

"I find it impossible to believe that any woman would come into Court and perjure herself by admitting an adulterous association that did not exist." (See p. 3 of judgment.)

The evidence of Mr Armstrong in *Barton v. Armstrong & Ors* is set out from p. 746 to p. 1079 in the transcript and the part relevant to the question now being considered is contained in his cross-examination and more particularly at different places from p. 767 to p. 830. Without seeking to limit the amount of evidence relevant to the question being considered, reference is made to the following matters appearing in the evidence of Mr Armstrong in the transcript:

- (i) There was no agreement between Mr Armstrong, Mr Eskell and Mrs Cleary that Mrs Cleary would sign a confession of adultery (see pp. 771-772);
- (ii) Mr Armstrong knew that Mrs Cleary and Mr Eskell were talking together in February, 1962 (p. 773);

I should advise honourable members to remember that date, February, 1962. The document goes on to state:

- (iii) Mr Armstrong made the following notes on 30th June, 1962, i.e. after the hearing of the petition in *Eskell v. Eskell*:

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I read out the questions that were written down by Mr Armstrong. In January, 1962, Mr Armstrong had apparently written those notes. The document continues:

"Notes Eskell and Cleary 30th June, 1962.

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

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

3. Mrs Cleary 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.

4. At this time and up until last week Mrs Cleary, Armstrong and Messell believed Eskell to be a very good type of man.

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 Armstrong should provide for it." (See pp. 779-780).

- (iv) Mr Armstrong did not know that the confession by Mrs Cleary was false (pp. 782-788);
- (v) Mr Armstrong denied he agreed with Mr Eskell to procure Mrs Cleary to provide a confession of adultery. He stated that Mr Eskell and Mrs Cleary made their own arrangements (p. 786);
- (vi) Mr Armstrong accepted that he knew something which might have been intended to mislead the Divorce Court (p. 787);
- (vii) Mr Armstrong stated that he did not know whether or not Mrs Cleary and Mr Eskell had committed adultery and that he did not know what they had done before he met them (p. 787);
- (viii) Mr Eskell came to Mr Armstrong asking whether Mrs Cleary could help him to find someone who would admit to adultery (p. 787);
- (ix) In January 1962 it was Mr Armstrong's belief that Mr Eskell was asking for false evidence of adultery (p. 788);
- (x) Mr Armstrong stated that he may have said to Mrs Cleary:
 "Stan (Eskell) and his wife both want a divorce. Could you help them out' or something to that effect" (p. 802); and
- (xi) Mr Armstrong stated that the arrangement Mr Eskell and Mrs Cleary entered into apparently had the effect of producing false evidence (p. 819).

This is a significant thing. All these discussions with Mrs Cleary occurred in 1962, and the divorce case was heard on 25th June, 1962. This was after a petition had been filed by Mrs Eskell, who had named another lady as co-respondent, and the further co-respondent was named after this confession was received. At that time apparently any suggestion of an association between the honourable member and the lady had long since finished. If honourable members look at the cross-examination of Mr Armstrong they will see justification for the next comment made by Mr Slattery:

There was evidence that Mr A. E. Armstrong and Mrs Margaret Cleary had had a close and intimate association since 1959.

This is some three years after. This is the suspicious part. Three years after the allegation, when the lady had no longer any association with the honourable member, but with another honourable member altogether she provided to the court this very convenient confession. It must be remembered that the lady named in the petition in the first instance was vigorously denying the allegation. Surely this gives rise to some suspicion. Surely it justified some inquiries by the authorities as to whether or not this was a phoney confession, as to whether there had been a conspiracy. Are we to rely only upon what was said before Mr Justice Street, or are we to look behind it?

I suggest that we should look behind it and look at the circumstances of something that occurred—a most convenient confession—three years after. According to the evidence there had been no association and a new affiliation had been formed. This is a most significant factor when we consider this matter. Mr Slattery's opinion continued:

When considering the question of any criminal proceedings against the abovenamed persons, I feel I should, with respect, have regard to his Honour's views on Mr Armstrong's credit and upon other matters arising out of the *Eskell v. Eskell* divorce. For his Honour's criticism and comments on Mr Armstrong's credit generally and on his conduct in relation to the *Eskell v. Eskell* divorce (see the judgment of *Street J.* at pp. 6-9).

This is the significant thing. This is what Mr Slattery said and this is his job:

My main task in this opinion is to evaluate the evidentiary material available in the brief—

That is all he has—the evidentiary material in the brief—

for the purpose of ascertaining whether there is any ground for criminal proceedings for conspiracy against the abovenamed persons.

Mr Slattery was not asked what I consider should have been the proper question: "Having regard to this evidence, should there be proper inquiry made to ascertain whether it is false?" That seems to be the most significant in the questions posed to Mr Slattery. The opinion continues:

The only evidence touching this question has come from written notes made and answers given in cross-examination by Mr Armstrong. This evidence establishes that Mr Armstrong was approached by Mr Eskell to ask Mrs Cleary whether she could help him find someone who would admit to adultery with Mr Eskell to hasten his divorce.

Again, we should remember that this came in at a convenient time after the divorce proceedings had begun and after the petitioner—at this time Mrs Eskell—had given evidence that she had had the lady she named followed. Mr Slattery continued:

It was Mr Armstrong's belief at this time that this evidence would have been false. It seems that thereafter Mr Armstrong mentioned the problem to Mrs Cleary who, according to Mr Armstrong's evidence, had discussions with Mr Eskell. At a later date in a Solicitor's office, Mrs Cleary signed a confession of adultery with Mr Eskell. This confession was subsequently affirmed on oath by Mrs Cleary and corroborated on oath by Mr Eskell in the divorce proceedings before *Dovey J.* who, because he regarded the cause as a most unusual one, called all parties to appear before him.

His Honour could do nothing else. This was the only safeguard open to him. The judge could only accept the evidence coming before him. He had no other source of information and therefore took that precaution. The opinion continues:

On a consideration of possible criminal proceedings against Mr Armstrong, the evidence indicates that he could have been implicated in an arrangement with Mr Eskell to ask Mrs Cleary to procure false evidence for presentation to the Divorce Court. This evidence alone does not establish the existence of a

conspiracy between the three abovenamed persons or any combination of them. It is not sufficient that Mr Armstrong may be guilty of improper acts if there was no common design. What evidence, if any, is available to connect Mr S. L. M. Eskell and/or Mrs M. Cleary with any alleged conspiracy? This evidence could only come as a matter of inference to be deduced from the acts done by them in pursuance of a criminal purpose in common between them.

Apart from Mr Armstrong's evidence, the only evidence available as to the acts and conduct of Mr Eskell and/or Mrs Cleary in connection with the Eskell v. Eskell divorce comes from the original documents filed in the divorce petition No. 2850 of 1961 and a reading of the transcript of evidence in the said petition.

So far as Mr Eskell and Mrs Cleary are concerned, there is no basis for advising that their evidence on oath before *Dovey J.*, as to their adultery, should be rejected.

Of course there was no basis for it. The significant words of Mr Slattery are: "*Prima facie* their evidence must be accepted". Of course there was no other evidence. No attempt was made to get that evidence and no attempt was made when these allegations came out. I am surprised, if it is true, that the police and others have not made this inquiry. I am reminded that when allegations are made, such as those by the Rev. Mr Noffs, the Commissioner of Police quite properly immediately makes inquiry. Why if they were not made, were inquiries not instituted in this case when this evidence was given? This is the significant part of Mr Slattery's view:

In my view there is no evidence admissible against Mr S. L. M. Eskell—

no evidence admissible—apparently it is only Mr Armstrong—

or Mrs Cleary that Mr Eskell and Mrs Cleary entered into an agreement between themselves or that either or both entered into an agreement with Mr A. E. Armstrong whereby false evidence was to be produced in divorce proceedings.

In the final result, I am of opinion that the evidentiary material in the brief—

that is all he was concerned with—

for opinion does not disclose evidence of conspiracy to abuse or pervert the due course of justice on the part of Mr A. E. Armstrong—

There is no evidence in the brief to support a charge against Mr Armstrong—

Mr S. L. M. Eskell and Mrs Cleary.

The Hon. R. R. Downing]

They are all in the same boat. Mr Slattery concluded:

I am also of opinion that there is no evidence to found a charge of perjury against Mr S. L. M. Eskell and Mrs M. Cleary in connection with the divorce of Eskell v. Eskell.

Those are the circumstances referred to which have caused all this public disquiet. This is the serious matter in the public mind and in the minds of honourable members here. The other night when we discussed the motion moved by the Minister for Decentralisation and Development for the expulsion of Mr Armstrong it became the general impression of members and the public that the most discreditable evidence in this case was the series of notes that Mr Armstrong had made in connection with this affair. It is well known that these men were close associates in the years to which reference was made to these notes. It is astonishing in view of what I said recently that when the Government moved for the expulsion of Mr Armstrong, Major-General the Hon. S. L. M. Eskell sat silent and had nothing to say. He was satisfied and is still satisfied to have Mr Armstrong expelled and to say not one word in his defence. It is only by a motion such as this that he can be compelled to say something. He has been virtually dragged to the House to say something, if he can, to remove this disquiet in the minds of honourable members. This disquiet is in the public mind. We all saw the leading article in the *Daily Telegraph* which was a reflection of what the public was thinking. The honourable member voted against this man who had been his associate. The evidence that this man was doing something in collaboration with Major-General the Hon. S. L. M. Eskell will permeate right throughout the community with the result that it is in the interests of the House that this motion should be carried.

The silence of Major-General the Hon. S. L. M. Eskell when the matter was first mentioned, his silence following the judgment, his silence the other night and his inaction and failure to do anything to refute the allegation against him is sufficient to

show us that it was with the greatest reluctance that he would come and give any reasonable explanation for his conduct. I anticipate that he will say, "For personal reasons I did not want to do this". When reflections have been made on your character, there comes a stage when your personal reasons, should you feel innocent and wrongly accused, compel you to come forward and make some statement in your own defence. This has been completely lacking in this case. If members want to remove this public disquiet and maintain the standing of the House in the public mind—this matter is discussed in many places wherever one goes—they will join with me in voting for this motion so that another member shall be appointed as Chairman of Committees. This will relieve the House of the stigma, undoubtedly in the public mind, of continuing to keep this member in this House as Chairman of Committees.

Major-General the Hon. S. L. M. ESKELL [5.30]: Mr President, I have listened for a long time and I have read for a long time many things that have been written and said regarding me in relation to my divorce, both before the *Barton v. Armstrong* case and at the time of my actual divorce. It is true that I have been reluctant to speak; and it is true, as the Hon. R. R. Downing said, that it is for personal reasons. They are old-fashioned reasons, to do with children and family, and innocent people and others. But now, as the Hon. R. R. Downing said, I must speak—I must defend myself because of the fact that these same children I have mentioned must hear me say now what I have to say. I could have spoken up when the Hon. Alex Armstrong was being attacked the other night; that would have been to the Hon. Alex Armstrong's advantage and to my own personal advantage to defend him and myself at the same time, but I still kept quiet for the reasons I have just described.

Mr Justice Street said that Mr Eskell and his wife were anxious to obtain a divorce. This is a misstatement. I am not saying that His Honour is telling a lie or anything like that, but he just did not know the facts. The facts are that I did not want a divorce, and in this regard I must refer to a statement I made in 1961 that I signed for my

solicitors and counsel regarding my position at that time, or before that time. I regret, also, that I have to mention my ex-wife and some of the situations involving her and her life—at that time and since. She is now remarried to a man named Alan Atwill.

My statement on 6th November, 1961, of which I shall read to you some part, states:

Alan Atwill and his wife Annette were among our circle of friends, and from 1947 until 1955 we saw each other at least once a fortnight. During 1956 the Eskells and the Atwills became an almost inseparable foursome, going out together at least twice a week and seeing each other during each weekend.

In October, 1957, Alan Atwill left his wife and went to live at Palm Beach. Immediately Atwill left home his wife, who genuinely wanted him back, bitterly blamed my wife as one of the causes for him leaving home and refused to talk or to see my wife. Mrs Annette Atwill had at least three to four discussions with me between October, 1957 and December, 1957, at which time she persisted with her contention.

In December, 1957, Alan Atwill and my wife saw me at my then residence, Fisher Avenue, Vaucluse, and both of them stated they were in love with each other, and my wife requested that I give them a divorce to enable them to marry as soon as possible after their respective divorces were complete. I pointed out to them that Alan's wife Annette had already expressed very strong opinions that my wife was responsible for the breakup in her marriage, and if she obtained any inkling of what they had said to me or if we made any move for Denise (my then wife's name) and I to get a divorce at that stage, I felt that Mrs Atwill would take drastic action in relation to her husband resulting in a divorce with my wife's name as co-respondent. I therefore proposed that until such time as the Atwill divorce was completed my wife and I should ostensibly live together, and if needs be that Atwill and my wife could see each other without any objection from me. Both my wife and Atwill agreed to this proposition.

My reasons for giving this proposition were twofold: I genuinely believed that Annette Atwill would act in the way I described above and, secondly, I had hopes in the course of time the expressed love between Atwill and my wife would cool or finish altogether, thus resulting in the *status quo* between my wife and myself being maintained. The main reason I wished the *status quo* to be retained was that I thought then, and still think now, that it would be better for the sake of my children for my wife and I to stay together, providing we could live in some form of harmony.

From December, 1957, until February, 1961, Atwill and my wife and myself lived this peculiar life, whereby I went out of my way to conceal the fact and at the same time condone this close association between my wife and Atwill. The pattern evolved over the years that my wife would leave home about 6 o'clock on Tuesday and Thursday nights and normally returned home between 11.30 and 2 a.m. the next morning. On Saturdays my wife would leave home before 9 a.m. and returned home between 7 p.m. and midnight depending on whether or not she and I were going out with some of our friends. On Monday night I usually went out on military matters, and on Friday nights I would be out one in every two. Wednesday night was the maid's night off and this, by tacit consent, became the night when we would eat with the children and after they went to bed discuss the normal problems of the children, the house, etcetera.

In the early stages of this arrangement my wife and I went to elaborate pains to conceal the fact that she was seeing Atwill in case Mrs Atwill came to hear of it. For instance, we went to the pictures together and left at separate times and in separate cars, after being in the theatre for about 15 minutes. We have gone to a cocktail party together and at the end have left in separate cars. In the first twelve months of this strange and unpleasant agreement I had made with the other two I saw Mrs Atwill from time to time. At all times I denied that my wife and Atwill were seeing each other, even though Mrs Atwill had heard to the contrary from other sources. I went out of my way to hoodwink her with a view to protecting my children.

In September, 1960, the Atwill divorce was finalized. From that time onwards my wife began to make further requests that I set about the divorce measures which we had discussed some three years previously. She still professed to love Atwill and over dinner we had some discussions and Atwill also expressed his love for my wife. I was not happy, but finally in November, 1960, I agreed to my wife's request, and we came to agreement of which we both made notes, the basis of which was as follows: I would allow my wife £31 a week until she remarried. I would allow her to occupy the house until November, 1962. If the divorce was not completed by November, 1962, then I would make some rental arrangement for her until she remarried.

As far as the children were concerned I undertook the following: to pay all school fees, including boarding school, provide all clothing, pay all medical expenses, all dental expenses, etc. She agreed to all these things, and my wife said, "We must be careful to obtain a divorce in the best way possible for the sake of the children." She said that depending on what was the shortest time under the new Matrimonial Causes Act, that the divorce would be desertion or restitution.

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The actual machinery and timings were further complicated by the announcement of my brother-in-law's engagement and the fact that he would be married on 24th February, 1961. We agreed after discussing the matter that when I went to military camp on 17th February, I should come down for the wedding on the 24th, and that I would stay at my mother's place so that I could ostensibly get a quick get-away back to camp. It was also planned that when I got back from camp to my residence on March 4 there would be no one at home and I would remove some of my personal effects and belongings and then go and live with my mother.

That is all that I am going to quote from those notes. That was a signed statement that I gave to my solicitors at the time. Now, from other notes of the time and other facts of the time I wish to go on to the period referred to by the Hon. R. R. Downing.

On 4th March, 1961, I went to live with my mother. From that day onwards I was followed by a detective hired by my then wife, despite the fact that I had agreed to let my wife have a divorce in the best way possible for the sake of the children. On 30th June, 1961, my wife's solicitor and his clerk called on me in my office and stated that investigators had followed me since I left home and that he had evidence of my adultery with Mrs Nan Elizabeth Dunn. He said that if I signed a confession, there would be no more problems for me. I refused to sign that confession, stating that adultery had not been committed with Mrs Dunn, nor with any other woman since I left my home. I asked him what evidence he had and he said, "A statement by a private investigator". I said that it was not true. The solicitor then departed.

Subsequently divorce proceedings started, naming Mrs Dunn as co-respondent. The charge of adultery was supported by a sworn statement by a private investigator that he had looked through a window and witnessed the adultery that took place between Mrs Dunn and myself. Mrs Dunn dined with me possibly on four occasions and at no time either then or since did I commit adultery with that lady. The investigator swore a false oath and because of this my wife's legal advisers were made aware that the divorce would be contested completely. The fact is that on the night it was alleged

I committed adultery with Mrs Dunn both her 14-year-old daughter and a 19-year-old girl, a university student, were in the house. After some months I was advised by my solicitor that if I would sign a confession in respect of any act of adultery committed by me, then Mrs Dunn would not be involved in the suit.

During the time when my wife and I lived together happily I never committed any matrimonial offence whatsoever. However, after she and Atwill confessed their affection for each other and our matrimonial life was broken up, although we lived under the same roof we went our separate ways. I committed adultery with Mrs Margaret Cleary between March and September, 1958. At that time Mr Armstrong had not met Mrs Cleary. In January, 1962, I told Mr Armstrong that I had a problem with my divorce and asked him if he would mind if I discussed the problem with Mrs Cleary. He was unaware of any previous association between that lady and me. Although he asked me for details of my problem I did not discuss the matter with him, nor did I give him any details. That was the first, last and only time that I discussed my divorce situation with Alexander Armstrong until after my divorce had been finalized.

Regardless of whatever notes Mr Armstrong made—and these were made some six months after the discussion with him—at no time was he present during any discussions that I had with Mrs Cleary. I told Mrs Cleary that I had a problem with my divorce, and after discussions spreading over three or four months she agreed that she would sign a confession in relation to the adultery that had taken place between us in 1958. I do not know what she told Alexander Armstrong about our discussions. The facts are clear: Mr Armstrong did not procure evidence in this matter and did not conspire to obtain false evidence. Mrs Cleary and I committed adultery and confessed it. There is no question of perjury.

Mr Justice Street said, "Mr Justice Dovey was suspicious of the veracity of the evidence of adultery". Mr Justice Street was partially correct in his statement. Mr Justice Dovey was very suspicious of the attempt to exclude Mrs Dunn from any part

of the proceedings. He suspected that Mrs Dunn was guilty of adultery and that I was attempting to protect her reputation. This, of course, is a natural reaction from a judge seeing a sworn statement by a detective that he had actually witnessed adultery between Mrs Dunn and myself. Mr Justice Dovey did not disbelieve that adultery had been committed between Mrs Cleary and myself. He said:

I find it impossible to believe that any woman would come into court and perjure herself by admitting an adulterous association that did not exist.

In view of the facts that I have stated, painfully but clearly, I maintain that I have not at any time brought discredit upon the Legislative Council, nor should the Council consider removing me from the position of Chairman of Committees. My divorce has been highlighted by some notes made by Alexander Armstrong, which he himself described as being notes that he had put down of thoughts that occurred to him, and are not necessarily fact. I know that those notes do not reflect the incidents that caused my divorce and my actions in relation to it. Further, it would have been easy for me to sign a confession that was put in front of me by my wife's solicitor naming Mrs Dunn co-respondent. There is the bitter and ironic fact that if I had committed such perjury as this, no voice would have been raised in protest then or now. I would have been in the company of thousands of others who have resignedly, helplessly and miserably accepted a trumped-up divorce case.

I defended Mrs Dunn because she was innocent of the charge of adultery and to protect her honour and reputation. I would do so again. The divorce court accepted my confession of adultery and in fact said there was no doubt that I had committed adultery. I did not commit perjury nor was there any necessity for me to conspire to mislead the court. Allegations have been made and inferences drawn only from notes made by Mr Armstrong and these have no relation to the facts or the truth of the matter. I am not guilty of any of the allegations made against me in this House. I am not guilty of perjury or conspiracy. I do not believe that any honourable member could vote for my removal

from the position of Chairman of Committees now that he or she has been made aware of the facts relating to my divorce.

Now I should also like to add something along the lines that the Hon. R. R. Downing mentioned, about such things as the Premier rejecting me as a Minister. This is not true. This is not a fact. I am not saying that the Hon. R. R. Downing is lying. On the contrary: he said that he obtained this information from reading papers and things. I am not saying that he did not say the truth as he knows it. The fact is that I went to the Premier and told him that when he was considering members for Cabinet I would not be available. This is the fact of the matter, and at no time did he reject me. This is the truth of that matter.

I am sure that this House will understand my silence throughout. As to the word "providential" that I think the Hon. B. B. Riley was talking about, the providential thing was the fact that Mr Justice Dovey just did not believe me or the court or any evidence that Mrs Dunn was an innocent person, and this was the providential thing to which he referred, I am sure.

The other matter that was mentioned was the question of the chairmanship of the Liberal Party group. Last November the Hon. F. M. Hewitt and I had a discussion on the fact that it was a two-headed monster, if you like to describe it as that, having both a Minister and a chairman, and at our first meeting in the new session in February I would put it to our members that the two should be merged and he should become the Minister and the chairman. It so happened that at our first meeting there was a discussion on the painful matter of the expulsion of Mr Armstrong, and this other matter was not discussed. In our second meeting the matter was discussed. My position of chairman lapsed, and the Hon. F. M. Hewitt is both the chairman and the Minister, and there is no mystery to that—there is no anything. That, Mr President, I think is all I have to say on this matter.

The Hon. B. B. RILEY [5.58]: I think anyone would be reluctant to intervene in this debate: it is a most painful occasion. Yet, if I may say so, the House may take

some heart from it, because a case has been stated by the Hon. R. R. Downing in terms of moderation and restraint, and it was stated because he felt that four matters which he raised were causing public disquiet about the position of Major-General the Hon. S. L. M. Eskell in this House. The House has heard from Major-General the Hon. S. L. M. Eskell a speech that must have caused him enormous pain to deliver, and I am sure that it caused members who listened to it pain to hear it. I hope to model the way in which I deal with this matter on the Hon. R. R. Downing's approach to it, and I should like to deal with it as calmly and dispassionately as possible and, in doing so, to invite the House to look at the material that is before it in support of the motion.

The Hon. R. R. Downing raised four matters. The first was the silence that Major-General the Hon. S. L. M. Eskell maintained during the progress of the suit between Mr Barton and Mr Armstrong. The Hon. R. R. Downing very fairly said that, of course, Major-General the Hon. S. L. M. Eskell had no right of audience. He did, however, suggest that a man in that position, having the evidence given about him that was given about him, was in a position to raise, and indeed should have raised, holy hell, as the Hon. R. R. Downing put it. It is easy enough to look back now with hindsight, taking in everything that has happened, and to say, "If I had been that man I would have said something." But, sir, I very much doubt whether that is a judgment which you or I or anybody in this House other than the man concerned is entitled to make. We do not know what moved him to maintain silence. It may have been legal advice. It may have been his own feelings—and, sir, I venture to think that they may have been deep, if we can judge by what we have heard this afternoon. I suggest that it is not right to say that, because this man maintained silence at that time, the public has no confidence in him and this House has no confidence in him. That, I think, was perhaps the least substantial of the three of the four grounds that the Hon. R. R. Downing put before the House which I shall characterize as unsubstantial.

I now turn to deal with the two other unsubstantial grounds. I need spend little time on them; they have already been dealt with by Major-General the Hon. S. L. M. Eskell himself. The matter of his being overlooked, if he was overlooked, by the Premier for Cabinet rank has, I suggest to the House, been entirely and properly explained by him, and it is a matter that from now on we can ignore. The third unsubstantial ground that I suggest the Hon. R. R. Downing raised was the matter of Major-General the Hon. S. L. M. Eskell ceasing to be chairman of the Liberal Party in this Chamber. Again I suggest to members that Major-General the Hon. S. L. M. Eskell has explained that in an entirely satisfactory way, that there is no cause there for any lack of confidence in him, and that this again is a matter that the House can dismiss from its mind.

Now I come to the fourth matter raised by the Hon. R. R. Downing, that is, as he put it, that Major-General the Hon. S. L. M. Eskell maintained silence in this House during the debate which resulted in the expulsion of Mr Armstrong from the House. The Hon. R. R. Downing relied, and relied very heavily, upon the judgment delivered by Mr Justice Street in *Barton v. Armstrong*. He relied also on Mr Slattery's opinion, and I know that the Hon. R. R. Downing will acquit me of any desire to be disrespectful or impertinent towards him when I say that, as he read extracts from the judgment and from the opinion to which he referred, it was extraordinarily difficult to follow him and to distinguish one from the other—what the judge said, what appeared in the notes made by Mr Armstrong, and what the Hon. R. R. Downing himself said by way of comment. I am sure that any member in the House who did not have a copy of the judgment would be seriously confused as to what was the material that the Hon. R. R. Downing was putting before the House. I say that in no spirit of criticism of the way in which the Hon. R. R. Downing spoke this evening. He had a difficult task to perform in presenting the material in such a way that there might be no confusion. I sympathize with him but suggest that he failed in his task.

It is most important that a distinction should be made between the different kinds of material the Hon. R. R. Downing has put before this House. In this connection I have to say only that there is a vast difference in the importance to this House between what Mr Armstrong said or wrote on the one hand and what Mr Justice Street said on the other hand. If one is confused with the other there is the danger of making a most serious mistake which could lead to an unjust conclusion. A criticism of more substance which I now offer about the problem confronting the Hon. R. R. Downing with relation to Mr Justice Street's judgment is that the honourable gentleman seriously misinterpreted what the judge said. The honourable member put to this House that Mr Justice Street found that where Armstrong was cross-examined about notes he had written he spoke the truth and therefore, the honourable gentleman suggests, in effect, if one finds in Armstrong's evidence some evidence that he was giving when he was being cross-examined about notes he had written, it must be true. That is far from being the fact. What the Judge said was this, and I am afraid I must read again a lot of what the Hon. R. R. Downing quoted:

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.

I interrupt my reading from the judgment to explain something that a lawyer accepts as second nature, but which sometimes other people do not understand. The cross-examining counsel is counsel hostile to the witness. In fact, he is counsel for the other side. The judge went on:

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 foreknowledge 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.

Let me pause there. The judge points out that at the start of cross-examination Mr Armstrong did not know that his opponent had these documents. Of course, when the

first of them was produced and he was cross-examined on it he knew his opponent had some documents of his but he did not know how many. In fact he never knew what the next one was going to be. Let me now continue with what the judge said. He went on:

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.

I hope honourable members will see the point I am making here. The judge is saying that where Armstrong did say something that was true it was because he was afraid that he was going to be confronted with a document that would prove him a liar, if he lied, and he therefore told the truth.

The Hon. J. A. WEIR: The Hon. R. R. Downing says that too.

The Hon. B. B. RILEY: Not quite.

The Hon. J. A. WEIR: That was the way I heard it.

The Hon. B. B. RILEY: I am afraid that a number of honourable members might have misunderstood it and that is why I am making this point. I hope I am not labouring it, but I am afraid that I probably am. However, it is crucial to a proper understanding of Mr Justice Street's judgment. The Hon. R. R. Downing also referred to Mr Slattery's opinion and made about it a perfectly accurate point that Mr Slattery was not asked to say, and did not say, whether further inquiries should be made in relation to any of the matters on which his opinion was asked. That is perfectly true, but what it comes to is that the further inquiries were not made and the further evidence that they might have produced—though we do not know whether they would have produced it—is not before the House. So the Hon. R. R. Downing then has to complain, which fundamentally is what he did at this point in his argument, that inquiries were not made, and if they had been made, they might have produced evidence that might support the motion he has moved. He is in the position of not having the evidence. He wishes

he had, and all he can do is complain that no inquiries were set on foot that might have produced it.

The question of what evidence he has is, of course, most important. I am confident that honourable members will decide which way they will vote on this motion on the strength of the case made by the Hon. R. R. Downing. Although he has not done so specifically, substantially he has said, "Let us have no confidence in Major-General the Hon. S. L. M. Eskell because he was guilty of a conspiracy to pervert the ends of justice and because he committed perjury." I might be misunderstanding the honourable member.

The Hon. R. R. DOWNING: I did not say that.

The Hon. B. B. RILEY: Not specifically.

The Hon. R. R. DOWNING: I certainly did not say it.

The Hon. B. B. RILEY: I thought I made it clear that the Hon. R. R. Downing did not specifically say that, but substantially that is what he is saying. He went through all the *Barton v. Armstrong & Ors* material, and he was forced to come up with the suggestion that Major-General the Hon. S. L. M. Eskell conspired to pervert the ends of justice and incidentally committed perjury. On the one hand, honourable members have such evidence as the Hon. R. R. Downing put before them and on the other hand they have the specific denial of Major-General the Hon. S. L. M. Eskell that he was guilty of conspiracy and that he did commit perjury. So it is a matter of weighing on the one hand this denial and, on the other hand, the material produced by the Hon. R. R. Downing to support his contention—his unspoken contention if honourable members like—that those offences were committed. This means that honourable members look at the evidence produced by the Hon. R. R. Downing. Let me make it clear that if an honourable member suggests in this House that a man has been guilty of conspiracy to defeat the ends of justice and guilty of perjury, he is making allegations of the committing of criminal offences.

The Hon. R. R. DOWNING: I did not say that.

The Hon. B. B. RILEY: I know that the honourable gentleman did not say it, but that is what he is doing. He is moving that the House has no confidence in Major-General the Hon. S. L. M. Eskell because of various offences which add up to charges of criminal conduct. Let us look at it squarely and be honest with ourselves about this motion. That has been alleged, not specifically, but it is alleged. I suggest to the House that the Leader of the Opposition, if he hopes to get support for a motion that is based on allegations of criminal conduct, must bear the burden of proof that falls upon a prosecutor in a criminal case. He is bound to prove his case beyond reasonable doubt. If that is what he takes up, that is what he must undertake to prove. The Leader of the Opposition must do more than merely discharge the civil burden of proof; he must do more than convince the House on the balance of probabilities. He has undertaken the burden of proof in a criminal case and he must prove his case beyond reasonable doubt.

I suggest it is only fair, too, that having made such charges, the Leader of the Opposition should support them by evidence that would be accepted by a court. In these circumstances he is asking the House to decide whether a criminal offence has been committed. Therefore, surely it is fair that he should tell the House that he has the evidence, which would be admissible in a court, and the House having heard the evidence as against the denials of the other side, he must satisfy it beyond all reasonable doubt that his motion is valid.

Let me take first the question of conspiracy. In a normal criminal case, if two people are accused—of course, in a case of conspiracy at least two people must be involved—a statement or act by one accused person is not admissible against the other. As I understand it, however, in a case of conspiracy a statement made or an act done by one conspirator in furtherance of the conspiracy—and I must emphasize those words very strongly—is admissible in evidence against the other. Let me translate

that into the situation here. If Mr Armstrong and Major-General the Hon. S. L. M. Eskell conspired, then a statement by Mr Armstrong or an act done by Mr Armstrong in furtherance of their conspiracy is admissible against Major-General the Hon. S. L. M. Eskell, but it is not admissible against him unless it was a statement or act in furtherance of the conspiracy.

The Hon. C. COLBORNE: That is what Mr Slattery said.

The Hon. B. B. RILEY: I think, in effect, he did. The point I make is that it follows that a statement made by one conspirator after the conspiracy is not admissible against the other. The reason for it is obvious. After the conspiracy, when the ends of the conspiracy have been achieved, the conspirators may have fallen out. One of them may then decide to concoct evidence against his former friend to get revenge. Therefore, the law sensibly says that a statement by one conspirator against another after the conspiracy has been completed is not admissible. That sort of evidence would be rejected by a court.

What is the evidence produced in support of this motion? The written statements of Mr Armstrong made after Mr Justice Dovey had delivered judgment, or the oral evidence of Mr Armstrong given the other day, and again long after Mr Justice Dovey had given his judgment. That mass of evidence goes in one hit: a court would not allow itself to hear it. That is really all the evidence that is available in support of the motion.

The only other charge suggested against Major-General the Hon. S. L. M. Eskell is the charge of perjury. Here again the burden on the prosecution is to prove beyond reasonable doubt that the statement made was false. What is the statement here? That Major-General the Hon. S. L. M. Eskell and Mrs Cleary committed adultery. Major-General the Hon. S. L. M. Eskell has told you just now that they did so in 1958, and he swore before Mr Justice Dovey that they did, and it was accepted by Mr Justice Dovey. The Hon. R. R. Downing must assume the burden of proving that they did not commit adultery and that when Major-General the Hon. S. L. M. Eskell swore

that he had, he swore falsely. Again if one applies the ordinary principles of British justice and says to oneself, "How would you be allowed to prove this in a court of law?" the answer is, "You must have two witnesses, or else one witness who is corroborated." There is just no witness here to the effect that the statement is false. There is no witness at all. Let it be assumed for a moment that Mr Armstrong is counted as a witness. Where is the corroboration? There is not any. In my submission, the case made by the Hon. R. R. Downing—from the highest motives and presented as fairly and restrainedly as the material before him allowed him to persuade himself he could present it—will just not stand up. I suggest that the motion should be rejected.

The Hon. J. J. MALONEY [6.18]: Last week this House had the unpleasant task of voting upon and finally taking action against a former member of this House. Tonight what astounds me is that a man trained in the higher spheres of the legal profession should attempt to tell this House that the Hon. R. R. Downing has not made out a case. The Hon. B. B. Riley has given us all sorts of legal reasons about what should be done and what should not be done. This House is not a court of law. I do not think any honourable member will say that it is a court of law. This House is the custodian of the dignity and honour of every member in this Chamber and by no stretch of imagination can this House be classed as a court of law. The astounding part of it all is that the Hon. B. B. Riley, of whose legal ability I have not the slightest doubt, did not use the same legal argument last week in support of Mr Armstrong. Last week this House decided to expel Mr Armstrong.

The Hon. B. B. Riley assisted the House and you, Mr President, by tendering advice to support your ruling that you had the right, despite Mr Armstrong's points of order, to allow the House to determine the matter. When that took place I was critical of the attitude of Major-General the Hon. S. L. M. Eskill who had made no statement either in the House or outside it to deny not mere allegations but evidence given

to the court in those divorce proceedings quoted by the Minister and again tonight by the Hon. R. R. Downing. The Hon. B. B. Riley took no objection to that debate proceeding and he voted for the expulsion of Mr Armstrong.

The Hon. B. B. RILEY: That was the man's own evidence.

The Hon. J. J. MALONEY: I beg your pardon? On the very same evidence that the honourable member is saying tonight is not admissible.

The Hon. B. B. RILEY: Nonsense!

The Hon. J. J. MALONEY: I know that but the honourable member said it. It is the same judgment as the one read last week. The Hon. R. R. Downing gave it further emphasis by referring to the opinion of Mr Slattery, Q.C., but he quoted from the judgment that the Minister referred to last week to condemn Mr Armstrong. No one can deny that. Honourable members who read *Hansard* will find the same proof. I have here the judgment that was read last week and I have marked everything that the Minister dealt with and with which the Hon. R. R. Downing dealt tonight. Yet the Hon. B. B. Riley can satisfy his ego in this manner by saying it is right to expel Mr Armstrong.

We on this side did not want to expel Mr Armstrong. We wanted an inquiry. We said last week that more than the fate of Mr Armstrong was involved. We said that Major-General the Hon. S. L. M. Eskill was also involved. We said, too, that a select committee should be able to conduct an inquiry into all the matters—the transcript and the documents—and report back to the House. The Hon. B. B. Riley voted against that. Now he says that the evidence upon which Mr Armstrong was expelled should not be admissible in this House—though he voted in support of that evidence last week.

The statement made by Major-General the Hon. S. L. M. Eskill does no credit to the House or to himself. He had the opportunity of making this statement from the time the *Barton v. Armstrong and Ors.*

case started and Major-General the Hon. S. L. M. Eskell's name appeared in the headlines. He had the opportunity to say that he knew nothing about these things though he admits tonight he had discussed the matter with Mr Armstrong. He had the opportunity of trying, as he says, to cover up for other people. He did not take this opportunity. He had the opportunity last week and tonight he has the audacity to say, "Had I spoken last week, it would possibly have been better for Mr Armstrong and myself." One could possibly in certain circumstances—I do not know what—appreciate a statement of that character had the honourable member not stayed in the House last week and voted for the expulsion of Mr Armstrong.

Mr Armstrong was expelled from this House, whether we like it or not, on the principal charge of his evidence in regard to procuring of evidence for Major-General the Hon. S. L. M. Eskell's divorce. It is true that his thought that he would bribe Mr Justice Dovey came into it, and it is true that the judge's comments about his unsatisfactory character came into it. But the fundamental reason—and every member of this House knows it—why Mr Armstrong was expelled last week was his unseemly conduct—as the Minister's motion puts it—in regard to the Eskell divorce.

Tonight the honourable member gives us a story—a statement that he has kept silent because of children and other people. I take it that they are his children or the children of someone else with whom he is closely associated. If his silence was to protect them from some possible stigma that might fall upon them or be thrown at them through the activities of their father, what would any honourable member of this House do in those circumstances? He would not sit here to vote for the expulsion of his confederate in the matter, despite what the Hon. B. B. Riley says about credit. If he did not want to be mixed up in the matter and if he wanted his name to be clean, he could have resigned from this House without any explanation. He could do so tonight and thus save all those people whom he has mentioned here. He could have saved his family and his own charac-

ter. He could have saved them from everything that has been said here tonight had he been man enough to come forward and to submit his resignation as Chairman of Committees.

The Hon. ASHER JOEL: Even if he were not guilty?

The Hon. J. J. MALONEY: Even if he were not guilty because, on his statement, Mr Armstrong was not guilty and he voted for Mr Armstrong's expulsion. Even if he is not guilty of what? The statement he made here tonight is not a statement that any decent married man would be glad to get up and make in his own defence anywhere. His statement tonight is that he has committed adultery long before this. He has brought in the name of his ex-wife, and brought in her adultery.

The Hon. R. C. PACKER: Completely unnecessary.

The Hon. J. J. MALONEY: Yes. Tonight he has ruined the character of people who have nothing at all to do with the debate in this House, and he has done that under the pretext that this was why he kept silent before. I am extremely sorry that the House last week decided that it would not have a select committee. I am extremely sorry that the select committee was not appointed; at least, somehow or other, we could have saved some people a lot of embarrassment that they will now suffer. I have no sympathy for the member following his statement tonight. Rather does he further convince me of the necessity for this motion. With the knowledge of his activities as will be given publicity throughout the State tomorrow would any member of this honourable House have voted to elect him to the second highest office in this House?

Maintenance of the dignity of this House is a matter above party considerations. This whole affair has been deplorable from start to finish. Members of the Legislative Council have conducted themselves in ways that no honourable member would tolerate. It is all very well for the Hon. B. B. Riley to lecture honourable members on law. This House does not need a lecture on law. It has certainly had an exposition tonight on

loose morals from one of its members. The Legislative Council is not a court of law; it is not bound by the strict rules of evidence: it is a place where honourable members themselves may decide right from wrong. The main function of the Legislative Council is to be the custodian of the dignity and honour of every member and of every future member, and of any other House that may be created. If honourable members endorse the statement made this evening by Major-General the Hon. S. L. M. Eskell, the dignity of this House must be lowered in the eyes of the public.

I submit that the Hon. B. B. Riley possibly has not studied the principles guiding the operations of Parliament as closely as he has studied principles of law. I appeal to honourable members not to be persuaded by his arguments. I do not think that any member of this House can accept the statement of Major-General the Hon. S. L. M. Eskell as a justification for his silence when it will be found, if one examines the proof of what he said, that he had spoken to Mr Armstrong. To my mind, any man who could do the things that Major-General the Hon. S. L. M. Eskell admits he has done is quite capable of doing all the things that he is alleged to have done, the sorts of things for which Mr Armstrong was expelled. I implore honourable members to maintain the dignity of this House. If the honourable member concerned will not do the right thing and step down, he must be forced to do so, as I for one do not wish to see as the second ranking leader of the House a man of this type.

[The President left the chair at 6.35 p.m. The House resumed at 7.48 p.m.]

The Hon. R. C. PACKER [7.48]: I rise to support the motion and I do so with considerable reluctance. At the outset I should like to say I do not believe that Major-General the Hon. S. L. M. Eskell is guilty of perjury or conspiracy. Tonight he has emphatically denied those charges and I accept completely what he says. I support the motion, not because I believe the honourable member is guilty of conspiracy or perjury, but for other reasons connected with his speech in this Chamber this evening. I

should like to start by referring to Standing Order 7(a) of this House under which the Chairman of Committees is appointed. It reads:

In the first Session of each Parliament the House shall by Resolution upon Notice, appoint one of its Members to be Chairman of Committees of the Whole House, who shall hold office, unless the House otherwise directs, during the continuance of the Parliament in which he is appointed and until his successor shall be appointed.

It is under that standing order that this motion has been brought before the House. If members of this Chamber feel that Major-General the Hon. S. L. M. Eskell should no longer be their chairman they are quite entitled to carry this motion. As I said earlier, for reasons unconnected with the Armstrong case, I support the motion. I do so because quite frankly not only did Major-General the Hon. S. L. M. Eskell speak in his defence far too late, but also he said far too much. I am sure I do not have to labour this point. I am sure also that all honourable members were as acutely embarrassed and horrified as I was that the honourable member should have dragged into this debate and into the full glare of publicity, innocent and defenceless people—namely, his first wife and the other persons whom he mentioned. There was no need for the honourable gentleman to involve these people in this debate and it was scandalous of him to do so. All that the members of this House wished to hear from Major-General the Hon. S. L. M. Eskell was a simple and blunt denial that he was guilty of perjury or of conspiracy. Instead, we were taken into the innermost secrets of his marriage, tragic as it may be.

I do not suggest that anything he has told us tonight reflects discredit upon him, except that he told us things that it was completely unnecessary for him to do. For him to say he kept silent out of consideration for his children and then say the things tonight that he said about the mother of those children is, to me, completely and utterly indefensible. It is primarily for that reason that I intend to support this motion.

Second, Major-General the Hon. S. L. M. Eskell, I fear to say, dissembled to the House in his speech. The Hon. R. R. Downing, in introducing the motion, said that Major-General the Hon. S. L. M. Eskell did not have the confidence of the Premier and Treasurer, and for that reason he was not appointed to the Ministry. I do not believe that was a substantial point, and I saw no reason for Major-General the Hon. S. L. M. Eskell to reply to that suggestion. It did not weigh in my mind and I am sure it did not weigh in the minds of other members because we all know that in this game of politics people are chosen and others are not chosen. But, for him to pretend to this House that he was not a candidate stretches my imagination to ludicrous lengths. He was a candidate: he fought hard for the job and lost it. Everybody in this House, including the honourable gentleman himself, knows that. Let me quote an article from the *Northern Daily Leader* of 8th August, 1968, which, I think, gives some evidence that the honourable gentleman publicly acknowledged he was a candidate for the Ministry. The article reads:

Brigadier S. L. M. Eskell's chances of being appointed a N.S.W. Government Minister are unlikely to be affected following his appointment today to a high C.M.F. post.

Mr Eskell is at present leader of the Liberal Party in the Legislative Council.

The Minister for Defence (Mr Fairhall) announced his appointment today as Commander of the 2nd Division, C.M.F., Eastern Command.

The Premier (Mr Askin) has said previously that a ministerial appointment "is a full-time job".

Mr Eskell said tonight: "I don't think this would be a yardstick to measure that by."

If Major-General the Hon. S. L. M. Eskell was not a candidate for the Ministry, why did he not say so at that time? Why did he make that remark? I cannot accept that anyone in this House would believe that he was not a candidate for the Ministry. I hate to use these words about a colleague. The honourable gentleman said he was not a candidate. It may be true, in fact it probably is true, that he went to the Premier and said that he did not want to be ap-

pointed, but I think most people know that that was after he discovered that he had no chance of being appointed.

The Hon. H. D. AHERN [7.54]: As a Temporary Chairman of Committees and because of the importance of this motion on the general conduct and procedures of the House, I wish to make a few observations. I had a few notes prepared but I am afraid that I shall add to them. My additional remarks will be brief and they will be specially directed to the Hon. B. B. Riley, who tonight told honourable members of what action was being taken in the Liberal Party about its leadership as reported by Major-General the Hon. S. L. M. Eskell. All I say on that score is that I nominated the Hon. F. M. Hewitt as leader of the Liberal Party in this House when nominations were called for the position, and in the subsequent election Major-General the Hon. S. L. M. Eskell was elected to the job. I congratulated him on it.

My attitude to the required impartiality of the office of Chairman of Committees was well stated in an address I made last year on the Appropriation Bill. I then declared where I stood. I said that I thought there was a mix-up in things, and there was too much politics in the office. I do not change my attitude tonight. I make one other statement without qualification—that I believe that this House unreservedly retains the right to determine its own procedures. I stand unchallenged on that. I believe that this House can do what it likes regarding its own procedures. I lay down that remark, as one who has been here for a long time, for the information of the Hon. B. B. Riley.

Honourable members will recall the late Sir Henry Manning stating the principles on this matter during the debate on the Balmain acquisition legislation, in respect of which my employment was involved. I shall not traverse that again. If any honourable member wants to read what Sir Henry said, it is recorded in *Hansard*. The Minister in charge of the House knows that when the Armstrong case was being considered by the Government my view was that both Mr Armstrong and Major-General the Hon. S. L. M. Eskell should be treated

the same. I still hold that view. With a view to preserving the prestige and integrity of the House and its officers, I propose to support the motion moved by the Hon. R. R. Downing. I look upon it as a non-party motion presented to the House to give honourable members an opportunity of registering their views on a most unfortunate matter that I hope will never come before this House again.

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [7.57]: My first comment is that these are very sad times for this honourable House. I listened carefully to the case that was presented tonight by the Hon. R. R. Downing. I shall not refer to the individual speeches, some of which were possibly a little wide of the mark but the Hon. R. R. Downing attempted to prove to the House that Major-General the Hon. S. L. M. Eskell is not a fit person to hold the office of Chairman of Committees. He based his case on the evidence recorded in the *Barton v. Armstrong & Ors* transcript, on Mr Justice Street's judgment and on almost a complete reading of the outside opinion sought by the Government from Mr Slattery, Q.C. The Hon. R. R. Downing criticized to some extent the terms of reference in that briefing to Mr Slattery.

Tonight the Hon. R. R. Downing devoted a lot of time to the silence of Major-General the Hon. S. L. M. Eskell during the *Barton v. Armstrong & Ors* case as well as during last week's debate in this House. I feel that the Hon. B. B. Riley dealt adequately with the flaws in the Hon. R. R. Downing's legal argument. I have no doubt that there are flaws in it, even though I am not a legal expert. Honestly I do not think that this legal issue is a major issue tonight, though I do not accept the nodded agreement of the Hon. J. J. Maloney in that respect.

Major-General the Hon. S. L. M. Eskell has sprung to his own defence tonight. He told honourable members why he was silent during the Armstrong proceedings. He told honourable members also why he was silent during the debate in this House last week. He said he sought to protect the members of his own family and others from harmful,

undesirable publicity. I am sure most honourable members would give serious consideration to doing that if a circumstance like it arose. Tonight in this Chamber Major-General the Hon. S. L. M. Eskell has bared the details of his private life in a way that very few people would do. By inference at least the Hon. R. R. Downing has made allegations of perjury and conspiracy.

Major-General the Hon. S. L. M. Eskell has given tonight in this Chamber a flat denial of perjury or conspiracy; he has admitted that he committed adultery. From the transcript of evidence it was clear that he had either committed adultery or was guilty of perjury. Tonight he stuck to the evidence that he had given before Mr Justice Dovey, where he admitted that he had committed adultery. The Hon. R. R. Downing has suggested that the doubts expressed by Mr Justice Dovey with regard to the evidence given in the Eskell divorce case should have been investigated by the police. He said that once there was any doubt in Mr Justice Dovey's mind about the evidence produced in court, investigations should have been made.

In spite of the denial by the Leader of the Opposition—I understand that is what he said—I am of opinion that the Hon. R. R. Downing was Attorney-General during the whole period of these divorce cases. In the circumstances, I should expect that the Hon. R. R. Downing would have acted accordingly if he had felt that action should be taken. He was a highly reputable Attorney-General, and if the judge had made no reference of the case to him, I feel that he would have seized upon it himself. The House has heard the case put forward by the Hon. R. R. Downing and the flat denials by Major-General the Hon. S. L. M. Eskell. In my view, those are the two sides of the case to be decided tonight: the other speakers have merely added their opinions to the main arguments.

It has been said tonight that the office of Chairman of Committees of the Whole House is the second highest office that can be bestowed on any member of this House by his fellow members. The Chairman of Committees is in effect the Deputy President

of the House in the absence of the President: he can be asked to act on behalf of the President in the President's absence, whether he be away overseas or absent through sickness. I believe that a vote on a motion of this nature should not be on party lines. Someone said tonight that this motion had not been moved in a party spirit, but I know that it was, and I do not think it can be denied.

The Hon. J. J. MALONEY: It can be.

The Hon. J. B. M. FULLER: I do not think it can be denied. That is my opinion. The House has heard the Hon. R. R. Downing's case and Major-General the Hon. S. L. M. Eskell's case. Because of the importance of the issues, I feel in my heart that an appeal should be made to each individual member of this House to vote as he thinks fit. I suggest that each individual member forget political allegiance tonight and vote as he thinks he should vote on the motion before the House. Members have heard both sides, and I feel after hearing the debate this afternoon and this evening, that this is the only honourable way that they can vote. Basically, I believe that maintenance of standards in our legislature is of paramount importance to our system of parliamentary democracy, and I believe also that maintenance of those standards rests with each individual member of the legislature.

The Hon. R. R. DOWNING (Leader of the Opposition) [8.4], in reply: First, may I clear up one of the matters mentioned by the Minister, who said that no investigation had been made at the time of this divorce case when I was Attorney-General. So far as I can recollect—and I think I would recall it if there had been a report—no report was made to me when I was Attorney-General about these proceedings, which, as I understand, were taken under the federal Divorce Act. As I recall it, I knew the mere fact that the decree had been granted, which was public knowledge. Perhaps my remarks have been misconstrued or misunderstood: I asked why the allegations made by Mr Armstrong concerning this matter had not been immediately investigated by the police. So far as I know, no other alle-

gations of impropriety in the conduct of that divorce case had been made prior to this. It never came to my notice.

The Hon. J. B. M. FULLER: There was some press publicity following Mr Justice Dovey's judgment.

The Hon. R. R. DOWNING: There might have been. It has always been the practice to refer to the Crown any improper practices in the conduct of divorce cases. This is generally done by a reference from the judge, though some information might come from outside sources. There was no reference by the judge in this case. If there had been, I would remember it. So far as I recall, no complaint was made to me, either unofficially or by the judge. There was no reference by Mr Justice Dovey to the effect that he had suspicions about this case.

The Minister has put forward the worthy idea that matters such as this should be dealt with on a non-party basis. I endeavoured to do that the other night in the case of Mr Armstrong. I made it clear to the House that I had no brief for Mr Armstrong or for any of the matters of conduct of which he was alleged to be guilty but I felt that justice not only should be done, but also should appear to be done. For that reason I strongly pressed that both matters should be dealt with at the one time. I am glad to know that the Hon. R. C. Packer, apparently on reflection, is now of somewhat the same opinion. Acceptance of my earlier submission would have obviated this debate tonight, in which event the most regrettable statement by Major-General the Hon. S. L. M. Eskell might not have been necessary. Might I say in all seriousness and sincerity that I gave a lot of consideration to this motion. I realized that I would have to give a lot of details that would hurt certain people. After serious consideration, I was finally swayed by the fact that the people whom I had to mention tonight—who were dealt with in the evidence, the judgment of Mr Justice Street, and the opinion of Mr Slatery, Q.C.—had already borne the full glare and blast of publicity.

I should have had grave doubts and should have been sincerely troubled, gravely troubled, indeed, had I known that the motion I was to move tonight would result in a statement such as we heard from Major-General the Hon. S. L. M. Eskell tonight. I should have been most reluctant to drag into this discussion the names of people who are unable to defend themselves, who unfortunately will now doubtless get the full blare and blast of this unfavourable publicity, which must cause them great concern and grave anguish. I think I should have sat down troubled indeed had I known that such a defence would have been brought forward by Major-General the Hon. S. L. M. Eskell tonight in this Chamber. Not only did his defence bring in those people who cannot reply themselves. His defence, had it been made when Mr Armstrong was here the other night, would have given Mr Armstrong an opportunity to comment upon it.

Not only are these people to be considerably grieved and mortified by the publicity which will follow this debate, but also the way in which the honourable member put his case could probably have grave legal consequences for the former Mrs Eskell, who was not in any way associated with these proceedings. I can say only that I regret that she and her present husband have been brought into it. Major-General the Hon. S. L. M. Eskell told us that for personal reasons that he valued he had not come to his defence earlier. But tonight these faded into insignificance when he sacrificed these people for the purpose of retaining the chairmanship of committees. All he had to do, to save these people from this suffering, sorrow and anguish that he has now heaped upon them, was to tender his resignation this afternoon as Chairman of Committees.

His children, the former Mrs Eskell and the other people that he named tonight would have been spared the disclosure of all the intimate personal details of their lives. He would have saved them this trouble if he had the consideration for them that he suggested in his speech that he has. That is all he had to do. Put brutally, his consideration for them was not worth his position as Chairman of Committees of

The Hon. R. R. Downing]

this House. I think every honourable member in this Chamber will regret this sincerely. I do probably more than anyone, having been the mover of the motion. I regret that I might have indirectly been responsible for bringing the names of these people into this discussion. I offer my sincerest apologies and my deepest regrets that they were brought into it by Major-General the Hon. S. L. M. Eskell. Might I say that I think that that disposes of the defence and the sincerity of the defence put forward by Major-General the Hon. S. L. M. Eskell.

I should like to make a few comments on what the Hon. B. B. Riley had to say. It was obvious to me that the Hon. B. B. Riley did not follow the tenor of my remarks. Perhaps it might have been my fault. I was trying to convey to the House the disquiet that existed among members and the disquiet that existed in the public mind about all these things that had been said about Major-General the Hon. S. L. M. Eskell. I did not for one moment ever attempt to prove criminality on the part of anyone. That criminality was not, as Mr Slattery, Q.C., said, proved in the material before him, and we had less material before us than Mr Slattery had. The Hon. B. B. Riley wants to be technical and to say that one should not deal with Major-General the Hon. S. L. M. Eskell unless there is this standard of criminal proof of certainty beyond reasonable doubt. Let me say that that was not the standard that the Minister asked us to consider in the case of Mr Armstrong. I do not think it is the standard that is required in matters of this kind in this House. The standard is, I think, as the Hon. R. C. Packer put it, the regard and confidence that members of this Chamber place in any particular officer. I do not want to say any more about what Major-General the Hon. S. L. M. Eskell said or about what the Hon. B. B. Riley said. I think that was adequately dealt with by the Hon. J. J. Maloney.

It is desirable, of course, that this matter be disposed of as quickly as possible. I am only thankful that the debate has not extended for longer than it has. I am sure that we all hope that such an experience will not again come before this House. I

regret that this whole matter was not dealt with on the basis on which I originally suggested it should be dealt with, by a select committee composed of even numbers of members from both sides of the House. Had that been done, I am sure that the hardship and sorrow to which the Hon. R. C. Packer referred, which we all regret, would not have been occasioned. Had I been a member of that select committee, I should have done everything humanly possible, within the powers of the select committee, to prevent the disclosure of anything such as was contained in Major-General the Hon. S. L. M. Eskell's statement tonight. I should have gone to any lengths to see that such a thing did not happen. I am sure that in that regard all the other nine members of the committee whom I nominated, once they gave careful consideration to this matter, would also have come to the same view.

It is all right for the Minister to say that this should be dealt with on a non-party basis. I am sorry that the whole matter, from the very start, was not dealt with on the basis on which the Minister suggests it should now be dealt with. I can only assume now, unfortunate as it may be, that probably there will be a complete re-opening of the proceedings, by virtue of the statement that Major-General the Hon. S. L. M. Eskell made tonight. I know that the authorities will probably have to give long and serious consideration to it.

My only consolation in that is the fact that I am not the person who has to give consideration to whether anything should be done in respect of the divorce case to which Major-General the Hon. S. L. M. Eskell referred. We all know there are certain rules about discretion and what must be disclosed to the court. All that Major-General the Hon. S. L. M. Eskell has done tonight is to give evidence—if it may be put that way—of some wrongdoing on

the part of someone who was innocent in these proceedings. I take some consolation from the fact that I shall not have to make that grave decision. So far as I am personally concerned, I hope that the proper authorities will see their way clear to exercise a benevolent discretion so that the people who have gone through all this that Major-General the Hon. S. L. M. Eskell referred to, will not be made to suffer further. I believe that every honourable member in this Chamber who has heard this debate tonight and heard me speak—I say this with all humility—will agree that I may have convinced some honourable members on the Government side that they should support the motion, but the most convincing argument put forward tonight why my motion should be supported was the statement by Major-General the Hon. S. L. M. Eskell.

Motion agreed to.

SPECIAL ADJOURNMENT

Motion (by the Hon. J. B. M. Fuller) agreed to:

That this House, at its rising today, do adjourn until Tuesday next.

ADJOURNMENT

BUSINESS OF THE HOUSE

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [8.17]: I move:

That this House do now adjourn.

I inform honourable members for their convenience that we hope to follow the business paper through in the order as printed today.

Motion agreed to.

House adjourned at 8.18 p.m.