

LEGISLATIVE COUNCIL,

Wednesday, 31st July, 1889.

Deepening Princess Royal Harbor—Further replies from the Governments of the other colonies as to the Constitution Bill—Railways Act Amendment Bill: in committee—Adjournment.

THE SPEAKER took the Chair at seven o'clock, p.m.

PRAYERS.

DREDGE FOR DEEPENING PRINCESS ROYAL HARBOR.

SIR T. COCKBURN-CAMPBELL— who had given notice of his intention to move a resolution affirming the desirability of the Government entering into negotiations with the South Australian port authorities for the purchase of a dredge, for the purpose of deepening Princess Royal Harbor—said that when he gave notice of the motion he understood that the hon. member for Albany would not be down this session; but as the hon. member was now present, he would ask that the motion be postponed until Friday evening, when the hon. member for the district could take charge of it.

Agreed to.

CONSTITUTION BILL: REPLIES FROM GOVERNMENTS OF SOUTH AUSTRALIA AND NEW ZEALAND.

THE SPEAKER announced that he had received the following further replies from the Premiers of South Australia and New Zealand to the resolution he had telegraphed to the Governments of the other colonies on the subject of the Constitution Bill:—

"To the Honorable the Speaker, Legislative Council.

"Both Houses to-day suspended Standing Orders and passed following address to the Queen's Most Excellent Majesty, &c.:—
 "Having in common with the other Australasian Colonies long enjoyed the advantages of Self-Government, under which our material prosperity has been increased, and our loyalty and devotion to Your Majesty have continued unabated, and feeling confident that the same results will follow the granting of similar powers to our fellow-colonists in Western Australia, we humbly pray that Your Majesty will be pleased to speedily extend to Western Australia a full measure of Responsible Government, thus

"advancing the cause of Federation and completing Australian unity by adding Western Australia to the group of loyal, contented, and autonomous colonies." This will be cabled forthwith to Secretary of State.

"J. A. COCKBURN.

"Adelaide, 30th July, 1889."

"To the Honorable the Speaker, Western Australia.

"Government of New Zealand think Responsible Government should be granted to Western Australia. Will heartily join in pressing it on Imperial Government, provided the Colony is confined to the temperate latitude and the Northern country excluded and reserved for a separate Government.

"H. A. ATKINSON.

"Wellington, 30th July, 1889."

NEW BILL.

THE SPEAKER: I notice that the motion on the paper in the name of the hon. member for Perth (Dr. Scott) is irregular. The hon. member has given notice of his intention to move the first reading of a new bill; the hon. member must first ask leave to introduce the bill.

MR. SCOTT: Then I move for leave to introduce a bill to amend "The Municipal Institutions Act, 1876."

THE SPEAKER: The hon. member must give notice of his intention to move for leave; he cannot do so without notice.

RAILWAYS ACT AMENDMENT BILL.

The House went into committee for the consideration of this bill.

Clauses 1 to 6:

Agreed to, without comment.

Clause 7.—"No person nor the representatives or relatives of any deceased person shall be entitled to recover from the Commissioner by reason of any injury sustained by any such person whilst being carried on any railway vested in the said Commissioner, or whilst being in, upon, or about any station, yard, land, or premises vested in the said Commissioner as a passenger travelling upon any such railway or as a servant of such railway, whether such injury arose from negligence or otherwise, in excess of the sum of One thousand pounds, except under an insurance ticket issued by the Commissioner as hereinafter provided:"

MR. MARMION said it seemed to him that at this stage in our political history it was not desirable that such a sweeping change in our railway policy as this clause proposed should be adopted. He should prefer that legislation of this character should remain to be brought in, if brought in at all, under another Constitution, when a responsible Ministry would sooner or later have an opportunity of proposing such a change in our railway regulations. It was a change with which he was bound to say he did not entirely disagree; at the same time it was open to so much argument as to the limit that ought to be placed upon the liability of the Government in these cases that it behoved them to be very careful, and to give the subject very serious consideration,—more consideration than they had been able to give this bill, which had only been before them a day or two, and of which they had not heard a word of warning as to the intention of the Government. He felt it was not desirable that such a sweeping change in the law should take place at the present juncture of our political history; and, unless he heard some stronger reasons than had been given for this clause he should feel bound to oppose it.

MR. DE HAMEL said he agreed with the hon. member for Fremantle in the remarks he had made; and he thought the House would do well to strike out this clause having reference to compensation. He thought so particularly in view of the interpretation clause, which provided that whenever the word "railway" was used in this Act it should be construed to include every railway in the colony, whether a Government line or a private line. It did certainly appear to him that the provision of this compensation clause which limited the liability of the defaulting party was not so objectionable as applied to a Government line as it was to a private line of railway. The Government, it might be taken for granted, endeavored to do all it could to protect the safety of the public; it would naturally use every precaution; it did not run its lines for profit but for the convenience of the public. The public themselves had to pay for these railways and they were interested in their management, and had a voice in their management; and he could under-

stand that there might be some reason for the argument that the liability of the State should be limited. But when it came to be proposed that the same principle should apply to all private companies' railways, over which the public had absolutely no control, he thought it would be a very dangerous principle to introduce. He had an amendment which he intended to move in the 10th Clause, when they came to it, restricting the operation of the compensation clause, but he agreed with the hon. member for Fremantle that the best thing they could do with this clause was to strike it out altogether, until there shall be a different form of Government, when the Ministry in power could bring in such an Act as they might think fit.

MR. A. FORREST said he for one could not agree with either the hon. member for Fremantle, nor the hon. member for Plantagenet. He thought it was very necessary that this colony should make a stand with reference to this question of compensation and draw the line somewhere. They had been told of cases outside this colony where the Government had had to pay as much as £130,000 compensation for one railway accident, and out of that sum one gentleman recovered as much as £30,000. He should like to ask how this colony would look if any gentleman in the same position here obtained a verdict of £30,000 against the Government, for a railway accident; and how it would be if we had three or four such claims. It would simply ruin the colony. He presumed the Railway Department used every care they could: it was not to their interest to do otherwise. He also presumed that private companies also exercised all the care they could; and for his part he intended to vote for the clause as it stood, limiting the amount of compensation to £1,000. He did not suppose that £1,000 would compensate people in every case; but this was a national question, a public question, and we had to look at it in that light, and in the light of the public revenue. He saw no good reason for waiting for Responsible Government, if this proposal was a right and proper one; why should it not be adopted at once?

MR. RICHARDSON was inclined to agree with the hon. member for Plantagenet, so far as his remarks applied to

private companies. It might be a debatable question, upon which there was much to be said on both sides, as to applying this principle to State railways; but when it came to the question of extending the same principle to private lines it assumed a very different bearing. The Government did not run its railways solely for the sake of profit; it ran its railways for the convenience of the public, and to serve the interests of the country; in fact, the Government railways were our own railways, the railways of the taxpayers, who had to keep them going whether they paid or not, and who had to pay for any accidents that occurred, so that the Government had a kind of paternal interest in the public which a private company had not. He presumed that private companies constructed and ran their railways for the sake of profit, and solely for the sake of profit, and their main object was to get a dividend for the shareholders; and to that end they would be inclined to cut down their expenses as far as they possibly could, and possibly cut it so fine that they might have to work their lines with an insufficient staff, and in this way contribute to accidents. A Government would not be liable to the same temptation; and he could see a distinction between applying this principle of limited liability in the case of a Government or public railway and a railway worked by a private company. To exempt all private railway companies from liability in cases of accidents would be to introduce a very dangerous policy; and he certainly should feel inclined to limit the application of this clause to Government railways, as suggested by the hon. member for Plantagenet. As to shelving the question until the introduction of another form of Government, he did not see the force of that; if the principle was a good one it ought to be adopted without delay; if it was not a good one, the introduction of Responsible Government would not alter it. There might be a serious accident happen on our railways before we adopted Responsible Government, and the colony might be called to pay very heavy damages, unless this principle of limiting their liability was adopted at the present time.

THE COMMISSIONER OF RAILWAYS (Hon. J. A. Wright) said he

could hardly understand the argument of the hon. member for Fremantle, except it be this,—that everything that is good should be left to be brought in under Responsible Government, and that everything that would benefit the colony should be postponed until the advent of that happy time. They were not to do anything,—not even to bring in a loan, it appeared; they were not allowed to pass any measure that would do the colony any good, until the Constitution was changed. That was all he could make out of the hon. member's argument. This bill was right enough, but it ought not to be brought in now, until they had another Constitution. He could not see the force of the argument. In his opinion a railway accident was just as likely to happen under the present form of Government as under another form of Government; and Responsible Government might be put off indefinitely. As for the opposition of the hon. member for Plantagenet to the application of the same principle to private railways as to public railways, they all knew the hon. member was opposed to private companies of every description.

MR. DE HAMEL: That is not true. I am not opposed to private railways or private companies at all.

THE COMMISSIONER OF RAILWAYS (Hon. J. A. Wright): I thought the hon. member was. At any rate I do not see the logic of his argument that if the Government ought to be exempt from liability beyond £1,000, a private company ought not to be exempt, especially when the private company's railways are worked as ours are, under Government supervision. I fail to see why a private company's railway should not under these circumstances have the same benefits as a Government railway. If the principle is a good one in one case, it cannot be a vicious one in the other. While on this subject of the liability of the Government, I should like to be allowed to read an extract from the report of the Victorian Railway Commissioners, with reference to the Windsor accident, which resulted in the Government of that colony having to pay compensation to the amount of £129,000. The Commissioners say:

We also think that the extent to which the State should be liable for personal injury to

the public using the railways deserves the most serious consideration. As, therefore, all those who use the railways participate in the benefits derivable from a service given at a minimum cost, the liability of the department should bear some reasonable relation to the consideration it receives. It has been said that if railway carriers had not an indefinite liability attaching to them, less care would be used in conducting the traffic, and accidents would be more frequent; but this needs no denial from those associated with the conduct of the business, and daily conversant with the anxieties connected therewith. It can scarcely be logically contended that, given a consideration of, say, 3d., a liability to an unlimited amount should be involved. The consideration paid should have some reasonable relation to the risk taken, and, except in the case of railways, this is the invariable principle acted upon. It is quite feasible to establish a system that would work equitably without prejudicially affecting travellers. Let a maximum liability, say of £1,000, be fixed, and adopt a system of insurance, at a scale of rates sufficient only to cover the increased liability then taken, with the utmost facility for effecting such insurance, by means of which any person not content with the maximum established could secure an insurance for any amount that might be deemed necessary.

It is upon that principle that the present bill is based. I certainly think there ought to be some limit, and I think £1,000 is a fair amount; or £5,000 in the event of insurance.

MR. PARKER said he understood from the Commissioner that it was intended to apply this clause to all lines of railway, private as well as public. If his (Mr. Parker's) reading of this clause was correct, the committee need not trouble themselves about the principle being extended to private railways, for he did not see how the provisions of this bill could possibly apply to private railways. The 7th Clause clearly expressed that the clause referred to railways "vested" in the Commissioner; it did not refer in any way to private railways; and so far as this bill was concerned there was nothing to prevent people recovering £500,000 from the Great Southern Railway Co., in case of an accident,—if they lived long enough to recover it. Then again, the 8th Clause, which referred to the insurance tickets; this also referred to railways "vested" in the Commissioner, and had no reference at all to any private company's line. These tickets were only obtainable at railway stations on the railways that were "vested in the Commissioner." The 10th Clause was com-

pletely contradictory of the 7th Clause,—the clause now under consideration. The 10th Clause, which was the interpretation clause, said that whenever the word "railway" was used in the bill it should be construed to mean any railway within the colony, but the preceding clauses of the bill distinctly referred to railways that were vested in the Commissioner, and to no other lines. That 10th Clause appeared to have been added to the bill after it was drawn, as a sort of addendum, and without reference to its application to the previous clauses of the bill. It was obvious that the bill as originally drafted was only intended to apply to Government railways; but it afterwards seemed to have struck somebody that it ought to apply to all railways, so this 10th Clause was pitchforked in, although it contradicted every other clause in the bill. He could not conceive how it could be possible to apply this 7th Clause to any other line than a Government line; and, with all due deference to the Commissioner, he defied anyone to say that this clause would exempt any private company from their liability as to compensation. He should be glad if the hon. and learned Attorney General would favor them with his views on this point.

THE ATTORNEY GENERAL (Hon. C. N. Warton) said it appeared to him that their best course would be to pass the 7th, 8th, and 9th Clauses, and then see how they should deal with the 10th Clause.

MR. RANDELL thought the principle which it was sought to be introduced was a very important one, and required very careful consideration, especially if it was intended that the bill should apply to private as well as State railways. It seemed to him it would be very much better to allow private railways to bring in their own bills, rather than that the Government should do their work for them. With reference to the question of compensation, he thought it was a question that ought to be faced by the House. He did think that the amount of compensation should be limited; but he thought the limit fixed here was too low. Referring to the case that occurred recently, he thought he might say that it was generally considered that the sum awarded to the plaintiff was very small; that was the general impression. His

own opinion was that the Government had made a very fair offer to the man, and that it would have been better if he had accepted it; but his opinion as to the amount of the award was that it was as little as they could possibly have awarded a man who had been deprived of earning his livelihood during the remainder of his life. The plaintiff in that case was only a working man, and the jury awarded him £850, which was very near the amount which this bill fixed as the maximum compensation in any case. It appeared to him it was simply a mockery to offer the representatives of a professional man who happened to be killed by a railway accident a sum of £1,000. Would £1,000 fairly compensate a doctor or a lawyer who in the prime of life was disabled from following his profession, and making any provision for his family? It was simply ridiculous. He thought it would not be difficult to fix a fair sum beyond which the Government should not be held liable; but he certainly thought the limit proposed by this bill was altogether too low, to meet all cases. As to postponing the bill until they had another form of Government, he did not see the force of that argument; he thought it would be better to face the problem now, and fix the amount with a due regard to the financial position of the colony and the general position in life of its inhabitants, rather than wait for the advent of another form of Government. He was not one of those who thought that juries were incapable of performing their duties, or who were reckless in the discharge of their duties. He did not think that. He thought that, generally speaking, juries in this colony—especially those who were summoned in special cases—were men that were fully competent to discharge their duties. There might be some little difficulty sometimes in arriving at a unanimous verdict, or a verdict that would give universal satisfaction, because of certain elements constituting the jury being so widely divergent, and because of the divergent opinions held by individual jurymen,—as they heard the case in connection with the trial that took place the other day. But while he thought that juries, as a whole, might be safely trusted to award what was a fair and just and a reasonable

amount of compensation, still he thought at the same time it was desirable that there should be some limit to the amount of the liability of the Government. He did not think there was much in the argument that if they were to limit the amount of the liability of the department it would make the railway servants or the railway officials more negligent. He did not think that was likely to enter into their calculations at all. [The COMMISSIONER OF RAILWAYS: Certainly not.] With reference to private companies the matter presented a different aspect altogether; and he should be unwilling to vote in favor of private lines being included in the same category as Government lines. He did not think it was difficult to show that the position of a private company as regards its lines was in no way parallel with the position of the Government as regards the State lines. Members would recollect the controversy that took place in England some years ago with reference to the undermanning of the railway lines in that country, and the consequent danger to the travelling public. It was pointed out, among other things, that the signal-men were overworked, being on duty for 16 hours out of the 24, and that it was impossible to expect these men to keep alert for such long hours, and that the result was a likelihood of accidents; and there was a great outcry made at the time. That was one of the dangers which they might expect on a private line, which was running solely for the sake of profit, rather than on a Government line, which was run more for the convenience of the public than for profit. In the one case the great object in view was to swell the profits of the shareholders, and there would be a temptation to underman the line; but there was not the same temptation in the case of a Government railway. He did not know exactly what powers the Commissioner of Railways exercised over private lines in this colony, whether he had the power to interfere if he thought that the staff was not sufficient for the safe working of the line, or that the line was not being worked in a satisfactory and efficient manner so as to ensure the safety of the public. If he had not this power then the argument applied with still greater force that the provisions of this bill, as to limiting the

liability of the companies, should not be extended to all the lines in the colony.

MR. MORRISON said he held very strongly with the last speaker's remarks; he thought the damages ought to be in accordance with the surrounding circumstances, and that there should not be a fixed limit beyond which they could not go, under any circumstances. But he should like to see the damages assessed by a Judge of the Supreme Court rather than by a jury. He must say that he had not much faith in the sentimental feelings of a jury in a small place like this; he was afraid they were liable to be carried away by these feelings, especially when the Government was concerned. He should prefer to leave the question of damages or compensation to a Judge. If this could not be done, he thought it would be very desirable to limit the amount of compensation; but he thought that £1,000 was not a sufficient amount in all cases.

MR. BURT said he should like to say in the first place that he perfectly agreed with the remark made by the hon. member for Sussex, as to the wording of this clause, and how utterly impossible it would be to apply the provisions of this 7th Clause to a private line of railway; it did not affect private lines in any way, and, no doubt, as the hon. member had said, the 10th Clause had been tacked on to the bill, hoping it would fit in with the other clauses in some haphazard way. With regard to the principle of the bill, he should like members to remember this fact—that until Monday last, when the bill was introduced, they had heard nothing about this question; neither the Legislature nor the country had heard a word about this proposed measure. It was an entirely novel principle, so far as this colony was concerned, this proposal to limit the liability of the railways to £1,000 in the case of an accident,—as novel a principle as if the Government had proposed to introduce a bill to give the franchise to women. It was not legislation which the country or the Legislature had been crying for; in fact, they had not heard a word about it until last Monday night. It was not legislation that was in force in England, nor in any of the Australian colonies, except one; and they were asked that this novel principle, which had only seen light on

Monday evening, should become the law of the land without the country having had an opportunity of saying a word on the subject. He thoroughly disapproved of the principle of the bill, himself. He saw no necessity whatever, simply because the Victorian Government had lost £129,000 over a railway accident in that colony, that we should rush hastily into this legislation. For all we knew, the Victorian Government were justly called to pay that amount; and he hoped no Government that was guilty of negligence to a large extent should be allowed to shelter itself from the consequences of such negligence by a bill of this kind. It struck him that if they were to let go the present wholesome check which they held over the Railway Department, this knowledge that they were responsible for their negligence, they should lose a very necessary check, and that it would lead to carelessness on the part of the department. He saw no reason for introducing such a principle into our legislation, no reason at all. He supposed that what had made the Commissioner think of it was because the Government had lately been called upon to pay for the result of an accident on one of their lines. [The COMMISSIONER OF RAILWAYS: Not at all.] If the Government relaxed their vigilance, as they undoubtedly did, in his opinion, on the occasion referred to,—[The COMMISSIONER OF RAILWAYS: Question.]—he was only expressing his own opinion—the Government ought to be made to pay. Supposing the victim of that accident had been a professional man, and he happened to have lost his life through what some people believed to have been an accident that could have been provided against if proper precautions had been exercised; would it be contended for a moment that £1,000 would be a fair and reasonable compensation to have given to the widow of that professional man? Certainly it was a very taking argument to say that there ought to be some limit on the liability of the Government to pay compensation, or the colony might be ruined; but, on the other hand, they must have some consideration for the ruin of private families through the culpable negligence of the Government or their officers. Accidents did not happen every day, and the Government

was not likely to be ruined if proper care and vigilance were exercised; but to do away with their liability in this way would, in his opinion, tend to increase the number of accidents. For his own part, if he happened to be injured by a railway accident, he should like to be able to come before a jury of his countrymen and let them assess the damages in the light of the surrounding circumstances. It was his intention to vote against the clause.

THE COMMISSIONER OF RAILWAYS (Hon. J. A. Wright) said he should like to say a few words with reference to what had fallen from the hon. member for the North. He should like to ask the hon. member whether he really thought that the fact of the Government being protected in the extent of their liability for compensation would for one moment weigh with an engine driver, and make him less careful? Did the hon. member think that an engine driver or anybody else would be likely to be less careful of his own neck simply because it might not cost the Government more than a thousand pounds in the event of an accident taking place? No doubt it was a very taking argument—he had seen it in print—that a professional man, a lawyer or a doctor, should have higher compensation than a working man if he met with an accident, and that, therefore, it was not right to limit the liability of the railways to £1,000. No doubt, in one sense, the professional man would be entitled to more consideration; but, if it came to the question of losing a leg, was the professional man likely to suffer more than a laboring man? The probability was that your professional man would be able to hobble to his office, or follow his profession, while the laboring man would perhaps be disabled for life, so far as earning his ordinary livelihood was concerned. He did not think that was the right way to look at this question. The question was whether the Government ought not to be limited to something more in accordance with the consideration paid to them by the public for carrying them, as was pointed out in the extract he had read from the report of the Victorian Commissioners. The hon. member also objected to the bill because he said it had been sprung upon the

House without due notice, and that the House had never seen the bill until last Monday. But, if there was anything in that argument, it applied equally to other bills introduced this session; it applied to the Electoral Bill, for instance. Did the hon. member consider this little bill of greater importance than the Electoral Bill, that it ought not to be rushed through this session?

MR. PARKER said there was nothing unreasonable in the principle of limited liability if they came to regard this question as one of contract between the person travelling by rail and the person who undertook to carry him. If a railway traveller chose to take the risk of travelling on a railway on the understanding that if an accident happened he should not be entitled to recover more than £1,000, the principle of this bill could not be regarded as unreasonable. Some years ago, when they used to travel by coach, and they had no railway in the colony, no one ever dreamt of obtaining any compensation in the event of accident; but now that the public were able to travel with a great deal more comfort and speed, it was regarded as a grievance if they were to be limited in the amount of compensation they might claim from the railway authorities. He really thought there ought to be some limit to the liability of the Government in these cases; he thought it was only right and proper that the Government should ask for some protection. They were not asking it for themselves; they asked for it in the interests of the public, they asked for it in order to protect the public revenue. So far as the question of limiting the liability affected the Government, it would make no difference to them whether the compensation should be limited or unlimited; but it might affect the public funds very considerably. It was the public purse, after all, that would suffer; and, looking at the question in that light, he could not help thinking that although this law was only in operation in the colony of South Australia, it was not an unreasonable nor an improper law. He did not see how it could possibly be said that it was unfair, if people who travelled by rail did so with the full knowledge that if they met with an accident the utmost they would be able to recover was £1,000, or what-

ever amount might be agreed upon. Having said so much as to the principle involved, he should like to add, that as this was certainly a novel provision, and one that seriously affected the public, and as it sought to entirely alter the position and responsibilities of the Commissioner of Railways as a carrier, and as the bill had never been before the public in any way, he hoped the Government would consent to withdraw these compensation clauses for the present. If they considered it expedient to bring them forward on a future occasion, they would have his support; but, at present, for the reasons he had just given, he should vote with the hon. member for Fremantle for striking out these clauses, so that the country might have an opportunity of considering them, and the press have an opportunity of discussing them.

MR. MARMION said there was a fallacy about the argument that this was a kind of contract between people who travelled by the railways and the Government; for, so far as the people were concerned, they had never been asked to become a party to the contract; and if this bill passed into law at present it would pass into law without the public having had a word to say in the matter. As the representatives of the people were there to defend the rights of the people, he thought they were bound to see that the people had some voice in the matter, before such legislation as this became the law of the land. There was no comparison at all between this bill and the Electoral Bill; that bill had been spoken of last session and had been commented upon in the columns of the public press; and what was more, it had been brought in at the request of that House. That could not be said of this bill; for, until it was brought in a few nights ago, no one outside the Government had ever heard about it. At present he was not prepared to express any opinion in favor of the bill nor was he prepared to condemn it off hand; he thought it was desirable that further time should be given for its consideration and that the public should have an opportunity of expressing an opinion upon it before it was passed into law. He thought it was neither necessary nor desirable at this stage of our political

existence to add such a measure as this to our statute book.

MR. RICHARDSON said his great objection to the clause was that the limit of the compensation fixed by it was too low; if the amount were increased he should be prepared to support it. He really did not think there was much in the argument that if they limited the liability of the Government it would tend to greater laxity and carelessness on the part of the railway officials. He did not think that the mere fact of the Government being liable to pay a large amount of compensation affected the mind of an engine driver, or made him more careful; what he dreaded more than anything was the result to himself, what he thought of was the likelihood of his own dismissal if an accident were the result of any negligence on his part; and the mere passing of this bill was not likely to make the railway servants more careful or more reckless. He thought with the hon. member for Sussex that there was a good deal in the nature of a contract in the proposal. If a man accepted the offer of the loan of a horse from another to take him on a journey, and the horse threw him and injured him, he would not expect the owner to compensate him; it was the same with the Railway Department: if a man travelled by railway on the understanding that he should not get more than £1,000 in the event of an accident, he simply entered into a contract with the department to carry him on those conditions. But he still thought the maximum amount provided for was too low; and if the Government would increase it to £3,000 he should be inclined to support it; otherwise he should vote with the Noes.

MR. RASON did not see what was to be gained by postponing the bill until the advent of Responsible Government; because, if the principle involved was a good one now—if the proposed legislation was necessary legislation, the sooner it became law the better. They were told that if a professional man met with an accident, he, or his representatives, ought to get more than £1,000, although £1,000 might be a fit and proper compensation for the working man. He would point out that if a professional man considered he was worth more than £1,000 he could increase the amount of

compensation he would be entitled to from £1,000 to £5,000 by taking an insurance ticket. It was for the man who wanted to travel by rail to estimate his own value; he knew the risk he was taking; and it was just a question of whether he chose to invest in an insurance ticket, or whether he thought £1,000 was quite as much as he was worth. But it appeared to him that the bill, as at present drafted, was very contradictory; and it very imperfectly expressed the ideas even of the Government themselves. It appeared to him that if the committee were to pass this clause, any amendment in the 10th Clause would not alter the question of the applicability of the bill to private railways. Looking, therefore, at the imperfect drafting of the bill, he felt inclined to vote for its rejection.

THE COMMISSIONER OF RAILWAYS (Hon. J. A. Wright) said a great deal had been said as to a professional man being entitled to a larger amount of compensation than a working man; he should like to know how they were going to draw the distinction between the two if both travelled on a second class ticket? Both had paid the same amount for their fare, and both ought to be entitled to the same compensation. Or were they to make a difference between a professional man who travelled first class and the professional man who travelled second class? Perhaps the hon. and learned member for the North would inform them?

MR. BURT said it was not he who introduced the professional man into the debate. It was done by another member, and done so as to point out that the loss in all cases would not be the same and that the compensation ought not to be the same. He had no doubt there were professional men who were not worth twopence; he dared say there were juries who would not give them more, even if the railway killed them. There were other cases in which £1,000 would certainly be altogether inadequate to compensate a man, or his representatives. The Commissioner of Railways seemed to think that all accidents arose through the fault of the engine driver, and the hon. gentleman asked them if they thought that an engine driver would be less careful if

the liability of the Governor were limited than he would be with the law as it stands now? He did not see why the driver should be picked out in this way; the driver was not the man who was generally responsible for railway accidents. How would a driver know whether there was a defective axle, for instance, or whether a bridge had been properly constructed, or the permanent way was in a fit condition for a train to pass over it; or how was a driver to know whether there might be a storm ahead of him, if he went from here to Albany, and found the permanent way broken away, and he had not been warned? He did not see why the driver should be held up as the man who was to be held responsible for all accidents. Generally, where accidents on railways occurred, they occurred for reasons that were outside the province of the driver. As for the Electoral Bill being a novelty, the principle of the Electoral Bill had been the law of the colony for a great many years; there was nothing new about it. They were only asked now to legislate in a matter of detail; the principle was already in operation. But it was very different with regard to the principle of the bill now before them.

MR. CONGDON said they must all recognise that this bill involved a very important principle, and for his own part he thought it was a desirable principle for the House to affirm,—that some limit should be placed upon the amount of compensation payable by the Government in the event of a railway accident. He did not see why they should seek to put it off until they had Responsible Government; that was a mistaken notion altogether, it appeared to him, if the principle was a right and proper one. He thought they should adopt it as soon as possible. At the same time he thought the principle should apply only to Government railways, and not in any way to private lines. If the application of the bill were limited to Government railways, the bill would have his entire support.

MR. RANDELL said an effort had been made to cast a little ridicule upon the argument that some people were entitled to a larger amount of compensation than others; but, he would ask if

we did not recognise the same distinction in all the affairs of life? Did we not pay special jurors a guinea a day, and common jurors five shillings? The man who was in a certain position of life, in receipt of a large income, was allowed a larger amount than the man in the position of a working laborer; and he thought the same principle might be applied in the case of compensation under this bill. It might not only be the loss of a leg, it might be the brain or the spine that was injured, and a professional man's livelihood lost to him: and £1,000 to such a man as compensation for the injuries he had received would be a mere mockery. He admitted the force of the objection of the hon. member for Fremantle, that the bill had not been before the public; and, as every individual in the colony was more or less interested in a bill of this kind, that might be regarded as a reason for postponing its passage into law. But after all, members were sent there to represent their constituents, and were pretty well able to gauge the opinion of the general public, and form their own conclusions upon a matter of this kind, as business men and representative men. He thought £1,000 was certainly a low maximum, and that in the circumstances of the colony £3,000 might be regarded as a reasonable maximum. There might possibly be some danger that if they left the door open for a verdict of £3,000 a jury might take it into their head that they ought to award that amount; but he thought that juries as a rule were too sensible to do that.

MR. DE HAMEL did not agree with the hon. member, Mr. Raudell, altogether; members could not very well represent their constituencies when they did not know the views of their constituents. They were called upon to vote on this bill without having had any opportunity whatever of ascertaining the opinion of the country about it: they could not pretend to know what the views of their constituents might be upon a measure that had been sprung upon them like this; and he thought that was a very strong argument indeed in favor of postponing these clauses of the bill, until the public had had an opportunity of expressing some opinion upon the subject. A sort of glamour had been thrown over the

bill by the statement that the amount of compensation might be increased by taking out an insurance ticket. But what was the fact at Home in regard to these railway accident insurance tickets? These tickets were not issued by the railway companies—though they were obtainable at the railway companies' offices; but they were issued by insurance companies, and they in no way affected the amount of compensation that a man would be entitled to receive from the railway company. The mere fact of a passenger having taken out an insurance ticket for £2,000 or £3,000 would not be taken into account by a jury in assessing the amount of damages he was entitled to from the railway company. The damages against the company would be assessed on the merits, and independent of any compensation he may have received in respect of his insurance ticket. It would be in addition to any amount which his own foresight had induced him to provide for. Therefore, it seemed to him they ought not to take into consideration here the fact that a man might increase the amount of compensation by taking an insurance ticket. He did not see why that should affect the responsibility of the Government or the Railway Department. He did not think much of the Commissioner's argument when he was comparing the relative loss to a professional man and a working man if they happened to lose a leg in an accident; the loss of a leg was not the only injury that people suffered through railway accidents. They all knew that, so far as the amount of suffering which a man had to endure if he had his leg broken, the working man would suffer as much as the professional man. But that was not the point of the argument. What they had to consider was the loss which a professional man would sustain if incapacitated from following his profession, and the position his family would be in. The Commissioner knew very well that his argument was not applicable at all to this view of the question, and that there was absolutely nothing in it. He intended to vote against the insertion of this clause.

MR. RANDELL said it might meet with the views of hon. members if he moved that progress be reported, and leave given to sit again.

Agreed to.

Progress reported.

The House adjourned at half-past eight o'clock, p.m.

LEGISLATIVE COUNCIL,

Friday, 2nd August, 1889.

Deepening of entrance to Princess Royal Harbor, and Purchase of a Dredge—Message (No. 4): Telegram from Secretary of State re Constitution Bill—Municipal Institutions Act, 1876, Amendment Bill: first reading—Re-appropriation Bill: second reading—Railways Act Amendment Bill: further consideration in committee—Adjournment.

THE SPEAKER took the Chair at seven o'clock, p.m.

PRAYERS.

DEEPENING OF PRINCESS ROYAL HARBOR AND PURCHASE OF A DREDGE.

MR. DE HAMEL: Sir, in rising to move the motion standing in the name of Sir Thomas Campbell, I desire to point out to the House that there need be no anxiety in the mind of members as to the financial aspect of the question—I mean as to the question of ways and means, in the event of the House agreeing to the motion; for the motion does not bind the House nor the Government to the absolute expenditure of any public money at the present moment. The House if it passes this resolution will merely affirm a principle, and that a principle in regard to which there can scarcely be any divergence of opinion,—the desirability of the Government immediately considering the question of the deepening the entrance to Princess Royal Harbor. How this is to be done is left simply and solely to the Government; it is a question solely for their consideration. We are, however, informed that the South Australian Government or the South Australian port authorities have a dredger now for sale which

it would be worth while for this Government to make some inquiries about with a view to its purchase. The Government is merely asked to make inquiries as to the selling price of this dredge, its present condition, its capabilities, so as to ascertain how suitable it may be for the purpose in view. If the answers to these inquiries are satisfactory, it might be the duty of the Government to see if they cannot purchase it, and to place upon the Estimates a sum sufficient for that purpose,—if the House came to the conclusion that it would be desirable for the Government to purchase it. This is not the first time that this question has been before the House; I have looked up the minutes on the subject, and I find that on the 29th of November, 1888, the then member for Albany, Sir Thomas Campbell, asked the Director of Public Works whether he could inform the House to what extent the soundings recently taken at the entrance to Princess Royal Harbor indicated a shoaling of the water in that locality; what steps he considered it necessary to take for making the harbor accessible to all vessels in any state of the tide, and what intention the Government had in regard to proceeding in the matter? The Director of Public Works replied as follows: "The soundings lately taken seem to give indications of shoaling at the entrance, more especially on the North side. To open a deep channel, 300ft. wide, would require dredging to the extent of about 89,000 cubic yards, which is estimated to cost £15,000, exclusive of the original outlay on the steam dredge. The Government has no funds at present to do anything in the matter, but I consider the dredging should be taken in hand at the earliest opportunity." That was the reply given by the Government on that occasion. Now, sir, I consider that this question of deepening and dredging the entrance to this harbor is a work of really national concern, and as such is a work that should be undertaken by the Government and paid for out of the public purse. But I cannot close my eyes to the fact that the estimated amount of the cost of this work is set down at £15,000.

MR. MARMION: £30,000. The dredge would cost £15,000, and the work of dredging another £15,000.