Legislative Assembly,

Wednesday, 15th August, 1894.

Personal Explanation (Mr. Illingworth)—The "Calyx Boring Machine"—Special goods trains for Southern Cross—Construction of Jandakot-Cannington Road—East Perth Brickfields—Early publication of Statutes—Publication of the Federal Council Acts—Consolidation of English Legislation applicable to Western Australia—Introduction of an Arbitration Bill—Railway Traffic Rates of Australian colonies—Distribution and allocation of the Ecclesiastical Grant—Draft copy of Mr. Traylen's Water Supply and Sewerage Bill—Employers' Liability Bill: further considered in committee—Municipal Institutions Bill: in committee—Adjournment.

THE SPEAKER took the chair at 7·30 p.m.

PRAYERS.

PERSONAL EXPLANATION—DR. MONTEITH'S TELEGRAM.

MR. ILLINGWORTH: Sir,—I ask the indulgence of the House, in accordance with one of our Standing Orders, for the purpose of making a personal explanation with reference to a telegram read to the House by the Premier last evening. A comment has been made upon that telegram in a paragraph amongst the "News and Notes" of the *West Australian* of this day's date; and in the closing lines of that paragraph it is stated that the Premier read a telegram from Dr. Monteith, of Cue, "characterising a statement made by the member for Nannine—that the Premier had refused to grant the sum necessary for furnishing the hospital at Cue—as being a slanderous accusation, and that he (Dr. Monteith) had not given the information to Mr. Illingworth." Now, sir, I have no objection whatever to accept the responsibility of all I say in this House or out of it; and, if I make any mistakes, I hope I have the manliness to confess my mistakes, and to make the necessary restitution. There is one mistake I made in this matter, which I regret; it arose in the heat of debate. That was the mistake of mentioning the doctor by name. But, as the matter has assumed the position it now has, it is necessary for me to make a statement. In the speech in which first reference was made by me to this matter, I am reported to have said—and I believe the report to be an excellent one—speaking just previously of the Premier's speech at Bunbury having been printed in pamphlet form, that the cost of that work would have provided the accommodation necessary at Cue hospital for men who were dying from typhoid, and who could not get accommodation in the hospital. The Premier at once interrupted me, asking "What evidence have you of that?"

THE PREMIER (Hon. Sir J. Forrest): The report is not correct, I assure you.

MR. ILLINGWORTH: I give the statement as I have it. To that I replied that I had the evidence of the doctor. I also said I had seen the hospital and the sick men who were not properly provided for; and I said if the Government could afford money for this sort of thing—referring to the printing of the Premier's speech—they could afford money for the sick and dying on the goldfield. After this there appeared a paragraph in the *Geraldton Express*, and also a long account from a visitor to Cue, a direct correspondent, who reviewed the whole question of the hospital. Some statements were there made aspersing the Premier's character—statements which I did not make. How they originated I don't know, but I sent a cutting from the paper to the Premier, and he replied in the House next day, as members are aware. Now in this telegram which was read last night we have a statement made by the doctor, and I want to point out to this House that the doctor admits a conversation with me on this subject, and that he mentioned certain figures—which were not known by me, and could not have been known by me, unless I had received the information. Practically, he admits that we had a conversation on this subject, but the subject referred to in that conversation was not the denied statement. What he did deny was another statement, and not this statement at all—a statement that affected himself and affected the conduct of the hospital, a damaging statement which when I heard it I did not believe, and which I took the trouble to consult him about, and received his assurance that it was utterly untrue, which assurance I accepted. The construction which is placed upon this telegram is that the whole thing is an invention and a fabrication. Now, it is unfortunate for the doctor, but somewhat fortunate for me. that, to-day, amongst four gentlemen who called upon

me from Cue, there was one gentleman who had voluntarily come to my office and made the following statement, and I wrote it down, and read it to him after I had taken it down, in order that there might be no mistake. This statement was made before I went to Cue. It was made before Mr. Darlôt spoke, and certainly before I arrived on the field. I mention that because it fixes the date. The statement which this gentleman made, and which he is prepared to take an affidavit upon, and as to which he is prepared to come and bear testimony at the bar of the House, if necessary, is this: "About the middle of May, before you (Illingworth) arrived on the field—I fix the date because it was before Darlôt had spoken—I had occasion to call upon Dr. Monteith. We had a conversation about the hospital, and he told me in that conversation concerning the hospital, that he had asked the Premier for £40 on account of the hospital, but that the amount had been cut down to £35. He seemed very angry, and said he hoped that Illingworth would get in, as he would see that we got justice done for the hospital." I want to call the attention of the House to the fact that this statement was made to me, and voluntarily made, by an independent gentleman, before I arrived at Cue at all; and I am perfectly satisfied that if I were at Cue to-day I could produce many witnesses to whom the same statement was made by the doctor. But, here, in the unfortunate position I have placed the doctor in, and which I regret, he is compelled either to take the consequences of his statement or to deny it. Now I want to make just this statement in personal explanation: I arrived in Cue on a Wednesday, and on Friday I received a letter from the doctor asking me to go over the hospital. He made an appointment with me for 4 o'clock, and I went over the hospital with him, and spent a whole hour with him. That hour was spent by the doctor in making distinct complaints about the defects of the hospital and the lack of assistance from the Government. The whole of these complaints were apparent to any one, so far as the state of things at the hospital was concerned. It was in that conversation that this statement to which I have referred was made, and those figures were mentioned; they could not have come to my mind unless I had had them given to me, and I say I got them distinctly from the doctor himself. I presume, Mr. Speaker, it is useless to pursue this matter any further. I just leave myself in the hands of the House as to the statement I made. It is for the House and for the public to judge whether I made the statement as given to me, or whether I invented it. I desire again to express my regret that I mentioned the name of the doctor; it was done in the heat of debate, and for that I am sorry.

THE PREMIER (Hon. Sir J. Forrest): I think it is a good thing you did mention it.

MR. ILLINGWORTH: Perhaps so. The statement was made, and I will just point out this fact: after speaking to the doctor, as I have said, at 4 o'clock, I spoke at the "Well" at 8 o'clock the same evening, and the doctor was present at the meeting. I then made the same statement at the "Well," and the doctor commended me for it. Before I left Cue I called upon him, and his last words to me were to urgently press the wants of the hospital, which I promised to do; and it was in pursuance of that promise, and the urgency of the doctor's representations, that I deemed myself justified in using the statement as I did. I now leave myself in the hands of the House as to whether the statement I made was correct or not.

THE "CALYX BORING MACHINE."

MR. RANDELL, in accordance with notice, asked the Premier whether he had any information with reference to a new boring machine, called the "Davis Patent Calyx Boring Machine," invented and perfected by a Mr. Davis, of Queensland.

THE PREMIER (Hon. Sir J. Forrest) replied that the only information which he had upon the subject was contained in the following extract from a Melbourne newspaper:—

A NEW BORING MACHINE.

There are on view at Messrs. Nicholson and Co.'s music warehouse, Collins-street, some samples of cores cut in the Jeetho Valley coal measures, which have attracted much interest in the mining community. They measure four inches in diameter, and were cut by one of the "Davis Patent Calyx Boring Machines," now

at work in Gippsland proving the extension of the coal seams. These machines are evidently destined to revolutionise the whole of the boring operations of the colony as regards developing our coalfields, and proving the extension of alluvial deposits. Prior to the introduction of the diamond drill (some sixteen years since) the system then in vogue of proving our auriferous deposits was most costly, and many a promising venture was abandoned owing to the means of prospecting being so expensive. A new lease of life was given to the goldfields when the diamond drill was brought into use. The drills have done most excellent work, but it is now held that for certain districts boring by the diamond drill is too costly. Holding the view that for certain classes of work the diamond drill could be improved upon, the patentee of the "Calyx Boring Machine" (Mr. Davis, a Queenslander) experimented at a considerable cost, with the object of designing a machine of light construction, capable of doing similar work to the diamond drill, but at much less cost. After 11 years' labour, and the expenditure of £4,000, he perfected the "Calyx Boring Machine," and the extensive practical tests made have demonstrated that he has accomplished the object in view. In Queensland the machine was first tried on artesian well boring, some 12,000 feet being bored successfully. Last year it was introduced into Victoria, and its capabilities were tested at Nyora, when a bore was put down 700 feet under the auspices of the Mines Department, at a cost of 3s. 9d. per foot. For some years the Government has been proving the extension of our coal deposits in Gippsland by means of the diamond drill, but owing to the mountainous nature of the district, and the great weight of the drills (from 20 to 40 tons), the expense attending dismantling, removing and re-erecting, has increased the cost of boring operations to (for 1893) 11s. 6d. per foot; thus the work of the "Calyx" at Nyora shows a saving of 7s. 9d. per foot, or about £400 on each 1,000 feet bored, whilst the light weight (some 4 tons) permits of the machine being rapidly and easily moved from one locality to another. Whilst only steam power can be used on the diamond drills, the "Calyx" can be effectively worked by manual labour or horse power, as well as by steam—a great advantage when the difficulties attending the obtaining of steam power in the wilds of Gippsland are considered. The machine is now at Jeetho Valley, and is giving every satisfaction to all persons interested, having bored to the end of last week 400 feet in 14 days, at a cost of 2s. 6d. per foot (1s. 3d. less than at Nyora), which includes cost of dismantling, removal from Nyora, and re-erection at Jeetho. Apart from the portability of the machine, the great feature is that in boring in coal measures an enormous saving can be effected. The patent rights for Government purposes are under offer to the Minister for Mines; and it is held that, on the boring done on the coalfields, if carried out by the "Calyx" machine in lieu of the diamond drill, a saving of about £7,000 per annum will be effected—an item of moment in these days of retrenchment. The bit used in the "Calyx" is constructed of steel, and costs about £2 10s. for every 1,000 feet bored, whilst the value of diamonds used in boring a like depth with the diamond drills comes to £130.

DESPATCH OF SPECIAL GOODS TRAINS TO SPENCER'S BROOK.

MR. JAMES, in accordance with notice, asked the Commissioner of Railways,—(1.) Whether it was a fact that on the 4th inst. four special goods trains, on the 5th inst. three such trains, and on the 6th inst. two such trains were despatched to Spencer's Brook? (2.) Whether such trains, or any of them, were so despatched without the usual or any notice being given to the gangers and others engaged along the line? (3.) If so, why no such notice was given?

THE COMMISSIONER OF RAILWAYS (Hon. H. W. Venn) replied as follows:—(1.) There were no special goods trains despatched on 4th or 6th inst., but on the 5th there was one train sent. (2.) In regard to this train, notices were sent to all concerned by the Locomotive, Traffic, and the Permanent Way Departments.

CONSTRUCTION OF JANDAKOT-CANNINGTON ROAD.—(2.) IMPROVEMENT OF EAST PERTH BRICKFIELDS.

MR. JAMES, in accordance with notice, asked the Director of Public Works whether any provision would be made in the Estimates for—(1.) The construction of a road from Jandakot area to Cannington? (2.) The improvement of the brickfields in East Perth?

THE DIRECTOR OF PUBLIC WORKS (Hon. H. W. Venn) replied, as follows:—(1.) I am unable to anticipate the Estimates, which will be placed on the table as soon as possible. (2.) The Government has already authorised the expenditure necessary for fencing in these brickfields, and has also authorised £100 for improvements.

EARLY PUBLICATION OF STATUTES.

MR. JAMES, in accordance with notice, asked the Attorney General whether provision would be made to enable the public to obtain copies of Statutes as soon as possible after the same are assented to?

THE ATTORNEY GENERAL (Hon. S. Burt) replied that provision was already made for this purpose.

PUBLICATION OF FEDERAL COUNCIL ACTS.

MR. JAMES, in accordance with notice, asked the Attorney General whether the Acts of the Federal Council would be printed by the Government Printer, and sold to the public?

THE ATTORNEY GENERAL (Hon. S. Burt) replied that printed copies were supplied, as required, and he was not aware that any demand had been made for these Acts which was not at once met. Should further need for copies arise, the Government Printer could be instructed to supply them.

INTRODUCTION OF ARBITRATION BILL.

MR. JAMES, in accordance with notice, asked the Attorney General whether it was intended to introduce, this session, an Act on the same lines as the English Arbitration Act of 1890?

THE ATTORNEY GENERAL (Hon. S. Burt) replied that the Government had no such intention.

CONSOLIDATION OF ENGLISH LEGISLATION APPLICABLE TO WESTERN AUSTRALIA.

MR. JAMES, in accordance with notice, asked the Attorney General, whether any effort would be made, and, if so, when, to consolidate, and if necessary amend, all English legislation applying to this colony and in force at the foundation of the colony?

THE ATTORNEY GENERAL (Hon. S. Burt) replied that no effort would be made, so far as he was able to say, in this direction.

RAILWAY TRAFFIC RATES OF AUSTRALIAN COLONIES.

MR. HARPER, in accordance with notice, moved that a return showing the merchandise and live stock railway traffic rates of all the Australian colonies, in operation in July, 1893, be laid upon the table of the House. He thought it was most desirable they should always have these tables at their command, for purposes of comparison, when dealing with our own railway rates from time to time.

THE COMMISSIONER OF RAILWAYS (Hon. H. W. Venn) said he would not be able to furnish these classification sheets now, as he only had one copy, but he had already communicated with the Governments of the other colonies asking to be supplied with these books, and, as soon as they arrived, they would be placed on the table of the House.

Motion put and passed.

AMOUNT AND DISTRIBUTION OF ECCLESIASTICAL GRANT.

MR. SIMPSON, in accordance with notice, moved that a return be laid upon the table, showing:—

1. The total amount of the annual ecclesiastical grant.

2. The distribution of the said amount amongst the different denominations.

3. The allocation of the amounts granted to the different denominations.

His reason for moving for this return was merely to seek information, which he thought would be of interest and possibly of use to the House when dealing with this grant.

Motion put and passed.

DRAFT COPY OF WATER SUPPLY AND SEWERAGE BILL.

MR. TRAYLEN, in accordance with notice, moved for leave to lay upon the table the draft copy of a Bill intituled "An Act to provide for Water Suppy and Sewerage of the City of Perth and other places in the colony of Western Australia."

Question put and passed.

MR. TRAYLEN, in accordance with the foregoing order of the House, laid upon the table the Bill referred to.

EMPLOYERS' LIABILITY BILL.

IN COMMITTEE:

New clause:

Debate resumed upon motion of MR. JAMES that the following new clause stand part of the Bill:—

"Whenever an employer enters into a "contract, either written or verbal, with "an independent contractor to do part of "such employer's work, or whenever such "contractor enters into a contract with a "sub-contractor to do all or any part of "the work comprised in such contractors'

"contract with the employer, such con-
"tract or sub-contract shall not bar the
"liability of the employer for injuries to
"the workmen of such contractor or sub-
"contractor, resulting from any defect in
"the condition of the ways, works,
"machinery, or plant, if they are the
"property of the employer, or furnished
"by him, and if such defect arose or had
"not been discovered or remedied through
"the negligence of the employer, or of
"some person entrusted by him with the
"duty of seeing that such condition is
"proper. Nothing in this section con-
"tained shall take away any right of
"action which the principal employer may
"have against his contractor or sub-
"contractor, or any right of action which
"any workman may have against his
"immediate employer, but the workman
"shall not be entitled to recover com-
"pensation more than once in respect of
"the same injury."

MR. JAMES said he understood, when the committee reported progress on this clause, that the Government were going to accept it, but he had since been informed there were objections to it. Although the principle involved was neither new nor startling, it appeared it was too startling for the occupants of the prosy benches opposite. Many things would startle the present Ministry that were considered neither novel nor startling in other places. This principle of making the original contractor liable, in the terms of this section, had been approved by the House of Commons; it was embodied in the Bill of 1888, and again in the Bill of 1890, and again in the Bill of last year. In the Bill of 1893 it was passed by the Commons with a large majority, nor was it objected to by the Lords when the Bill was sent up there. The objections of the House of Lords were directed against another clause of the Bill entirely, and, but for those objections to that particular clause, this would have been the law of England now. He had already explained the object of the clause, and, if the Government were not prepared to accept, he presumed it was no use for him to dilate upon it any further. It was simply an extension of a principle already accepted by the House, and the main principle of the whole Bill.

MR. ILLINGWORTH said there was a view of this question which he should like to place before the House. He referred to the case of mines let upon tribute. Supposing that through a defect in a shaft, or in a cage, or in the means of haulage, a miner was killed or injured, the men who were working the mine on tribute, though perhaps not men of straw, might not be able to pay compensation, and the wealthy owner or owners of the mine, with whom the actual defect rested, would escape their liability, in consequence of the mine being worked by tributaries. That was a point which he thought was worthy of attention in connection with this clause.

MR. LEFROY said he could not fall in with the views of the hon. member who had introduced this clause, which, he was afraid, would be a fertile source of litigation. His own idea was that when an employer of labour, who was a contractor, let a portion of the work he had undertaken to perform, to another party, he ought not, by doing so, be freed from his responsibility.

MR. RANDELL said he was not disposed to legislate too far in advance, nor to indulge in fancy legislation in favour of employer or employed; but the committee had already affirmed the principle of responsibility which this clause proposed to extend a little further. If an employer sub-let a part of his contract to another person, and to enable that person to do the work which he (the contractor) himself had undertaken to perform, he furnished that person with the plant or machinery necessary for carrying on the work, and an accident happened through some defect in that plant or machinery, he failed to see why the contractor should be released from his responsibility. If he were to be released in this way from all liability, it would be a temptation to contractors to sub-let their contracts to men of straw, who might be reckless as to consequences. He thought this clause would have the effect of restraining employers from sub-letting to persons who were not careful and to be trusted. It would make a contractor very particular as to the men he employed to carry out his contract, or any portion of it. He thought the clause only carried out to its legitimate conclusion the main principle of the Bill.

MR. R. F. SHOLL said the remarks that had fallen from the hon. member

for Nannine had more than ever convinced him that this clause ought not to be included in the Bill. The hon. member referred to a case where a mine might be let on tribute to impecunious men, and, if an accident happened, the owners of the mine would be relieved from all responsibility. That was one way of looking at the matter; but, supposing when this mine was let on tribute the plant and machinery were in perfect order, but that through the neglect of the tributaries themselves who were running the mine, an accident happened, why should the owner be held responsible? These persons would probably say that the plant or machinery must have been in bad order when they took it over, and they would probably be backed up by the men themselves, and the owners of the mine would have to fight the matter out, at a disadvantage. The clause would lead to endless litigation, and would do no good. All that House had to do was to do justice between employer and employee, and to show no partiality towards either party.

MR. ILLINGWORTH said the hon. member who had last spoken evidently did not understand the point of his (Mr. Illingworth's) argument. Many mines in the other colonies, at Bendigo especially, were worked, at different levels, on the tributary system, and the companies owning the mines and the machinery had to run the machinery, and, if a rope or a chain broke through some defect, and the tributaries were killed or some men employed in the mine, who was to pay the damage? The owners would escape all liability. By a system of sub-letting, the whole intention of this Bill might be evaded; and, if there was anything which that House should set its face against, it was the pernicious practice of sub-letting. It was one of the most crying questions of the day this question of sub-letting,—in other words, sweating. If a mining company were to be allowed to escape responsibility by sub-letting, and an accident happened because they were too penurious, or unwilling to make a call, or too mean to incur the expense of purchasing a new rope, although their attention may have been called to the necessity for a new rope by their manager,—if such a company was to be allowed to escape all responsibility under this Bill, all he could say was, the Bill would fall far short from attaining the object in view.

MR. SOLOMON said if the intention was to restrain the original contractor from transferring his liability to another party, why not make the sub-letting of contracts illegal? That would solve the difficulty. At present contractors too often undertook contracts at such low prices that they could not hope to carry them out at a profit without sub-letting; and, if it was proposed to prevent them from getting rid of their liability under this Bill, why not abolish sub-letting by making it illegal?

MR. CONNOR said it seemed to him from the arguments of the supporters of this clause that we must be on the eve of another general election. To his mind this clause pointed to the hustings. It appealed to the electors rather than to the House, and to one class only. He thought the clause would press unduly upon employers of labour, and that the Bill had gone far enough in this direction.

MR. JAMES: Does the hon. member know what the clause means?

MR. CONNOR: It means that an employer is to be held responsible whether he is an employer or not.

THE ATTORNEY GENERAL (Hon. S. Burt) said the instance given by the hon. member for Nannine had nothing whatever to do with this clause. The story the hon. member told them about the iniquitousness of mining companies letting mines on tribute to get rid of their liability, and of a rope breaking and causing death, was a subject they should endeavour to meet by other legislation than this. That sort of thing was amply and distinctly provided for in the Acts which regulated mining.

MR. ILLINGWORTH: We have no such Act at present.

THE ATTORNEY GENERAL (Hon. S. Burt) said they hoped shortly to have one. It was only quite recently that there had been any necessity for such an Act in this colony. This clause did not refer to work of the kind referred to by the hon. member, but to work undertaken by a sub-contractor, who agreed to do part of the original contractor's work. It could not be said that such was the case with mines worked on tribute. The clause, as he had said before, had something to recom-

mend it, but he thought it introduced an element of injustice. Take the case of the Government lending a locomotive to the contractor for, say, the line to Coolgardie. The Government—who under this Bill were placed in the same position as other employers of labour—if any defect arose in that engine which resulted in an injury to a workman on the line, would be held liable under this clause. That seemed to him to be rather a hard case. Why should the Government be responsible for the lives and limbs of the contractor's men, because the contractor allowed that locomotive to fall into a state of disrepair? If an employer lent a crane to a sub-contractor, and had nothing more to do with it, were they to hold that employer responsible in the event of an accident through the negligence of the sub-contractor, or one of his gangers? Under the Bill a workman could not recover in a case where he knew of a defect in the machinery or plant unless he could prove that the employer already knew of that defect; but here they were asked to extend the liability of the employer to the case of a sub-contractor's workman. Why should not the employee of a sub-contractor also be debarred from recovering if he knew of the defect? He did not mean to say there were not cases that ought to be provided for, but he thought this clause went altogether too far. It was rather premature for us to lead the way in legislation of this kind. The question raised by this clause had certainly not been considered in that House until yesterday, and, if it were hastily adopted, they might be placing difficulties in the way of employers of labour, and doing great injury to the trades and industries of the colony.

MR. JAMES said that the question of the Government lending an engine to a contractor did not come within the purview of this clause at all. The clause only applied where a contractor entered into agreement with a sub-contractor to do a part of his (the contractor's) work with the contractor's plant or machinery. The Government were not the contractors for the construction of the line, and the person to whom they lent their engine was not a sub-contractor, nor was he doing work which the Government had themselves undertaken to do. The case which this clause was intended to cover was the case where a dishonest contractor—and they did not come there to legislate for people who recognised their moral or social duties, but for people who would not do that which was fair and honest unless they were compelled—the case where a dishonest contractor, who having taken a contract at a low price, found he must resort to sub-letting (or sweating, as it had been called), and, by sub-letting, hoped to be released from his liability under this Bill as an employer. If they did not insert some such provision as this in the Bill, there would be nothing to prevent a dishonest contractor from casting the responsibility upon a sub-contractor, in case of accident; and that sub-contractor might be a man of straw, and selected for that reason by this dishonest contractor. A great deal had been said about encouraging litigation. It was a trashy argument, and he hoped they should hear no more about such a parrot cry.

MR. R. F. SHOLL said they had been two days now debating this little Bill, or rather the proposed amendments to the Bill. They had got through the original Bill right enough, but the hon. member for East Perth wanted to make it a Bill of his own. He would suggest to the hon. member that he should allow his new clauses to go by the board, and, when the third reading stage was reached, to move that the Bill be read a third time that day six months. If he carried his motion, the hon. member could then bring in a Bill of his own next session, which, possibly, might receive more support than these new clauses were receiving. For his own part, he did not think the Bill was at all necessary, and all the hon. member's eloquence could not convince him that it was necessary. This question of employers' liability was more of a parrot cry from a few people, instigated in the first place by a small body of people who called themselves by the high-sounding title of a "Trades and Labour Council," or some such name. They had never yet been able to ascertain the number and importance of that body. They generally saw the same names in print as addressing the meetings of this Labour Council, but he had never been able to ascertain how many people at-

tended these meetings. He hoped the hon. member would accept his suggestion.

MR. MORAN believed he had had as much experience of the law of contract, in this colony and in Queensland, as any man; and he thought this clause was slightly redundant. The system here with regard to Government contracts was, that the man who took the contract was the man who was ultimately responsible for the men's wages, no matter if he sublet the work over and over again. If the sub-contractor did not pay, the original contractor was liable for the men's wages. Why should not the same principle apply in respect of the contractor's other liabilities, his liabilities under this Bill? With regard to tribute mining, he did not see what this clause had to do with it. The owner of a mine could not contract himself out of his liability towards the men working in that mine, whether he worked it through tributaries or by a "boss." The intention of the clause was right enough, but the wording was too verbose. He thought the whole clause might be put into three or four words, or it might be left out altogether, and insert a clause providing that no employer can contract himself out of his responsibilities. That was met by another new clause, of which the same hon. member had given notice, and which had the merit of being short and sweet.

THE ATTORNEY GENERAL (Hon. S. Burt) said he ought, perhaps, to apologise for referring to this clause again, but it had been stated so persistently by the hon. member for East Perth that the value of the Bill would be lost if this clause were not accepted, that he thought he ought to say a word or two. It would be well to consider the clause on its merits, and to see what could be done to meet the object which the hon. member had in view. He did not think this clause would meet the case. It was a difficult question to deal with, and he believed it had baffled the House of Commons somewhat. He could understand the case of a builder, for instance, subletting the plastering of a house, and lending the sub-contractor a ladder that was rotten or insecure, and an accident happening. That was a very simple case to deal with. But a contractor might lend a good sound ladder to a sub-contractor, and that ladder might, in course of time, by fair usage and wear in the sub-contractor's service, become unsound, and an accident might happen over which the original contractor had no control. Was the contractor to keep himself informed, by daily inspection, of the condition of every ladder or bit of scaffolding which he lent for the use of a sub-contractor in the course of a building contract?

MR. RANDELL: That is exactly what is done.

THE ATTORNEY GENERAL (Hon. S. Burt) said it might be so in the case of buildings, but he did not see how it could be done in other cases, as, for instance, where an engine was lent to a contractor, if you had to see every day that that engine was kept up to the mark in every respect. He was not prepared at the present moment to say that he could see his way so clearly as to vote for the clause as it stood. He thought there was some good in it, and possibly, hereafter, at the next session perhaps, the hon. member might bring in a clause on similar lines, and, possibly, it might receive his support; but at present he could not support the clause now before the committee.

Clause put and negatived on the voices.

New clause:

MR. JAMES moved that the following new clause stand part of the Bill: "Every covenant, contract or agreement "hereafter made or entered into, where- "by any workman or person binds him- "self or his personal representatives, "either expressly or by implication, not "to claim any benefit or enforce any "right under this Act, shall be null and "void." He regarded this as, perhaps, the most important section in the whole Bill. It was what was known as the contracting out clause. He asked the committee to agree to it, and so prevent men upon whom the Legislature conferred certain rights from contracting themselves outside those rights. It was upon this clause that there was a split between the two Houses in England. The want of such a provision was discovered soon after the passing of the English Act of 1880, and constant efforts had been made since to supply the omission. As a sort of compromise, it had been suggested that contracting out should not be allowed except in cases where employers

provided an assurance fund in the event of accidents. The principle had met with a large measure of support, and it had much to recommend it. He thought it hardly required any words of his to commend it to the acceptance of hon. members. It was absurd to say that men were free agents, and to talk about freedom of contract, because they knew that to a large extent this was all nonsense at present; and he asked the committee to prevent men from depriving themselves of those rights which the Legislature considered they ought to have.

MR. R. F. SHOLL said if it was the intention of the Government—as he understood it was—to accept this clause, it was not much use opposing it. But he did not see, if a man was willing to agree not to take advantage of the Act, why he should not be allowed to do so, so long as he was satisfied there was no risk attached to the work he had to do. It seemed to him that such a provision as that was an insult to a man's intelligence.

MR. ILLINGWORTH said it was not a question of intelligence, but simply a question of bread and butter. A man out of employment, and brought face to face with his intended employer, who handed him a slip of paper holding the employer free of all liability in the event of accidents, would either have to sign that paper or go about his business. It was to prevent that kind of terrorism that this clause was intended. It was all very well to talk about insulting a man's intelligence, and to talk about freedom of action when a man was out of work, and had a family at home wanting bread and butter. Intelligence and freedom of contract must give way in the face of a family in want of the necessaries of life. This clause proposed to protect a man in these needy circumstances from sacrificing the rights which the Parliament of his country considered he ought to have.

THE PREMIER (Hon. Sir J. Forrest) said he must admit he agreed with the hon. member for Nannine in this instance. If they passed this law for the protection of workmen, he did not think it would be right to leave such a loophole for evading the law as there would be if this clause were not inserted in the Bill. They all knew that in many cases, for various reasons, advantage was taken of workmen in this way. Men who were anxious to obtain work, and who had families dependent on them, would not care to refuse to sign a paper exonerating their employers from the responsibility cast upon them by the Act. If the law was to be of any benefit at all, a person should not be allowed to contract himself out of it to please his employer.

MR. RICHARDSON thought there was a strong element of justice in this clause. If the Legislature was prepared to give certain statutory rights to the working man, why not also prevent him from bartering away those rights under the pressure of circumstances? A man might have the disagreeable alternative placed before him of either starving to death or running the risk of an accident, and perhaps being killed; and, probably, he would think that the risk of accident was more remote than starvation. He thought it was only right they should protect a man placed in such an unfortunate predicament.

MR. R. F. SHOLL said the arguments used in support of this clause were really platform arguments. He did not think there was any sound common-sense in them. The hon. member for Nannine had drawn a very sorrowful picture of a starving wife and family; but there would be plenty of starving wives and families notwithstanding this clause. We should try to relieve a man who was reduced to such circumstances, as far as possible, but not by preventing him from accepting employment when it was offered to him. Although there was a good deal of legislation of this kind now in force in the other colonies, the work of agitators, he believed that a good deal of it would be repealed before many years. We did not want this democratic, or, he should say, this radical element coming amongst us to agitate the minds of people here. These men had almost ruined the other colonies, and, being now crowded out from there, they found their way here; and it seemed they were already working upon some members to induce them to introduce legislation of this kind into the House. He had no personal feeling in this matter; he was not an employer of labour himself. But, to say to a man who was seeking employment that he should not accept employment except on

certain conditions was, he thought, unjust to that man, and an insult to his intelligence.

MR. CLARKSON thought with the hon. member for the Gascoyne they were placing a very low estimate upon the intelligence of the working man when they believed of him that he would sign an agreement to engage in work which might endanger his life, unless they prevented him from doing so. Surely they must credit the labouring man with some intelligence, and believe that he was not yet reduced to that imbecile state which this clause gave him credit for? He thought it was an insult to the working classes to legislate to protect them from themselves in this way.

MR. RANDELL said he would give his cordial support to this clause. He did not think it came from the other colonies. Some of the grandest men that England had ever produced had given their support to this provision, and also some of the biggest employers of labour. It was not a question of the intelligence of the working man, but a question of conserving his rights. When a man was placed in the position of having to agree to abandon his rights or to see his family suffering from want, it was not a question of intelligence with that man, but a question of sheer necessity. It was a question of actual compulsion. Perhaps the Act would not operate largely in this colony for some time to come, but they were there to legislate not only for present requirements but also for the future, and he thought it was very proper that they should throw this protection around the working man.

MR. LOTON said that from the long discussions that had taken place on almost every clause of this Bill, one would think that almost every man in Western Australia was an employer of labour. They might be legislating a little in advance of the present circumstances of the colony, but, so long as they based their legislation on sound and just principles, and made applicable to the requirements of the country in the immediate future, such legislation could do no harm. This clause embodied a principle which, he thought, should be embodied in the Bill, and it would have his support.

MR. COOKWORTHY said he was not going to say anything about the Bill as a whole; no doubt the intentions of its framers were very good and praiseworthy. But, unless this clause was added to the Bill, they might as well not pass the Bill at all. It would be useless without this provision in it.

THE ATTORNEY GENERAL (Hon. S. Burt) said that, in framing this Bill and bringing it before the House, the Government were quite aware that the principles embodied in it had not been very much canvassed in the country; and certainly the principle contained in this clause had scarcely been mentioned. Therefore, the Government thought it would be better that provisions of this nature should be introduced into the Bill in the course of its passage through the House, and after the fullest discussion. This clause undoubtedly contained a principle of very great importance, and for his own part he was very glad to see the amount of support it received.

Clause put and passed.

New clause:

MR. JAMES moved that the following new clause stand part of the Bill: "Upon "the trial of any action in a Local Court, "one assessor may be appointed by each "party, for the purpose of hearing and "determining the same together with the "Judge. In case of a difference, a ma-"jority shall decide. For the purpose of "regulating the conditions and mode of "appointment, and remuneration of as-"sessors, and all matters of procedure "relating to their duties, and also for the "purpose of consolidating any actions "under this Act in a Local Court, or "otherwise preventing multiplicity of "such actions, rules and regulations may "be made, varied, and repealed from time "to time in the same manner as rules "and regulations for regulating the prac-"tice and procedure in other actions in "Local Courts." The hon. member said his desire was that as far as possible cases arising under this Bill should be tried in the Local Courts. In England, where they had County Courts, and also in the other colonies, litigants if they liked could have a jury to determine the matter at issue; but we had no juries in our Local Courts in this colony, and, if some effort was not made to popularise these Courts in this way, the result would be

that litigation would be thrown into the Supreme Court, and become much more expensive; and the expense, in the majority of instances, would fall more upon the employer than the workman. His proposal was that, as we had no jury to try cases in the Local Courts, each party to any action under this Bill might appoint one assessor, to assist the magistrate hearing the case. As he had said, he thought this would tend towards popularising these tribunals, and at the same time save litigants a considerable amount of expense in having their cases determined by these Courts instead of the Supreme Court.

THE ATTORNEY GENERAL (Hon. S. Burt) said he could not agree with the idea of popularising any Court of law. Justice should be swift, sharp and incisive. For his own part he would prefer any day to go before a Judge or a Magistrate sitting alone than with these assessors. If we had juries or assessors in these lower Courts we would open the door to abuses, and go a great way to encourage litigation. A man would not think of bringing a rotten case before a Judge, but would take his chance with a jury with any sort of case. He thought the magistrates of our Local Courts were quite competent to decide any case brought before them under this Bill, and he saw no cause for altering the present practice. It must necessarily increase the expense, and the result would probably be that one party would appoint a partisan as his assessor, and the other party would appoint a partisan as his assessor, and it would be a case of "pull baker pull devil," with the presiding Magistrate between them.

MR. JAMES said if the Government were not prepared to accept the clause he would withdraw it. His object in bringing it forward was to lessen the expense of litigation, by encouraging the trial of these cases in the Local Court rather than in the Supreme Court.

Motion, by leave, withdrawn.

Preamble and title:

Agreed to.

Bill reported with amendments.

MUNICIPAL INSTITUTIONS BILL.

IN COMMITTEE.

Clauses 1 and 2:

Put and passed.

Clause 3—Interpretation:

MR. JAMES moved to insert the following definition between the definition of "Council" and "Governor":—"Councillor shall include the aldermen in those "municipalities where the population is "declared by the Governor to exceed "5,000." This definition, of course, would only become necessary in the event of the committee agreeing to amend Clause 8, as he proposed to amend it, by enabling municipalities where the population exceeded 5,000 to elect aldermen instead of councillors. This was one of the recommendations of the Municipal Conference, and coming as it did from men who had spent many years of their lives in municipal work, he thought it was entitled to consideration. He did not think there was anything unreasonable in the request, and it was the law elsewhere; and he thought the House might with good grace agree to give councillors in our larger towns this other title.

THE ATTORNEY GENERAL (Hon. S. Burt) deprecated this attempt to raise a discussion upon a principle embodied in a subsequent clause, by means of a formal amendment of this nature, which was virtually a consequential amendment. He believed that in other Assemblies these verbal consequential amendments were usually inserted in Bills without a formal motion. Of course if the committee thought fit, they could go at this stage into the discussion of whether we should have aldermen or not, but he thought it would be more convenient to consider the question when they came to the clause dealing with it.

MR. JAMES said he would withdraw the amendment for the present.

Amendment, by leave, withdrawn.

MR. JAMES moved to insert the following words at the end of the definition of "land":—"And in the case of any land or premises whereof different portions are occupied by different persons, shall include each such portion." His object was to make it clear that municipalities should have the right of rating each separate office held by different tenants in one and the same tenement, instead of the whole falling upon the landlord or owner. There were many tenements in Perth containing several offices, tenanted by different occupiers,

but the landlord or owner was rated for the whole building. He proposed to give municipalities the right to rate each separate tenant.

MR. RANDELL thought there would be considerable difficulty in carrying out the principle of rating suggested by the hon. member. There might be several tenants in one house to-day, and different tenants in the same rooms a month hence. To carry out this principle to its legitimate conclusion, you might have to rate the occupier of every room in a house.

At 6·30 p.m. the Chairman left the chair for an hour.

At 7·30 p.m. the Chairman resumed the chair.

Amendment, proposed by Mr. James, put and negatived.

Clause agreed to.

Clauses 4, 5, 6, and 7:

Put and passed.

Clause 8—Constitution of Council:

MR. JAMES moved, in sub-clause (*c*), to strike out the word "councillors," and to insert the word "aldermen" in lieu thereof. He said the members attending the Municipal Conference had resolved to ask that this alteration of title be made in the Bill; and he thought the title of "aldermen," which they desired, might be conceded as an act of grace to councillors in the larger towns, having more than 5,000 inhabitants.

MR. WOOD supported the amendment as an act of grace, and said the title of alderman was used in most other colonies. This title would attach more dignity to the office, and the alteration would have to be made sooner or later.

MR. ILLINGWORTH opposed the amendment as being sublimely ridiculous. In Melbourne, having 140,000 people, the oldest councillor in each ward was styled "alderman," but all the other members were styled "councillors." Members of all other councils in the colony were styled "councillors." The same practice prevailed in nearly all the colonies, only the capital city having "aldermen." A town of 5,000 persons would be a small place, hardly sufficient to form a Road Board in another colony.

MR. RANDELL understood that "aldermen" were elected elsewhere under a different franchise from that applying to "councillors," and the aldermen represented the more conservative element, the great property interests. This colony might wait until a real desire and need arose for a change in this direction.

Amendment put and negatived, and the clause agreed to.

Clause 9.—Power of Governor to declare municipalities:

THE ATTORNEY GENERAL (Hon. S. Burt) said this clause provided, amongst other things, for the proclaiming of a new municipality in the case of a suburban locality having rateable property sufficient to produce an annual revenue of not less than £300, upon a rate of 1s. in the pound of assessed value. If a new municipal district could not produce a revenue of at least that amount, he could not see that such district would be likely to work the municipal machinery beneficially. The clause was designed to meet the case of such a suburb as Leederville, situate on the north-west boundary of the Perth municipality. As to declaring other new municipalities, the intention of the clause was that the Governor might declare any town a municipality, no matter what might be the value of the rateable property within it. To give clearer effect to this intention, he suggested that in the first line the words "any town" should mean any town being a municipality.

MR. RANDELL said the clause was favouring an undue tendency to decentralisation, whereas in London the great desire was to centralise the machinery of the several parish vestries into one large municipal corporation for the whole of London. This bill tended in the opposite direction, by setting up small municipalities on the borders of larger ones, and this was a danger that ought to be guarded against. The question of sewerage would be more difficult to deal with where a large town community was subdivided into separate and independent areas. As in Melbourne, so in Perth, it might happen that persons outside of the central municipality might object to have the sewerage of the inner circle taken through an outer municipality. In England, also, this trouble was experienced, and it should be prudently avoided here. He was not in sympathy with this local desire for separation, and he would rather see a federal movement for municipal pur-

poses, with one strong body of management, and the outer portions represented as wards, which could be done adequately.

THE ATTORNEY GENERAL (Hon. S. Burt) said the committee should understand that the real motive for separation, in the case of an outlying portion of a municipality, was to secure the Government subsidy for the outside place. He regarded the principle as pernicious.

THE PREMIER (Hon. Sir J. Forrest) said he agreed with the hon. member for Perth (Mr. Randell) as to the objection that applied to the constituting of new municipalities on the borders of a larger one. This provision in the clause was put in by request, in order to meet the case of Leederville, on the border of Perth, and such other places as might become populous suburbs. When a deputation waited on him to make the request, he suggested that the people should apply to the City Council for taking in their district as a new ward of the city. They preferred, however, to ask for separate municipal powers, and this provision was accordingly put in the Bill. Still, he could not see why a place like Leederville should have a mayor and corporation.

THE ATTORNEY GENERAL (Hon. S. Burt): And aldermen!

MR. SOLOMON said he agreed with the views of the Premier and the member for Perth. In New South Wales there was a tendency to amalgamate municipalities that were adjoining each other.

MR. R. F. SHOLL disagreed with the Premier's idea as to centralisation, and said the municipal area of Perth was large enough to accommodate a population of twenty times the present number; and notwithstanding the large revenue received from rates in the city, he believed the streets were never in such a bad condition as at present. The reason was that the town was scattered over so large an area that the funds were not adequate for making and maintaining the great extent of streets and footpaths. He approved of the new provision for enabling the outlying suburbs to have separate municipal government, and the time would come when the city itself should be subdivided into municipalities. It was a mistake to have suburbs absorbed by the central municipality. Perth would be better if divided into two municipalities.

MR. RANDELL objected that the subdividing of a municipality must increase the expense of municipal government by multiplying officials, town halls, and so on.

Clause put and passed.

Clause 10.—Governor may change the style of council and chairman:

MR. JAMES asked whether it was not an oversight to provide that the Governor, upon the application of the council of a municipality, might change the style and title. A few persons might apply that their place—say Leederville—should be re-named "Porkopolis," and the Governor, in his discretion, might re-name it accordingly.

THE ATTORNEY GENERAL (Hon. S. Burt) said this provision was the same as in the existing Act. The permission to change the name did not apply to the name of the place, but to a change of the title of "chairman" to that of "mayor."

MR. JAMES said that as that change could apply only to a municipality having 5,000 or more of inhabitants, he moved to strike out of lines 4, 5, and 6 the words "he may think fit, and may alter the name and style of the chairman of such council to the name and style of mayor of such municipality," for the purpose of inserting the words "as may be so applied for."

THE ATTORNEY GENERAL (Hon. S. Burt) said the clause was intended to meet the case of a town having increased its population to more than 5,000 people, so that the corporate title might be changed from that of "chairman and councillors" to that of "mayor and burgesses." The amendment under discussion would enable the Governor to give to a town such name, style, and title as it thought fit to ask for; and that would never do.

Amendment put and negatived, and the clause agreed to.

Clauses 11 to 17, inclusive, agreed to.

Clause 18.—General and special meetings of ratepayers:

MR. RANDELL moved to insert in the first line of the sub-clause, after the word "seven," the word "clear," so as to read "seven clear days."

Amendment put and passed.

MR. RANDELL moved to insert, in the fourth line of the sub-clause, the words "or places" after the word "place," so as to read "place or places."

Amendment put and passed, and the clause as amended agreed to.

Clauses 19 to 23, inclusive, put and passed.

Clause 24.—Proceedings (of committee) need not be approved:

MR. RANDELL asked whether this clause was the same as in the existing Act.

THE ATTORNEY GENERAL (Hon. S. Burt) said there was no provision in the existing Act with regard to committees.

MR. RANDELL objected to the clause as giving too much power to committees, for if their proceedings need not be approved by the council, any committee might exercise authority without approval. He moved to strike out in the first line the words "not unless so," and to insert the words "unless otherwise" in lieu thereof, so as to read: "the proceedings of such committee shall, unless otherwise ordered by the council, require the approval of the council."

Amendment put and passed, and the clause as amended agreed to.

Clauses 25 to 28, inclusive, put and passed.

Clause 29.—Disqualification to vote:

MR. JAMES said the clause did not provide for any exception as to a councillor taking part in any discussion upon a matter in which he had a pecuniary interest. A councillor might be interested as a shareholder in a company, and the mere fact of his holding shares should not disqualify him from speaking or voting.

THE ATTORNEY GENERAL (Hon. S. Burt) said it was not intended to provide for exceptions in the case of shareholders of companies, because it often happened that there were one to two shareholders of companies sitting in a council, and they might largely influence the dealings of a particular company with the council. Such cases had occurred.

Clause agreed to.

Clause 30 put and passed.

Clause 31.—Penalty for acting as councillor, being incapacitated:

MR. SOLOMON asked whether any penalty was also provided in the Bill to meet the case of a mayor or an auditor acting when legally incapacitated.

THE ATTORNEY GENERAL (Hon. S. Burt) said a mayor would not act when disqualified, surely.

MR. SOLOMON moved to insert, in the first line, the words "mayor or auditor" before the word "councillor."

THE ATTORNEY GENERAL (Hon. S. Burt) said the amendment would make the clause unworkable, unless the structure of the whole sentence were altered.

Amendment, by leave, withdrawn, on the understanding that the Attorney General would re-consider the clause.

MR. JAMES moved to strike out of the eighth and ninth lines the words "and shall, when recovered, be paid into and form part of the corporation funds." The person who laid an information should be allowed to receive a portion of the penalty, especially as he might have to pay his own costs; and if this provision were not made, there would be no inducement to lay an information.

THE ATTORNEY GENERAL (Hon. S. Burt) said the only person likely to have a knowledge of the offence would be an officer of the council.

Amendment put and passed, and the clause, as amended, agreed to.

Clauses 32 to 36, inclusive, agreed to.

On the motion of the ATTORNEY GENERAL (Hon. S. Burt) progress was reported, and leave given to sit again.

ADJOURNMENT.

The House adjourned at 8·50 p.m.