

the fullest and most explicit information. I believe that Ministers will be willing to give this information to the utmost of their power, so as to enable members to form a sound judgment upon these works. I trust that whatever may be the works determined upon and whatever may be the course pursued, either under our present or any future Ministry, it will all be in the direction of tending to promote the best interests of the colony. In the carrying out of this policy I place very much reliance on the honest discharge of the duties of administration. I believe that a great deal will depend upon the way in which these works are carried out. I think large sums of money may be wasted if Ministers or those who are appointed by them to superintend the construction of these works are not honest and capable men. A great deal of the future success of these undertakings will depend upon their being honestly carried out. Therefore I trust that Ministers will exercise their best and soundest judgment and make every effort to secure for the working head of the Works and Railway department, which is becoming one of the most important departments of the service, an officer who is not only competent to attend to the construction as well as the working of our railways, but also a man who will be honest in his dealings between contractors and the public.

Motion agreed to.

Bill read a second time.

The House adjourned at 12:30 a.m.

## Legislative Council,

Friday, 6th February, 1891.

The Delegation to England: Letter from Sir W. C. F. Robinson—Crown Claims Ordinance Bill: second reading—Parliamentary Privileges Bill: first reading—Protection to Parliamentary Printers Bill: first reading—Apportionment Bill: second reading—Yield of Gold from Eastern Goldfields: Return—Standing Orders: Explanation by the President—Adjournment.

THE PRESIDENT (Sir T. C. Campbell, Bart.) took the chair at 3 o'clock.

### PRAYERS.

THE DELEGATION TO ENGLAND—  
LETTER FROM SIR W. C. F. ROBINSON.

THE PRESIDENT informed the House that he had received the following reply from Sir William Robinson, expressing his thanks for the resolution passed relating to his recent services in England:

"Government House, Perth,

"27th January, 1891.

"I have received, with much gratification, your letter of the 23rd inst., informing me of the resolution passed by the Legislative Council, with reference to my services in London in connection with the passing of the Constitution Bill. It was a great pleasure to me to have an opportunity of assisting the delegates from this colony to the best of my ability in the important and interesting mission with which they were charged, and I highly appreciate the expression of thanks which you have been so good as to communicate to me on behalf of the Legislative Council.

"I have, &c.,

"W. C. F. ROBINSON."

### CROWN CLAIMS ORDINANCE BILL.

THE HON. G. W. LEAKE: I have the honor to move the second reading of a Bill intituled "An Act to amend the Ordinance to facilitate proceedings by persons having claims against the Government, (31 Vic. No. 7)." I shall not, sir, detain the House very long; although I shall endeavor to show hon. members why I believe this Act necessary. I may state that I have not brought it forward in connection in any way with the Government, or any member of it. In the 31st year of the reign of the Queen—and I

think that year was 1868—Her Majesty's subjects had no right to enforce their claims, pecuniary or otherwise, against the Crown. Thereupon it became indispensable that an Act should be passed to prevent the subject from being remediless. At that time there was, in addition to the common law remedy, a statute which related to proceedings in the case of contract with the Crown, which was called a Petition of Right, and there was also an Act in New South Wales to the same effect and from which our Ordinance was copied. The compiler of our Act—a gentleman whose name is received in this colony with every respect—Sir Archibald Paull Burt—thought proper to introduce such general words into it as not merely extended the remedy against the Crown in cases of contract, but also created a fresh remedy in cases of tort. I do not exactly know why these general words were introduced; but at all events it was not considered in New South Wales, the parent colony in which the remedy was introduced, that the Act went further than to give the subject a remedy in cases of contract. That view was subsequently shown to be erroneous by the Judicial Committee of the Privy Council in a case from, I think, New Zealand. It was there held that these general words not merely included claims arising on contracts, but cases of tort also. The fact of that case being tried goes very far to prove that it was not originally intended to give the subject any remedy other than under a contract. As the law stands, if any claim arises through the negligence of any servant in the employ of the Government the Crown is liable. When I was Acting Attorney General under the Government of Sir Harry Ord, one of the P. & O. steamers happened to touch the ground while in charge of a pilot. The manager of the P. & O. Co. at Albany sent in a claim to the Government which was referred to me. I, as Attorney General, advised that the Crown was not liable other than in cases of contract. I do not think the P. & O. Company knew any better about it than did Sir Harry Ord, for they happened to agree with me, and the consequence was the claim was dropped. Now supposing the P. and O. Company had been as well instructed in the law as we are now by the settled

decision of the Privy Council, just see what an enormous expense the colony would have been put to. In the first place there was the loss of a voyage to the steamer, which had to be towed down. Although possibly no damage was done to the body of the vessel, still there would have been a claim for the expense incurred while the ship was in charge of a servant of the Government, she having her voyage interrupted and to be discharged. I merely point this out as one instance. Many years ago I recollect a vessel—the “John Panter”—under sail in charge of a pilot. It was compulsory for her to take a pilot. She touched on the rocks, and all sorts of damage was incurred. At that time the Act 31 Vic., No. 7, was not in force; but if it had been, the Crown would have been liable for any amount of damages the “John Panter” could have supported. There is another instance I might give of cases that very frequently arise, and that is in regard to claims against the Sheriff. For every default of the Sheriff, as he is constituted at present, the Crown is liable. Here it is different to what it is in England. Here the Sheriff receives the fees on behalf of the Crown, and pays them into the Treasury. He has not even the appointment of his own bailiff. It is not a good thing to give every blackguard who has the bailiff in his house a remedy against the Crown, for if once a jury gets hold of the Crown they will salt it to a nice extent. Here is another instance, although it is perhaps the converse of the argument I have been using. Some time ago a gentleman named Smith, the Captain of the “Meda,” set fire to a bush screen in which were a few Malays and native women, who chose to go there for the purpose of buying drink. This was magnified into the burning down of a tenement, and the defendant was mulct in £100 damages. If that case had been brought against the Government, instead of against Captain Smith, the damages would have been £1,000 instead of the milder £100. Another instance might be given with reference to railway accidents. These accidents come within the scope of a special enactment. I speak now subject to correction. A man happened to be run over by a railway carriage. Immediately after, a fair annuity and a sum down was offered to him, which

would have kept him in easy circumstances for the rest of his life. An adventurous legal gentleman, however, took up his case, and advised him to have nothing to do with the offer, but to get a lump sum down. This was obtained; but ultimately the man died, in something like poverty, he having received no real benefit from what he got. I say, sir, it is a very cruel thing to the colony, especially as we have self-government, to place it at the mercy of any person with just enough knowledge and skill to advise a man who has received an injury, that he is entitled to go to the Supreme Court and get something at the hands of a jury—perhaps a merciless jury—who may award whatever they may feel disposed to. The Act, sir, is a short one; but it is an important one. Its sole enacting words are these: "Nothing in the said Ordinance contained shall be construed to give any person any remedy against her Majesty, her heirs or successors, or against Her Majesty's Colonial Government, in any case not arising out of claims founded on contracts or grants made on behalf of the Crown." Now it may be said that these arguments hardly apply here, as we are a sort of republic; but that does not, I think, warrant our lending a hand to any unscrupulous person who would put the law in motion for his own advantage and not for the benefit of the person injured. We are all aware that when any person is injured by the fault of the servants of the Crown, the Crown is always liberal. All this Bill does is to make the law here the same as it is now in England, and the same as it would have been here now if it had not been for the accidental use of the words "any claim" against the Government. I shall not detain the House any longer. This is not a matter of passion, and the Ministry will remain in office whether the Bill passes or not. I think it is a matter of interest, however, to the country that the Bill should pass, and I therefore now move that it be read a second time.

THE HON. T. BURGESS seconded.

THE COLONIAL SECRETARY (Hon. G. Shenton): I have carefully listened, Sir, to the remarks of the hon. member in moving the second reading of this Bill; and as it is a very important one, I think it would be as well if we took time to consider it. I, therefore, move the

adjournment of the debate until the next sitting of the House.

Question—That the debate be adjourned—put and passed.

#### PARLIAMENTARY PRIVILEGES BILL.

This Bill was received from the Legislative Assembly, and read a first time.

#### PARLIAMENTARY PRINTING BILL.

This Bill was received from the Legislative Assembly.

THE COLONIAL SECRETARY (Hon. G. Shenton) moved that the Bill be now read a first time.

THE HON. G. W. LEAKE: Sir, I rise to order. There is another Bill of mine which is one of the Orders of the Day, and I think we should exhaust our own business before entering on business received from the Lower House.

THE PRESIDENT: That is a question which will arise when the Standing Orders are adopted. I think at present it is only showing respect to the other branch of the Legislature to take any message we receive from them into consideration as soon as possible.

Question—That the Bill be read a first time—put and passed.

#### APPORTIONMENT BILL.

THE HON. G. W. LEAKE: I have now to move the second reading of a Bill for the better apportionment of rents and other periodical payments. It is a Bill to supply a defect in our legislation, which has long since been remedied by the Imperial Parliament. Up to the 34 Vict., which was, I think, the Act of 1871, there was no power in England to apportion payments which were made annually, monthly, or weekly, in the event of the recipient dying before they became due. Therefore, if a pension were payable annually, or rent was payable within a certain time, and the lease was terminable by re-entry before the full sum became due, the person who would otherwise be entitled to it would lose it. Suppose, for instance, the pension which I happily enjoy was payable at the end of the year, or in July next, and I died to-day, my executors would be debarred from getting the money up to the period of my death. It is hardly necessary for me to say more on the subject than to

say that it is a measure that should be adopted by the Legislature here. Indeed, a considerable injury will accrue if we do not adopt it.

THE HON. T. BURGESS seconded.

THE COLONIAL SECRETARY (Hon. G. Shenton): I move the adjournment of the debate until Tuesday.

THE HON. G. W. LEAKE: Why should the debate be adjourned? What question of very great importance is involved in this Bill? Why not go on with it now?

Question—That the debate be adjourned—put and passed.

#### YIELD OF GOLD FROM EASTERN GOLDFIELDS—RETURN.

THE COLONIAL SECRETARY (Hon. G. Shenton) laid on the Table a Return showing the number of ounces of gold obtained from the mines at Yilgarn.

#### STANDING ORDERS—EXPLANATION BY THE PRESIDENT.

THE PRESIDENT: The Standing Orders are now on the Table. It would save time if hon. members would look through them, and, if they have any objections, to give notice of their amendments by Tuesday next. Then on Friday next some member of the Committee—either the hon. Mr. Hackett, or the hon. Mr. Leake—can move that they be adopted as a whole, subject to the amendments proposed if such be considered advisable.

THE HON. J. W. HACKETT: Adopting your suggestion, sir, I give notice that on Friday next I will move that the Standing Orders be adopted as printed.

#### ADJOURNMENT.

The House at 3:40 p.m. adjourned until Tuesday, February 10, at 3 o'clock.

## Legislative Assembly,

Friday, 6th February, 1891.

Shipping facilities at Derby—Public Reserves in neighborhood of towns—Protection of Parliamentary Printers Bill: third reading—Parliamentary Privileges Bill: third reading—Audit Bill: second reading—Estimates, 1891—Colonial Hospital: Letter of Patrick Power—Adjournment.

THE SPEAKER took the Chair at 2:30 p.m.

#### PRAYERS.

#### SHIPPING FACILITIES AT DERBY.

MR. A. FORREST asked the Premier whether it was the intention of the Government to improve the shipping facilities at Derby, so as to enable settlers to ship cattle and other stock, the present arrangements being very bad?

THE PREMIER (Hon. J. Forrest) said the Government was fully aware of the importance of providing shipping facilities at Derby for the shipment of stock, and hoped to be able to attend to the matter at an early date. If the hon. member could show him, upon the information he possessed, the best way of meeting the wishes of the settlers in this matter, he should be very much obliged to him.

#### PUBLIC RESERVES IN VICINITY OF TOWNS.

MR. RICHARDSON: I desire to ask the Commissioner of Crown Lands, Whether in his opinion a sufficient number of Reserves for public parks, gardens, and recreation grounds have been declared in the neighborhood of the various cities and towns of the colony (both seaport and inland); and, if not, whether the Government intend to at once take steps to remedy the oversight?

THE COMMISSIONER OF CROWN LANDS (Hon. W. E. Marmion) replied as follows:—In and for all new town-sites sufficient Reserves are provided, when the surveys are being made. With regard to other cities, towns, etc., of the colony, I am of opinion that it is specially the province and should be the care of the Municipal and Town Councils, Roads Boards, and other public bodies of a representative character, to see that Reserves for the purposes set forth in the question of the hon. member should be