LEGISLATIVE COUNCIL,

Monday, 3rd December, 1888.

First Readings—Appropriation Bill, 1889: in committee—Roads Bill: third reading—Railways Act, 1878, Amendment (Closure of Streets) Bill: second reading—Messages from the Governor—Sand Drift Bill: in committee—Newspaper Libel and Registration Amendment Bill: in committee—Civil Service Life Insurance Bill: Order of the Day discharged—Adjournment.

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

PRAYERS.

FIRST READINGS.

The General Loan and Inscribed Stock Act Amendment Bill, and the Arbitration (Land Regulations) Bill, were read a first time.

APPROPRIATION BILL, 1889.

This bill passed through committee, *sub silentio*.

ROADS BILL.

Read a third time.

RAILWAYS ACT, 1878, AMENDMENT (CLOSURE OF STREETS) BILL.

SIR T. COCKBURN-CAMPBELL: Sir, I rise to move the second reading of "A bill to enable the Governor in Council to re-open streets closed under the provisions of the Railways Act, 1878." This bill, as a matter of fact, is simply drafted for the purpose of carrying out a resolution passed by this Council a few nights ago, in these terms: "That in the opinion of the House it is desirable that the Government should in all cases retain power to re-open streets closed under the provisions of the 42nd Vict., No. 31, Sec. 12." I thought, myself, when this resolution was brought forward by the leader of the Government, as an amendment upon one I had brought forward, that as a matter of course the Government would have brought forward a bill to carry out the intention of the House. But for some reason or other, it appears it has not been considered desirable by the Government to adopt that course, and I had to bring in a bill myself. There is not the slightest doubt, I think, that all members will agree that the powers given under this Act of 1878 in regard to closing streets and roads are excessive, and that such powers should not be given without provision being made for the protection of the rights of the people. So far as I can hear, Englishmen at home are extremely tenacious with regard to any right of way they may possess—more so than with regard to almost any other right; and these rights are also very carefully preserved in all English colonies. Here, however, in this colony—by carelessness rather than any special intention—we have provided no such protection whatever for the public. in cases of obstructions caused through the closure of roads by our railways. I was very glad to find the Commissioner of Railways the other day—moved partly by what recently took place at Albany, and I suppose partly by what occurred in this House—introducing a completely altered method of procedure in the steps to be taken hereafter, prior to the construction of a line of railway. The new Standing Orders brought in the other day will to a great extent protect the interests of the public in the future; but of course they do not affect what has been done in the past in any way; nor do they, so far as the future is concerned, protect the interests of the public so fully as they might do. They may do all that is necessary to provide for the immediate requirements of the public, under these circumstances; but we all know that the tendency of railways generally is to increase trade and settlement, and develop the country, and, very shortly after the construction of a railway, a totally different state of things is found to spring up in regard to the accommodation required. The new Standing Orders do not in any way provide for these future requirements, but simply for the state of things existing at the time a railway is projected; therefore it is absolutely in the interests of the public that some such measure as this should become law. With regard to the town of Albany, hon. members are aware that the result of the railway company exercising the powers which they say they have to close the streets abutting on the foreshore of the harbor along which the railway is carried has been to cause endless agitation and worry to everybody concerned; and, although the Commissioner of Railways has done what he con-

siders necessary to minimise the inconvenience at present, there appears to be a difference of opinion, even among lawyers, as to whether these arrangements have been acts of grace, or of right, and whether the company has not an absolute power to close these streets and to block the inhabitants of the town from access to the harbor. That, I understand, is the contention of the company,—that it has only been an act of grace on their part, this arrangement they have made with the Commissioner, with regard to the convenience of the people of the town, and that under their contract they need not have granted this concession. I happen to know a good deal of what passed up to the time of this contract being drawn up by the lawyers, and also what the intention of those who gave the instructions for the framing of the contract was—I refer to the select committee; and I know that their intention as regards these accommodation works was expressed in the first clause of the contract, which says that "the railway and works relating thereto" shall consist (*inter alia*) of "all such necessary and sufficient under and over bridges and level crossings, accommodation roads, approaches," etc., "as may be necessary for the accommodation or protection of the lands intersected by the railway." But, to my astonishment, I have been told that this does not refer to streets at all, and that this part of the contract is merely surplusage. I believe the words were inserted, in committee, at Your Honor's suggestion, and I am certain that the intention of the Council was—and it was within the knowledge of the contracting parties, too —that the railway should consist of these accommodation works, as specified in this clause. But, strangely enough, doubts have arisen as to whether these words mean anything at all. I am not going to enter into the legal aspect of the question—it is beyond me; but, as doubts have arisen, and as lawyers take a different view of the subject, and that it may be argued that the company have these absolute powers, it appears to me that the bill I have brought in is necessary to set at rest this question, beyond the possibility of any mistake hereafter, so that the Government may be able to carry out such arrangements as may be necessary for the protection of the rights of the public. It appears to be absolutely necessary that such an Act should be passed in order to place the public in a position for self-defence. It may be said that special Acts might be brought in, when required, in each particular case; but my object is to avoid the necessity in the future of having these special Acts—[The COMMISSIONER OF RAILWAYS: What!]—to avoid the necessity of having these special Acts from the Legislature in the future, and also to avoid the probability of litigation, which may arise. Members may have faith in the present company, and believe they will do what is fairly reasonable in the matter; on the other hand, this company may have to give way to some other company—I believe there have already been proposals for making different proprietary arrangements: and, in view of all these contingencies I certainly think it is necessary that the Government should be in a position to protect the people against any arbitrary action on the part of the company's successors. I have heard it said that this bill is in contravention of the terms of the 67th clause of the contract, which states that nothing in any Act to be passed by the Legislative Council of the colony "shall in any manner operate against the contractor, or his syndicate or company, so as to limit the advantages granted to him under the contract." I maintain that this power of closing streets is not an "advantage" at all under the contract. The advantages there contemplated are those concessions which the contractor obtains as a *quid pro quo* for building the railway. The power of closing streets is what we may call a power of procedure, for the purpose of constructing the railway; and, even if it were held to be an advantage, it is not an advantage granted under the contract. It is also contended, I believe, that these streets through which the line passes are vested in the company, and that therefore they cannot be compelled to provide crossings. That is a legal matter; but I am advised there is nothing in it, and that it is perfectly competent for this Council—notwithstanding this land being vested in the company—to insist upon this first clause of the contract being carried out, as to providing all necessary crossings, etc. With regard to the bill, the preamble

recites very clearly why the bill has been brought in, and the first clause provides that it shall be lawful for the Governor in Council, upon application made by any municipal council or roads board —or without such application, if necessary—to re-open any streets or roads closed along a line of railway, and to direct the construction of the necessary crossings, or bridges, or other accommodation works necessary for the public benefit and convenience. There is another clause which I have given notice of this evening. It appears that the Executive, to whom this bill was submitted, consider there ought to be some procedure clause provided, defining how these things should be carried out; and I have given notice this evening of a clause, providing for that. I may say that the bill is not brought in out of any hostility towards the company. I am certain, myself, that, if the bill is passed, the company will be in a better position in one sense than they are at present. So long as the people feel that the company enjoy this absolute monopoly of power and that they are at the mercy of the company in these matters, so long will the present agitation and ill-feeling against the company continue. But if the people come to feel that there is a reasonable protection afforded them, and that their rights are legally protected, I believe all fair ground for the present grievance and contention will be done away with. Members will observe that the bill applies solely to roads and streets absolutely in existence, and not to any future roads or streets that may be declared; in the event of any such new roads or streets being wanted, of course it would have to be done under a special Act. I consider the House in agreeing to this bill is simply carrying out its own expressed desire, and, in the second place, protecting the general interests of the public, which are now most insufficiently protected. As regards my own district the provisions of the bill are specially applicable, and, if carried out, will I trust take away all reasonable ground for that mischievous agitation which has been going on, for considerably over a year. I understand, sir, that a despatch has been received from the Secretary of State, to whom some of the people of the town referred this matter, in which Lord Knutsford acknowledges that, although in his opinion sufficient has been done for the present accommodation of the public, still at the same time he considers it desirable that the Government should take steps for the protection of the interests of the people in the future. These steps will be taken if this bill is passed, as I hope it will be.

Mr. KEANE: It is not my intention to say much upon this bill. I was in hopes that the new Standing Orders introduced the other day by the Commissioner of Railways would have been sufficient for the hon. member, without this bill; but the hon. member is evidently determined that he will father this little bill, and carry it through the House if possible, for the benefit of Albany. Up to the present time, we all thought the Commissioner of Crown Lands had sufficient power for closing or opening any roads or streets, for railway purposes, but in the preamble of this bill we are distinctly told that doubts have arisen as to the powers of the Commissioner in these matters, and the bill does not stop there. It goes a great deal further than that, and provides that any municipal council or roads board may apply to have bridges, or level crossings made, accommodation roads, approaches, cattle creeps, water-courses, drains, culverts, or other works, under, over, upon, or across any land, street, or road intersected by a line of railway. That does appear to me rather too much of a good thing altogether. If a roads board liked, it could alter the whole course of a railway, under that provision. It is not simply a question of opening a road or a street; it is a question of interfering with the construction of the whole line. I do not for a moment say that some such a bill would not have been proper, if we had not got these amended Standing Orders; but I did think those Standing Orders would have answered every purpose we wanted. If this bill is passed, what will it mean as regards the contracts for the two land grant railways already entered upon? The contractors will have to do a lot of things which they never expected being called upon to do. Before entering into these contracts they went carefully over the country traversed by the railway, and noticed what accommodation works would be necessary, and

they made their calculations accordingly; but, if this bill becomes law, any municipality or roads board through whose district a line passes may call upon the contractor at any time—not to-day nor to-morrow, but at any time, years hence—to put fresh crossings and bridges and all sorts of accommodation works, and go to the expense of thousands upon thousands of pounds, which they never contemplated when making their calculations. I contend that it is neither fair nor just that those who have entered into these contracts should be made liable to be called upon in this way to incur expenditure which was never dreamt of when they entered into the agreement. With respect to all this trouble at Albany, I think our Albany friends, when they read the despatch of the Secretary of State will find that they didn't get all they want, and that probably they would have got a great deal more if they had left it to the Commissioner.

MR. PARKER: I am sorry, sir, that I am obliged to oppose this bill, because I think the hon. member who brought it forward is only doing what he thinks is his duty in the interests of his constituents. We know very well that, in matters of sentiment, people are more apt to have their feelings disturbed than in matters of more practical concern; and I take it that in this case, where the Albanians seem to have worked themselves up into a feeling of great excitement over this matter of closing their streets, I think it is really a matter of sentiment more than anything else, and that in reality their interests are not practically affected at all. We were told the other day by the Commissioner of Railways that some of these streets were never used before, that others simply ran into the sea, that others were so steep as to be impassable for vehicles; and that it was only when the railway ran through the town that the Albanians discovered, as regards some of them, that there were such streets in the town at all. But what I wish particularly to impress upon the House is this: the Government of the colony, on the one hand, acting upon the advice of the Legislature, has entered into a contract with certain people, on the other hand, for the construction of this line of railway, upon certain terms; and, I take it, we must all admit it is not usual, when two parties have entered into a solemn contract, nor would it be fair nor just, to allow one of these parties to alter the terms of that contract, without the consent of the other party. I think if that were attempted to be done in the case of a contract between private parties, we should call it by a very ugly name. I do not think we should consider it fair and reasonable to allow one party to vary the contract, to the prejudice of the other party, without the other party's consent; and I should be sorry if this House were to lend itself to any such policy of repudiation, in regard of any contract entered into between this Government and any body of contractors, such as this bill contemplates. I should be extremely sorry to have ourselves held up to the world as a Legislature who, having entered into a contract for the construction of a public work like this, should afterwards seek to repudiate its agreement, to its own interest, and the detriment of the other contracting party. If we were to do so, I think we would be held up to public scorn, and rightly so. The hon. baronet says that in agreeing to this bill we shall simply be agreeing to what we have already affirmed in a resolution. I cannot agree with that. That resolution simply said that, in the opinion of the House, it is desirable that the Government should in all cases retain—"retain" is the word—power to re-open streets closed under the provisions of the Railways Act. To retain a power, implies that the power is already possessed; but this bill proposes to confer a power that is not at present possessed, and which it was never contemplated should be possessed, when this contract was entered into. Nor is it possible to "retain" a power that we have already dispossessed ourselves of, and given to another party. Therefore, with all due deference to the hon. member, I say that in passing that resolution we in no way pledged ourselves to pass such a bill as this. The hon. member told us that he knew a great deal as to the intention of the select committee, when drafting this contract. I also was on that committee, but I am not going to ask the House to accept my view of what the intentions of the committee were. I ask the House to judge of the words of the contract itself.

I presume nearly every member of that committee—and it was a very large committee—had his own ideas as to the intention of this or that clause; but I think we are bound by the wording of the contract, as signed and agreed upon, and I would ask the House to bear with me for a moment while I refer to the words of the contract itself. What does the 3rd clause say? "For the purpose of the construction of the railway, the contractor shall and may, without any further notice or authority, enter upon and take a strip of land, along the whole length of the railway (subject to deviation as aforesaid) not exceeding in any part three chains in width, and such lands shall be used for the purposes of the railway." So that, absolutely in this contract itself, we give them power, not only to take up a few streets at either terminus of the line, leaving openings for the people to cross, but one continuous strip of land, not exceeding three chains in width, starting from the Albany jetty at one end, and terminating at Beverley, at the other end. Therefore it is useless for us to argue that we never intended them to take these streets. How could they work or build the railway if they did not take these streets? Were they to leave certain gaps, and did they expect the trains to jump over these gaps, and proceed on their way. Mind you this is not a contract hastily drawn up by the Government, but by a select committee of this Council, after weeks of most serious consideration, and I believe the hon. baronet himself was the chairman of that committee. The Government when it prepared this contract simply carried out the views of that committee, precisely as those views were confirmed by this House. The hon. member also says it was not until after the Beverley-Albany Contract Confirmation Bill passed the House last year that people knew anything about the company having obtained this power. But what are the facts? In 1884 we passed an Act to authorise the construction of this railway (48 Vict. No. 21), and empowering the Government to enter into the necessary contract. Under that Act we gave the contractor certain powers for the purpose of entering upon lands and doing all things necessary and proper to be done for carrying that contract into effect. According to that Act it was made lawful for the contractor to exercise all the powers, rights, and principles vested in the Commissioner of Railways under the Railways Act, 1878, as regards the taking of land. Those powers are defined in the 12th section of that Act (42 Vict. No. 31), and include, *inter alia*, the right of fencing or closing any road or street required for the construction of the line. In pursuance of these powers, the contractor, some eighteen months ago published in the *Government Gazette* a list and a description of all the lands he proposed to take, and included in that list was the land proposed to be taken in the town of Albany, including these streets. No notice was taken by the Albanians of this publication—not a word of protest or objection was raised at the time. And what was the effect of that *Gazette* notice? Clause 13 of the Railways Act provides that when such notice shall have been given the land mentioned therein shall be deemed to have been taken to all intents and purposes, and the land became vested in the Commissioner—or, in this case, in the contractor, who had been given the same powers as the Commissioner, by the Act of 1884. Therefore to say that it was the Act of last year that gave the contractor power to take these streets is absurd. The sole object of that little Act was this: by the contract power was given to build "a line of railway from Beverley to Albany proceeding in the direction shown upon a map or plan" that was annexed to the contract, which was the only definition given of the course of the railway, and a question arose, in consequence of certain words in the Railways Act—relating to the special Act authorising the construction of a railway requiring the line to be described therein—a question arose whether this company not having had a special Act, in which the precise course of the line was described, had power to construct the railway at all. Therefore, in order to set at rest any doubt upon that question—the right of the contractor to construct the line at all—that little Act of last session, in which the route of the railway was more fully described, was brought in. But not a single extra power was given by that Act to the contractor, or to this company, that they did not possess before. It simply set at

rest the question of whether they had any legal right to construct the line at all, as it was not expressly defined or described in the previous Act, and only shown on the map or plan. Therefore to say that the company obtained this power by a side-wind, and without the public or the members of this House knowing it, is quite incorrect. The Legislature fully intended in the previous Act (the Act of 1884) that the company should have this power, and exercise all the rights and privileges of the Commissioner as to the taking of lands. Nor have they claimed any powers beyond those given to them under that Act and under their contract. What would be the effect of this bill? Although it purported to be a general Act, dealing with all railways, the hon. baronet was perfectly honest when he reminded us that in reality it only related to the town of Albany. [Sir T. COCKBURN-CAMPBELL: I said no such thing.] It was brought in simply to allay the agitation in that town. There is no other line of railway now in course of construction — no line to which this bill could refer. Can it be said that the bill had been brought in, in the interests of the company? If not, in whose interests has it been brought in? Apparently in the interests of his constituents, the people of Albany, and antagonistically to the interests of the contractors. I say antagonistically to the interests of the contractors, because it seeks to impose upon the contractors obligations which were not contemplated in the contract, and therefore it must be detrimental to their interests. I ask this House again, is it fair to take advantage of our position in this way, and to seek to deviate from the terms of a contract entered into, without the consent of the other party to the contract, when that deviation is detrimental to the interests of that party? Would we dream of doing it in any private contract? Would we not scorn the man who took such an advantage over another, in a contract between private individuals? If the hon. member will tell me that the company is perfectly willing that this bill should pass—pass it, by all means. But, until they express their willingness, or say they have no objection, we have no right to interfere with the terms of this contract. I do not care what is done with regard to any future railway, but we should be doing irreparable injury to the good name of the colony were we to attempt to interfere with a contract already entered into, to the detriment of the contractor, without the contractor's consent. Clause 67 of the contract says that nothing done hereafter by the Legislative Council of the colony—that is, after the contract was entered upon—shall in any manner operate against the contractor, so as to limit the advantages granted to him under the contract. I should have almost thought such a provision was unnecessary: I should have thought that no Legislature of Englishmen would think of interfering with the advantages granted to a contractor under his contract. But we have actually embodied that provision in this contract. It might be thought that I am speaking in this matter in the interests of this company; I am speaking in the interests of preserving the good name of the colony; and I may tell hon. members this—I have never been consulted at all by the company about this bill. It has been brought in so lately that the company have never had an opportunity of seeing it, much less obtaining advice about it. [Sir T. COCKBURN-CAMPBELL: They've heard all about it, long ago.] I do not care, myself, whether it is the company or who it is, in whose interests the bill has been brought in; I am speaking now in the interests of the colony. I do not wish to see the good name of the colony dragged through the mire, simply to satisfy the sentimental grievances of the people of Albany, stirred up by a demagogue.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): I hope I shall not be led to speak with any warmth upon this bill, myself; but, in reading through the bill, one or two matters have occurred to me, which I should like to point out to the hon. member in charge of the bill. I notice that clause 1 does not deal with any new roads, but with roads which have been closed to traffic, either by being permanently fenced or otherwise; but I think if this Act is to be a really useful Act, it ought to deal with such new roads as may hereafter be required, in crossing this railway. It also provides that the Governor may act in this matter of pro-

viding level crossings, without being moved to do so by either a municipality or a roads board. I cannot help thinking that is an unnecessary power. Under the Roads Act and the Municipalities Act the Governor can only act in these matters upon the advice or recommendation of those bodies; therefore I think this bill, unless this clause is altered, will be at variance with those two Acts. But the principal point I wish to refer to is that the bill makes no provision, as I understand, for any future roads that may be required. In a large colony like this, where a line of railway traverses 240 miles, it is very necessary there should be some power to open any roads or crossings that may hereafter be required in the interest of traffic, but which at present, owing to the paucity of settlers along the line, may be altogether unnecessary. I believe myself, notwithstanding what the hon. member for Sussex has said, that this power now exists; but there would be no harm, so far as I know, in removing any doubt on the subject. I think, however, that the 55th, 56th, and 57th clauses of the Roads Bill we have just passed, provides machinery for the making of roads through fee simple land, and I submit that the land granted by the Crown to the contractor under this contract is fee simple land, and with the same reservation as to the right of the Crown to resume any portion of the land, up to one-twentieth the area, for purposes of public utility. As to there being anything dishonest or unfair towards the company, in giving the Governor in Council this power, I do not see it at all; I see nothing unfair in the Crown exercising a right reserved by it to resume lands for purposes of public utility—unless the deeds of grant in the case of this company are different from ordinary deeds of grant, and that the rights of the Crown are not saved. I am sure that was never the intention of this Legislature, when it drafted this contract. This railway passes over some hundreds of miles of country, much of which is now unsettled, and it would be impossible for the Commissioner of Railways or anybody else to say what roads and crossings may hereafter be required, when this country becomes settled, as we hope it may; and surely it is not unreasonable to give the Governor or somebody power to open these crossings, when the time comes that they may be required. There is no intention on the part of the Government to alter this contract.

MR. PARKER: But there will be an alteration of the contract.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): I submit not.

MR. PARKER: You give additional powers to the Governor.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): I maintain not; I consider these powers of taking or resuming land is already vested in the Crown.

MR. PARKER: Then this bill is not wanted.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): It is considered necessary to make the matter more clear, to remove all doubt. It is ridiculous to contend that no crossings should be made, except those that are necessary in the present rudimentary state of settlement, and it would be absurd for the Commissioner to ask the company to put in all these crossings now, when they are not necessary. But they may become necessary by-and-bye as the country becomes populated and traffic increases.

MR. SHOLL: Who is to pay for them?

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): That's another matter. I am not saying who is to pay. All this bill asks that, in the interest of the public, power should be given to have these openings and crossings made.

MR. RICHARDSON said the bill appeared to him somewhat peculiarly drafted, and he was rather in the dark as to what it meant. It made no provision as to who was to pay for these future crossings—whether the company, or the roads board, or the municipality, or the Government. He certainly thought the bill ought to say at whose expense all these crossings, and cuttings, inclined planes, drains, passages, and all this paraphernalia were to be made.

MR. BURT: I would like to say a word or two on the second reading of this measure, because I think it is one that touches rights of some considerable importance, at least to the population of the town of Albany. I have listened

attentively to the remarks of the hon. and learned member for Sussex, and it seems to me that his remarks bear a two-fold character. For a moment he argued that to pass this measure would be an interference with the terms of the contract; and, secondly, he argued that certain powers to take land, including streets, were acquired by the original contractor, Mr. Hordern, and not given to the company by the Act of last session. With regard to this second point it appears to me to be outside the question, if they have obtained these powers, when they obtained them—whether they obtained them under the contract, under the Act of 1884, or under the Act of last year. It is interesting perhaps from a historical point of view, to follow the hon. member's remarks, as to the legislation that has taken place on the subject, and the passing of a special Act, because of the existence of a doubt as to whether the contractors had a right to build the railway at all. That Act, we all agree, put an end to that doubt, and we are all satisfied now that the company are entitled to construct this railway. To that extent at any rate we may be thankful to this Act of last session. But, as I have said, it is not of much importance now to argue when the company obtained these powers, so long as they have got them. But the first portion of the hon. member's argument is one of some importance, and that is whether this proposed legislation is any alteration of the terms of the contract? For my own part, I cannot see that it is any alteration or variation, in any shape or form, of the contract. I think when we come to consider what is in the first clause of the contract we must come to the conclusion that the bill is not contrary to the terms of the contract, but in express keeping with the terms of the contract. The first clause of the contract says that the railway and works to be constructed under the contract shall consist of and comprise—(*a*) a line of railway from Beverley to Albany; (*b*) all necessary sidings, etc., for the due and efficient working of the railway; and (*c*)—which is the point now at issue—"all such necessary and sufficient under and over bridges and level crossings, accommodation roads, approaches, cattle creeps, watercourses, drains, culverts, and other works as may be necessary for the accommodation or protection of the lands intersected by the railway." If the hon. member will compare those words with the words of this bill he will find that they are in accord. That being so, if this bill simply seeks,—and I take it that is all it does—to more clearly express the powers of the Governor in Council with respect to these accommodation works, it is simply carrying out that which the company under their contract undertook to provide, and that which was always contemplated they should do. I think the bill is necessary simply because this provision here is not very clearly defined, and, if I may say so, has been rather ill-drawn. It says "all such necessary and sufficient" accommodation works "as may be necessary." It is rather clumsily expressed; nor does it state here, nor throughout the whole contract, who is to judge as to the necessity of any particular crossing or other accommodation work. Nor does it say necessary at what time, now or hereafter. [Mr. SHOLL: It might be a hundred years hence.] Certainly, or a thousand years hence. It is not contrary to the terms of the contract, but carrying out the provisions of sub-section (*c*) of the very first clause of the contract, which stipulates that the contractor shall make all necessary crossings, etc. The hon. and learned member also says that we propose to limit the advantages of the contractor. I submit that we propose nothing of the sort. What advantage do we limit? Are we taking away any portion of the land vested in him under the contract, or are we depriving him of anything he is entitled to under his contract? Nothing of the sort. What does the preamble of the bill say? "Whereas certain lines of railway have already been authorised to be constructed, the routes of which intersect certain lands, streets, and roads, and, owing to the smallness of the population along the route of such railways and for other reasons," these crossings and the other accommodation works specified, "have not hitherto in some cases been considered necessary or provided; and it may be necessary hereafter—for the accommodation of traffic and the more convenient access to different portions of land intersected by such line

of railway"—to provide for the construction of these works; and, "whereas doubts have arisen as to the power of the Commissioner of Railways to require (in the case of private lines of railway) the construction of such works as may be necessary to be provided for these purposes, be it therefore enacted"—etc. That is the sole object of the bill. It is very clearly set forth in the preamble. There may be no necessity to have these accommodation works constructed now, but there may be hereafter. It must be remembered, too, that there are other private lines of railway besides this—the Rockingham line and the Lockeville line, for instance.

Mr. PARKER: The Rockingham line is not built under any Railway Act.

Mr. BURT: The country will probably find itself in greater difficulty with regard to that line than a line that has been built under a Railway Act, and very serious trouble may arise in the future, if rights which have been enjoyed for many years are to be interfered with. At any rate this bill is made to apply to all private lines, as well as this Albany line. I think it will be agreed that these Albany people have a grievance. It may be a small matter at present, but it has given rise to a large amount of ill-feeling. The hon. member for Sussex says they hardly knew they had these streets until the railway went there, and that they simply lead into the sea. For my own part I do not know that they could lead to a more delightful place than the sea shore. The sea and the harbor must always remain one of the attractions of a town like Albany; and if the inhabitants are shut out from going down to the foreshore by the closure of these streets, I think it is a most important innovation of their rights. All this bill desires is this, so far as I can see: that the Governor in Council shall have power, at any time, to declare these streets open—streets that may not be of sufficient importance now to keep open, but which may be, hereafter, as the town increases. At whose expense, the bill at the present time does not say; but, in committee, hon. members will be quite able to settle that. All this bill seeks is that there shall be power given to reopen these streets and to keep them open; and that such power should be given to the Crown is, I think, beyond question. There is no invading in any sense of the terms of the contract, nor any attempt to limit any advantages gained by the company under their contract. If there were, I should be very sorry to say anything in support of the bill. We have already varied the terms of the contract, this very session, in the interests of the company, giving them the right of selecting their lands sooner than they would be entitled to under the terms of their agreement, and it cannot be said that this House is not disposed to deal fairly with the company in every way. As to the new Standing Orders introduced the other day, the hon. member for Geraldton says he thinks they would be sufficient without this bill; but I think the hon. member, upon reconsideration, will see that these Standing Orders only refer to the accommodation works that the public may require in future railways, before those railways are undertaken. The hon. member said this bill would empower the roads boards to alter the whole construction of a railway—that is absurd. Nothing could be done without the consent of the Governor in Council. The bill simply gave the Governor in Council a power which the contract intended to give him, and which this House intended he should have, and which the contractor must have contemplated he should have—the power to provide such necessary crossings as may be expedient in the interests of the public. It would be absurd to suppose that we should have a line of railway between Beverley and Albany, which could only be crossed at distances of a hundred miles.

The COMMISSIONER OF RAILWAYS (Hon. J. A. Wright): We have heard a great deal from the two learned members of the House about the legal aspect of this question, its *pros* and its *cons*; I wish to deal with the common sense view, which I think is the view this House ought to take in this matter. I am very glad in one way that the hon. member for Plantagenet when he introduced this bill—and also the hon. and learned member for the North in supporting—showed their hands, and that it is more for the sake of Albany than for the sake of the colony generally that the bill is wanted. [Sir T. Cockburn-Campbell: No, no.] That is what they have

stated—or, at any rate, that is the only conclusion to be gathered from their remarks. The bill no doubt is intended to be a very good bill, but I would point out that at present it provides nothing in the way of procedure, and says nothing about who is to bear the expense. [Sir T. COCKBURN-CAMPBELL: There is a new clause dealing with that.] I am glad to hear it, for the bill as it stands is rather a crude affair. No person in his senses could ever imagine that a railway of this importance, running from Albany to Beverley, should only require such crossings as may be necessary at this moment; or that the railway from Guildford to Champion Bay was to be one continuous unbroken band, without openings or means of getting across it. If it were, we should have the question of Separation settled most effectually. Both in the interests of the colony and in the interests of the companies themselves, it would be absurd to imagine such a thing. Lines of communication with the railway must be opened, and, as settlement increases, we may expect that more lines will be necessary, and it is of course necessary that some procedure should be decided upon, to provide these accommodation works. The only question now is the question of expense—who is to pay for these crossings hereafter? I understand, from the information I have received from the chairmen of all the roads boards between Beverley and Albany, that every road or track that requires a level crossing at present, has a level crossing provided for it, and that they are perfectly satisfied with the accommodation given. Coming now to the town of Albany itself, we come to the only sore point we have to deal with—the head and front of our offending. Albany, when this railway was started, was a town of many roads and of many streets—on the map; but these roads were evidently laid down on that map by somebody sitting quietly on an office stool in Perth, who had never seen the town of Albany, for many of these streets are simply impracticable, for purposes of traffic. They either lead nowhere, or present such difficulties, in the way of access or egress, that they could be of no practical use to the inhabitants. But it has suited some people to get up an agitation on the subject, and I was glad to hear the hon. member in charge of the bill saying he believed the grievances of the Albany people were sentimental rather than real. I think so, too. The first trouble was the crossing at York street and at Spencer street. With regard to the latter, it was a street that led to the jetty, and they wanted a crossing for carts and other vehicles; but, as carts are not allowed on the jetty, and never will be, the necessity for that crossing was not very apparent. With regard to York street, the Governor offered to give them a level crossing for carts there, but as it went right through the middle of the railway station yard, where all the shunting should be, it was stipulated very properly that the company should have the key of the crossing gates, the responsibility of working the line resting upon them. This was absolutely necessary for the public safety, and it appeared a perfectly satisfactory arrangement to a great many of the inhabitants. But not to a certain party, who, on the strength of this agitation, thought to float into power and popularity. The question was referred to the Secretary of State, and the Secretary of State has answered that a level crossing for carts is not required at York street, and that a foot-crossing for passengers is all that is wanted. The Secretary of State also says that, in future, in the event of a reclamation being made, and crossings being required, the person making that reclamation shall have to pay for such accommodation. That appears fair. That is the key of the whole position; and if it had been proposed that those who desire to have crossings and roads made that do not now exist, should do so at their own expense, there would have been no dissent from anyone. But he wants the company to bear the expense, which is obviously unfair, as regards accommodation works for any new roads or streets that may be required hereafter. That is all I have to say to the bill.

SIR T. COCKBURN-CAMPBELL: I should like to say one or two words in reply. The instructions with regard to the bill were simply that it should clearly define the powers of the Governor as regards streets already existing at the time of the construction of the railway. It is clear from the terms of the contract that it is for the com-

pany to bear the cost of re-opening any streets in existence at the time of the line being constructed; and I have a clause on the notice paper providing for that; and I believe it is the intention of another member to move a new clause dealing with any future accommodation works which any roads board or a municipality may desire to have, and that they should have it done at their own expense. My hon. friend the Commissioner always will insist upon always bringing a certain gentleman—(I may as well name him) Mr. De Hamel on the scene, in order, it appears to me, to prejudice what I am trying to do in the interests of my constituents.

THE COMMISSIONER OF RAILWAYS (Hon. J. A. Wright): I protest against that being said, for it is not a fact.

SIR T. COCKBURN-CAMPBELL: The hon. gentleman knows there exists a considerable amount of prejudice against this Mr. De Hamel. But I can assure hon. members that the people of Albany —with the exception perhaps of a certain section, consisting mostly of the more ignorant classes—are in no way influenced by Mr. De Hamel or his works, but have been opposed to the present Mayor, and his ways, all through this agitation. It has been said that the people did not know these streets were there until lately. That is very likely. They did not realise their existence until they were closed and they found themselves shut out from access to the foreshore. The arrangements made for the present may perhaps be sufficient temporarily—I do not express any opinion upon that. But what have we heard from the hon. and learned member for Sussex, who, if he will pardon me, really appears to hold a brief for the company in this matter—

MR. PARKER: Whom does the hon. member himself hold a brief for? For his constituents, I presume, for the next election.

SIR T. COCKBURN-CAMPBELL: What does the hon. member for Sussex tell us? He says that the company have a right to block the whole of these streets on the line of railway, and that the public have no rights at all. I think that is an untenable position, and that under the first clause of their contract the company are bound to provide all necessary accommodation works for the convenience of the public. There appears, however, to be some doubt as to the construction of this first clause, and it is to set this doubt at rest, and to give the Governor in Council a power which he ought to possess, and which it was contemplated he should possess, that this bill was brought in. It involves no breach of faith with the company, nor is there any breach of faith contemplated. The "good name" and the "fair fame" of the colony are quite safe so far as this bill is concerned. The hon. member need have no apprehensions on that score. As to the necessity for it, the hon. member himself has supplied the most conclusive argument, when he contends that the company are at present absolutely masters of the situation in the matter of these streets.

MR. VENN thought it must be admitted, after the legal arguments they had heard, that the law was rather shaky at present on the point at issue, and that it was desirable to remove all doubts on the subject. At the same time it was incumbent upon them to be very careful that they did no violence to any existing contract. If the bill should be taken into committee, he proposed moving a new clause dealing with the rights of municipalities and roads boards to apply for level crossings being made at their own expense, across any line of railway passing through their districts.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser) said he had been pained to hear the hon. and learned member for Sussex talking rubbish about "repudiation," "breach of faith," "dishonesty," and a desire to unduly interfere with the rights of the company under their contract. No one for a moment could possibly entertain the idea that the Government or that House would ever dream of countenancing such a policy, and he had been shocked to hear the hon. member suggesting it. The bill was certainly not so comprehensive as they would wish it, but, as some new clauses were to be moved in committee, he believed it would emerge from the committee stage in a form which would be more acceptable to all parties.

Motion put and passed.

Bill read a second time.

MESSAGE (No. 11): ASSENTING TO BILLS.

THE SPEAKER announced the receipt of the following Messages:

"The Governor has the honor to inform the Honorable the Legislative Council that he has this day assented, in Her Majesty's name, to the undermentioned Bills:—

"12. *An Act for raising the sum of One Hundred Thousand Pounds, to supplement the Loan authorised to be raised under 'The Loan Act, 1884.'*

"13. *An Act to confer upon the Warden of a Goldfield the Powers of a Licensing Bench.*

"14. *An Act to amend an Ordinance intituled 'An Ordinance to provide for the establishment of Proper Places for the Burial of the Dead' (10 Vict., No. 12).*

"2. The authenticated copies of the Acts are returned herewith.

"Government House, 3rd December, 1888."

MESSAGE (No. 12): CONFIRMING NEW STANDING ORDERS.

"The Governor has the honor to inform the Honorable the Legislative Council that he has this day confirmed the following Standing Orders, passed by your Honorable House on the 26th ultimo:—

"Nos. 98*a*, 98*b*, and 98*c*.

"2. The authenticated copy of the Standing Orders is returned herewith.

"Government House, 3rd December, 1888."

MESSAGE (No. 13): PROTECTION FOR KIMBERLEY SETTLERS.

"In reply to Address No. 16 of the 28th ultimo, the Governor has the honor to transmit, herewith, for the information of the Honorable the Legislative Council, correspondence with the Commissioner of Police on the subject of increased police protection for the Kimberley District.

"2. It is hoped that the arrangements which will now be made, without increased expenditure, for stationing police on the Fitzroy, Lennard, and Robinson rivers, and also midway between Wyndham and Derby, and for the increase of the total police force in the Kimberley District to 48 men of all ranks, will prove sufficient and satisfactory.

"Government House, 3rd December, 1888."

MESSAGE (No. 14): REVISION OF INLAND TELEGRAPH RATES AND CABLE ARRANGEMENTS.

"The Governor has the honor to enclose, herewith, a Report, dated the 28th ultimo, with enclosures, from the Postmaster General, on the subject of a revision of Inland Telegraph rates, and relative also to the charges and arrangements which should be made in connection with the Telegraph Cable to be landed at Roebuck Bay.

"2. The Governor will be glad to be favored with the views of the Honorable the Legislative Council on the Postmaster General's proposals.

"Government House, 3rd December, 1888."

On the motion of the COLONIAL SECRETARY Message No. 14 was referred to a select committee.

SAND-DRIFT BILL.

IN COMMITTEE:

Clause 1—Governor may proclaim the existence of a sand-drift:

THE DIRECTOR OF PUBLIC WORKS (Hon. J. A. Wright) moved some verbal amendments, rendering the clause more explicit.

Clause, as amended, agreed to.

Clause 2—Duties and power of municipality as to a proclaimed sand-drift:

Agreed to, *sub silentio*.

Clause 3—"The council of a municipality in which a sand-drift has been proclaimed shall have power to levy a rate to be called 'The Sand-Drift Rate,' in the same manner as municipal rates are now levied under the provisions of 'The Municipal Institutions Act, 1876,' and of any Act amending the same. Out of the proceeds of such rate the council shall defray all the expenditure incurred in and by the execution of their duties under paragraphs (*a*) and (*c*) in the second section of this Act, and shall also defray one-half of the expenditure incurred by owners of land in complying with the provisions of paragraph (*b*) in the said section:"

MR. CONGDON said he should like to be allowed to say a few words with refer-

ence to the principle involved in this clause. Unfortunately he was absent when the second reading took place, and he had no opportunity of seeing the bill until that evening. It seemed to him that this clause was altogether opposed to the recommendation contained in the report of the Sand-Drift Commission. That report in no way recommended the levying of a sand-drift rate, and he was certain that the incidence of such a rate as was here proposed—a rate leviable on all property holders in the town—would be very unfair. He failed to see why the general body of ratepayers should be called upon to do that which ought to be done by the private owners of the land affected by this sand-drift, — an evil which had been brought about mainly through their own want of attention or neglect. What the committee recommended was simply that a ring fence should be placed around this area, and that the owners of the land within that area should erect their own boundary fences, and bush the surface of the land, at their own expense. He thought this was only fair, and he could not at all agree with the justice of levying a rate upon the whole town to combat an evil that had assumed its present proportions through the want of foresight and attention of the owners of the contiguous property. He moved that the clause be struck out.

THE DIRECTOR OF PUBLIC WORKS (Hon. J. A. Wright) said the recommendations of the Sand-Drift Committee certainly differed very much from the provisions of this clause. What the committee said was this—he was quoting from their report: "As in this case the "cause of the drift seems to have been "originally from the scrub having been "cleared away and the place denuded of "vegetation, the expense of remedying "the evil, as regards each separate lot, "should, in the opinion of the members "of the committee, be borne by the "several owners; as it would be mani-"festly unfair to levy a rate upon the "whole community or all the ratepayers "of Fremantle, for what at present "affects only a minority of the inhabit-"ants. The committee advise, however, "that the Government be requested "to supply the necessary prison labor "and materials for the enclosing fence "round the whole area of the sand-drift, "the Town Council, on their part, being "asked to supply the necessary cartage. "This done, that the owners of the "several blocks enclosed be called upon "at once, under the terms of the pro-"posed Act, to fence their grants, and to "bush them to the satisfaction of the "inspecting officer, to be appointed for "the purpose; the Town Council doing "the same with the roads, &c., within "the area. In the event of any owner "refusing to comply with this, that the "work be executed by the proper author-"ity, and be a charge upon the land." That was what the committee recommended, and he could not help thinking it would have been a fairer way of dealing with the difficulty than levying a rate upon the whole community, who were in no way responsible for the evil. He had not seen the bill until after it was printed and circulated.

MR. SHOLL presumed it would be for the general good of the town if the encroachments of this nuisance were stopped, and, looking at the matter in that light, he thought it would be only fair that the whole of the ratepayers should share in this expense, and he could not see a better way of doing so than levying a rate.

MR. MARMION agreed with the hon. member who had last spoken. It seemed to him a very fair compromise between the general public, as represented by the municipal council on the one hand, and the owners of land on the other, that the expense should be shared between them. Knowing as he did the whole circumstances of the case, and the cause and origin of this evil, he must say he did not consider that the owners of land were responsible for it to any great extent, and that in the majority of cases the evil was not brought on through any negligence on their part, but through causes over which they had no control—the inroads of the sea mainly, caused probably by the further extension of the jetty, and the consequent washing away of the sand dunes along the coast. The owners of land had never been called upon by the municipality to fence their property, nor could they be compelled to do so until they had macadamised roads. He thought it would be a great hardship upon these land owners to ask them to bear the whole of this

expense, and that it was a very fair compromise proposed by this bill. It would be seen from the second clause what the owners of land were to be called upon to do: (1) "To fence with a substantial "fence, to the satisfaction of the Council, "the whole or such part or parts of the "boundaries of their land as may be "directed by the Council; and (2) to "bush with green bushes, well pegged "and wired down, to the satisfaction of "the Council, the whole or such part or "parts of their land as may be directed "by the Council." He thought if the owners of the land did this, they might fairly ask the municipal council to bear a moiety of the expense.

THE ATTORNEY GENERAL (Hon. C. N. Warton) said he had framed the bill according to his instructions; and, whatever may have been the recommendations of the committee, it appeared to him, after a careful perusal of the whole of the evidence, that this would be a perfectly fair compromise. He had read every word of the evidence taken before the Commission, and he was inclined to give more weight to it than to the report itself. It was clear from the evidence that this evil threatened to spread over the whole town in course of time, and the whole town was concerned in preventing it from doing so. It would be seen from the second clause that other little expenses, in addition to this, would devolve upon the municipality. They had to put up, "at a sufficient number of "suitable points, on the boundaries of "the sand-drift, conspicuous notice boards "having plainly painted thereon a "notice setting out the fact of such pro-"clamation and the boundaries of such "sand-drift;" and they also had "to "fence, with a substantial fence, the whole "or such part or parts as to the Council "shall seem fit of any land within the "sand-drift not in the occupation of or "owned by any person."

MR. MARMION said his idea was that the Government should have borne a part of this expense, by either providing the necessary labor, or a vote out of public funds. He thought a fair arrangement would have been to call upon the owners of property to pay one-third, the municipality one-third, and the Government one-third. He thought they had a claim upon the Government, because he could not help thinking—and in that view he was supported by other local authorities—that it was owing to the extension of the Government jetty that this sand-drift had attained its present proportions.

MR. CONGDON must say again he thought it was a very wrong principle to tax the whole town for the benefit of some dozen people, who had a small quantity of land in this locality, which they had neglected to protect. It was very easy to strike a municipal rate, but it was not fair to inflict such a hardship on the whole town to relieve these few proprietors of land; and to do work which they themselves ought to have done, and kept done.

MR. RICHARDSON said it must be borne in mind that it was in the interests of the whole town that this sand-drift should be stopped, and it would be hard on a few owners of land to have to bear the whole expense of stopping the drift, for which they were not altogether to blame.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser) said the same principle had been applied some years ago in Perth, when a drain rate was levied, in connection with the main drain. No doubt that drain greatly improved the surrounding lands, but it was of no advantage to many people—on the contrary, perhaps, a disadvantage, interfering as it did with the supply of water in their wells, yet they all had to pay that rate for some years, until the work was paid for. He thought that might be accepted as a precedent for this sand-drift rate. It would be for the general good of the town to prevent this sand nuisance from encroaching further than it already had done; and the good citizens of Fremantle might be asked to co-operate to prevent this further incursion, as the citizens of Perth had done in the case of the main drain.

MR. PEARSE said he failed to see how this work was to be carried out, unless a general rate were levied; but the municipal council, he thought, could fairly ask some help of the Government in the matter. He had no property in that part of the town himself, but he would be very glad, as a ratepayer, to contribute his proportion of the expense of remedying the evil, which was ruining the south ward of Fremantle, and

which, if not stopped, would spread all over the town.

MR. CONGDON, seeing the feeling of the House, said he would withdraw his amendment to strike out the clause.

Clause put and passed.

Clause 4—Duties of owners of land:

Agreed to, without comment.

Clause 5—Provisions of Public Health Act as to "nuisances" to apply:

Agreed to.

Clause 6—When sand-drift not in a municipality, but within a road board district:

THE HON. SIR J. G. LEE STEERE said he noticed by this clause that when a proclaimed sand-drift was not within a municipal boundary, the district road board was called upon to do that which a municipality had to do, where there was a municipality; and he noticed that, in default of a board doing what was required of it, the work could be done by the Government, and the expense deducted "out of moneys voted by the Legislative Council to roads boards." According to these words the money would be deducted out of the grant annually voted by the Legislature, and not, as it ought to be, out of the amount allotted to the particular board, whose duty it was to have done the work. He therefore moved to strike out the words "voted by the Legislative Council to roads boards," and insert "appropriated by the Government to such roads board" in lieu thereof.

THE ATTORNEY GENERAL (Hon. C. N. Warton) said the reason he had worded the clause as he had done was because sometimes there was a balance left of the annual grant unappropriated to any board, and he thought perhaps the money might come out of that unexpended balance.

Amendment agreed to.

Clause, as amended, put and passed.

The remaining clauses were adopted, *sub silentio*.

Bill reported.

NEWSPAPER LIBEL AND REGISTRATION AMENDMENT BILL.

The House went into committee on this bill.

Clauses 1 and 2—Short title and construction:

Agreed to.

Clause 3—"No action shall be brought "against the proprietor, publisher, editor, "or any person responsible for the publi- "cation of a registered newspaper for "any libel published therein unless the "plaintiff at the time of application for "the issue of the writ make before the "Registrar or other officer of the Supreme "Court an affidavit setting out the libel "complained of and stating that special "damage has been sustained by him in "consequence of the publication of such "libel and containing full particulars of "such special damage, and unless at the "time of service a copy of the said affi- "davit be delivered to the person served "as defendant. Such affidavit shall be "in lieu of and shall be and be deemed "to be the statement of claim in such "action. At the trial of any action "against any proprietor, publisher, editor, "or any person responsible for the publi- "cation of a newspaper for any libel "published therein the plaintiff shall in "no case recover damages exceeding the "amount of special damage sworn to by "him in his affidavit as aforesaid:"

MR. SCOTT said he mentioned when moving the second reading of the bill that if the House considered this clause somewhat too revolutionary, he would be prepared to substitute another clause instead of it—a clause requiring security to be given in certain cases, where there was a doubt as to the ability of a plaintiff in a libel action to pay the costs, in the event of his losing his case. He was quite satisfied himself with the present clause, though perhaps it was rather revolutionary in its character as regards the existing law; but, if the committee preferred a clause providing security for costs, he was quite willing to strike out this clause, and move another one in lieu of it.

MR. RICHARDSON thought certainly there were objections to this clause. It appeared to him they were running into this danger,—that, in legislating in the direction of protecting newspapers against speculative actions — a protection for which he thought there was great necessity—they were in danger of running to the other extreme, and give too little protection to the individual. Although our newspapers at present were respectably conducted, it was quite possible that under another form of Government, when party feeling ran high, we might have

newspapers that would be conducted on very different principles, and malign people right and left, and, under this clause, he did not see that those who were so maligned would have much protection. A man might be called by some very ugly names, a thief and a swindler, and what not, and be held up to the contempt of society, and yet be unable to assess any special damage. Although he may have suffered much pain of mind, and the loss of his good name, and had his reputation destroyed, he might not be able to convert that loss into pounds, shillings, and pence, and prove that he had been damaged to that extent. And unless he could do so, he would have no remedy under this clause. Moreover, a man would not be able to say what injury the words might cause him in course of time. The clause as now worded appeared to him to throw open the door to tremendous abuses, and would enable unprincipled conductors of newspapers to levy blackmail upon public men, and do all sorts of injury.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser) was very glad to hear the hon. member for the North speak in such a sensible manner, and he hoped the committee would pause before attempting to pass into law such a stringent measure as this. He thought, as he said on the second reading, it would be better to wait until they saw what would be the fate of somewhat similar legislation recently introduced into the Imperial Parliament, dealing with the same subject. He felt it his duty, under the circumstances, to oppose the clause, and it would also be his duty to oppose the other clause which the hon. member said he proposed to submit in lieu of it; and, if necessary, he should feel bound to divide the House on the question.

MR. PARKER thought it was unnecessary to discuss this clause, as the hon. member in charge of the bill had said he did not intend to press it.

Clause put, and negatived on the voices.

Clause 4—"At the trial of any action "against the proprietor, publisher, editor, "or any person responsible for the pub- "lication of a newspaper for any libel "published therein, the plaintiff shall be "nonsuited unless he give evidence at "such trial as witness on his own be- "half:"

MR. PARKER moved that the word "printer" be added, after "publisher," in the second line. He did not see why the printer of a paper should not be made a defendant, if necessary.

MR. SCOTT said the clause followed the wording of the existing Act, and that was the reason why it was left out.

Amendment put.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser), as a test vote on the bill, called for a division. The numbers were—

Ayes	12
Noes	5
Majority for ...	7

AYES.	NOES.
Mr. H. Brockman	Hon. J. Forrest
Mr. Harper	Mr. Horgan
Mr. Keane	Hon. C. N. Warton
Mr. Marmion	Hon. J. A. Wright
Mr. Morrison	Hon. Sir M. Fraser, K.C.M.G. (*Teller.*)
Mr. Randell	
Mr. Richardson	
Mr. Scott	
Mr. Shenton	
Mr. Sholl	
Mr. Venn	
Mr. Parker (*Teller.*)	

Amendment adopted.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest) asked whether it was not altogether exceptional legislation to compel a plaintiff to give evidence, if he did not wish to do so? Why should they compel a man to conduct his own case otherwise than as he wished? Was there any such law in any other country, which made it incumbent upon a plaintiff to go into the box? In war a general must be allowed to manage his forces in the way he thought most likely to secure him a victory, and it appeared to him that in a court of law a plaintiff should be allowed to conduct his case in the way he thought he was most likely to win it. He did not see why they should force a plaintiff to go into the box if he did not desire to do so. Why should he be compelled to provide his opponent with powder and shot? Probably some of the legal members of the House would be able to say whether such a law as this was to be found in the statute book of any other English community.

MR. HORGAN said it was quite an innovation in legislation, and quite contrary to the general law of evidence. When a plaintiff called other evidence to prove his case, what was the use of com-

pelling himself to go into the box to reiterate the same evidence? If a defendant wanted to have him there to cross-examine he could subpœna him, and so compel him to go into the box. It was quite revolutionary, and an interference with the functions of a Judge, to have such legislation as this; and quite unnecessary. Cases would be prolonged to an undue length for no purpose. Plaintiffs in other actions had not to go into the box, unless they chose, and why should an exception be made in the case of newspaper actions.

MR. PARKER said, he took it, the whole of this bill was entirely exceptional legislation. He understood from the report of the select committee and the evidence taken that the desire of the committee was to do something to protect the newspapers, in the exceptional position in which they were placed with regard to being liable to be made the victims of what were called speculative actions. They all knew it was a very easy thing to bring an action against a newspaper for libel. People saw something in a paper which they imagined was a libel upon them, and forthwith they must have a shot at that paper; and they could very easily get someone to bring on the action for them. He understood that what the newspapers especially complained of was that they were liable to such actions being brought against them by persons who had nothing to lose nor to gain by it; and newspapers here, it appeared from the evidence, were not in a position to bear the financial strain of these actions, which simply involved them in costs, whether they got a verdict or not, as had been their experience in the past, apparently. Therefore they asked for this exceptional legislation to protect them from such actions; and, it appeared the first thing that struck the select committee was that if a plaintiff were compelled to go into the box—not simply to give evidence on his own behalf, and to reiterate what other witnesses had said, but in order to give the defendant an opportunity of cross-examining him—they thought probably that this would deter some men from bringing these speculative actions against newspapers. If it was necessary to have exceptional legislation to meet the exceptional circumstances of newspaper proprietors in this colony—and the evidence went to show that it was necessary—he did not see much objection to this particular clause. He did not see that it would be a very great hardship to compel a plaintiff, who sued for damages for libel, to go into the box. If a man brought an action to recover damages because his character was assailed, surely it was not too much to ask him to go into the box and detail what damage he had sustained. That was the view taken of it by the Lord Chief Justice in the recent case of *O'Donnell* v. *The Times*; and, as our own Judges were divided in opinion on the subject, he thought the best thing we could do was to make it law.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest) said he had asked the question in order to hear whether it was not considered by the legal members of the House that this was exceptional legislation. They had heard now that it was, and that this was a provision that did not exist in any other law of libel, in any other country. For that reason he thought the bill deserved very careful consideration. The O'Donnell case was an exceptional case, he believed, the plaintiff having been charged with all sorts of atrocities in connection with some secret organisations, and he might have had strong reasons for not going into the box, to be cross-examined. He saw no objection to it himself, for he thought a man might fairly be called upon to establish his case, before he obtained heavy damages. Still it was exceptional legislation, and apparently we were in advance of the times in this respect.

MR. VENN thought they must bear in mind that in establishing this principle they were establishing a precedent, and they might be asked for exceptional legislation in other directions. Although he voted against the Government the other evening on the second reading, he did so to elicit further discussion, and there remained in his mind a doubt as to whether he should not support the Government in opposing this bill, in committee. If the Colonial Secretary was inclined to divide the House, he thought he should give him the support of his vote, for he did think it was venturing rather too far, to apply this exceptional legislation in favor of newspapers that

did not obtain in any other part of the world. As to the division of opinion between our two Judges, possibly the constitution of our Court might be soon altered and the necessity for legislation to meet that difficulty might not be required.

MR. SCOTT said that the committee felt that this was exceptional legislation; but something was necessary, and if this did not work well it could be repealed.

MR. RANDELL said they had had exceptional legislation in that House before now; they had exceptional legislation before them that night in the shape of the Sand-drift bill, and he did not see why such legislation should be objected to in this instance. He saw no reason why a man with clean hands should not be compelled to go into the box. Special circumstances had recently transpired in this colony to warrant this bill. He could see no reason why we should wait to follow others, but set them a good example. We might set the example in legislation of this kind, as the other colonies had done in other matters, such as the Torrens Act.

The clause was then passed.

Clause 5—"In making any return "under the provisions of the 9th section "of the principal Act (48 Vict., No. 12), "it shall only be necessary for the printer "or publisher of a newspaper to state the "name, occupation, place of business (if "any) and place of residence of one of "the proprietors of such newspaper, and "such one shall be called and known and "entered in the Register as "The Repre-"sentative Proprietor,"—etc.

MR. PARKER failed to see why there should be any alteration in this 9th clause of the Act. That clause required a return to be made at the Registry Office, annually, giving the names of all the proprietors of a newspaper, with their respective occupation, place of residence, etc. Surely that was not a very hard duty to impose upon newspaper proprietors once a year, merely the names and their place of residence. As a rule there were not many proprietors. [THE ATTORNEY GENERAL: Seventeen in one instance.] He presumed it was not necessary in the case of proceedings being taken against a newspaper, they should all be served with writs. [THE ATTORNEY GENERAL: Seventeen writs.] It was quite unnecessary. Every respectable newspaper had a solicitor, who would accept service of a writ; and it was not necessary to have more than the original writ and one copy. What he objected to was this provision for registering only one of the proprietors. The proprietary might—and probably would—register the name of one of the impoprietors, say Jones, who was in the most impecunious circumstances; Jones might be penniless. What would be the result? A man might get a judgment against a paper, and he might have to whistle for his money. He might not know who the other proprietors were—the men of substance, and he would run a great risk to issue a writ against any man unless he was certain he was a proprietor. In this way a newspaper might defeat a plaintiff who had obtained heavy damages against it. Seeing that it was proposed to demand security for costs from a plaintiff, he thought it would be only fair that the plaintiff also should have some security, that if he obtained judgment he would get his money. He moved that the clause be struck out.

THE ATTORNEY GENERAL (Hon. C. N. Warton) said the provisions of the clause were not altogether new. The 7th clause of the principal Act left it to the discretion of the Judge, where inconvenience would arise in case of all the proprietors having to be registered, or there were other special circumstances, to dispense with that formality, and to have the newspaper registered in the name of some one or more "representative proprietors."

MR. PARKER said that referred to registration; this clause related to returns, and it was only under special circumstances that a Judge could exercise that discretion as to registration.

Clause put and negatived.

Clause 6—Definition of "public meeting," the proceedings at which shall be privileged: "The publication in a regis-"tered newspaper of a fair and accurate "report of the proceedings in any Court "of Justice, at any State or Municipal "ceremonial, at any political or municipal "meeting, or at a public meeting, shall "be absolutely privileged and it shall be "a good and sufficient defence for any "person sued or prosecuted for libel

"published in a registered newspaper in "respect of a report of the proceedings "on any of the occasions above mentioned "to prove that the said report was fair "and accurate. The expression 'public "meeting' shall include, *inter alia*, any "meeting which shall have been an- "nounced by any convener or promoter "thereof either by advertisements, pla- "cards, or otherwise to be a public meet- "ing, also any meeting from which "members of the public are not excluded, "on the ground that they do not belong "to any particular body, association, "party, or society, and also any meeting "which any reporter for a newspaper was "before, or at the time of, or during the "holding of the meeting invited to "attend:"

MR. PARKER said this clause, though it made reports of public meetings privileged, did not define what constituted a public meeting. [The ATTORNEY GENERAL: Impossible.] But it mentioned a certain class of meetings which were to be regarded as coming within that category. Among them was any meeting at which a reporter had been invited to attend. It appeared to him this would be open to abuse. Two or three persons might meet together, and having invited a reporter to attend, proceed to libel people right and left, holding up any private individual to scorn and ridicule, and protect themselves under the plea that they had invited a reporter to attend. These men might not be worth suing, and the paper would be protected. He thought these words should be struck out.

MR. HORGAN would go further than that, and strike out all the words after the word "accurate," to the end of the clause. Under the clause as it stood there was nothing to prevent two or three malicious persons, who took the precaution to issue a few placards, to have a hole-and-corner meeting and launch forth into the grossest libels and slanders, and they would be protected simply because they had stuck two or three placards on a wall, and called it a public meeting. He had frequently been violently attacked by the *West Australian*, and he felt very sorely about this bill, and if it became law in this shape it would cause people to resort to cowhiding and revolvers, and remedies of that kind. He would much prefer, himself, giving a good cowhiding to an editor than go into Court. He moved, as an amendment, that all the words after the word "accurate," at the end of the first sentence, be omitted.

Amendment put and negatived.

MR. PARKER moved that all the words at the end of the clause, after the word "society" be struck out.

Agreed to.

MR. SCOTT moved to add the following words to the clause: "For the purposes of this section it shall be immaterial whether admission be free, or on payment, or by ticket or otherwise."

Agreed to.

Clause, as amended, put and passed.

Clause 7—Prerogative of the Crown as to criminal informations for libel:

Agreed to.

MR. SCOTT, without comment, moved the following New Clause: "No action "shall be brought against the proprietor, "publisher, editor, printer, or any per- "son responsible for the publication of a "newspaper for any libel published "therein, after the expiration of three "months from the date of the publica- "tion of such libel in such newspaper."

MR. VENN thought the time was rather short. A libel might appear against somebody living a long way from Perth, say in the Kimberley district, and he might not see it within three months after its publication.

MR. HORGAN considered it ought to be six months at least. A man might be absent from the colony at the time, in England perhaps, and would not be able to see the libellous paragraph.

MR. SCOTT said he had no objection to make it four months, instead of three; but he thought there ought to be some limit.

The word "four" having been substituted for "three," the clause was put and passed.

MR. SCOTT gave notice of a new clause (providing security for costs), which he said he would move next day; and moved that progress be reported.

Agreed to.

Progress reported.

CIVIL SERVICE LIFE INSURANCE BILL.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser) moved that the order of

the day for the further consideration of this bill in committee be discharged.

MR. PARKER: Is it the intention of the Government to drop this bill altogether?

THE ATTORNEY GENERAL (Hon. C. N. Warton): Yes.

MR. PARKER: I think it is a great pity. It seems to me to be a very useful and necessary bill; but, of course, if the Government will not proceed with it we cannot make them do so.

Motion put and passed.

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

LEGISLATIVE COUNCIL,

Tuesday, 4th December, 1888.

Appropriation Bill, 1889: third reading—Law of Distress Bill: third reading—Railways Act, 1878, Amendment (Closure of Streets) Bill: in committee—Newspaper Libel and Registration Bill: in committee—General Loan and Inscribed Stock Act Amendment Bill: second reading—Land Regulations Arbitration Bill: second reading—Geological Museum at Albany—Private work done by Civil Servants—Adjournment.

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

PRAYERS.

APPROPRIATION BILL, 1889.

Read a third time.

LAW OF DISTRESS BILL.

Read a third time.

RAILWAYS ACT, 1878, AMENDMENT (CLOSURE OF STREETS) BILL.

On the order of the day for going into committee upon this bill,

MR. PARKER said he felt it his duty to oppose the bill at every stage, and he did so more especially now that he had seen the new clause proposed to be introduced, calling upon the Railway Company to bear all the expense in connection with the re-opening of streets and the providing of level crossings. As he had already pointed out on the second reading of the bill there was a statutory contract between the Government and this company, and this bill contemplated a distinct variation of that contract, without the consent or (so far as they knew) the knowledge of one of the contracting parties. Such a proceeding would be regarded as a distinct breach of faith between private individuals, and he could only regard it in that light when the Government or the Legislature of the colony resorted to it. It had been argued that this bill did not alter nor vary the terms of the contract, nor give any additional power to the Governor that he did not already possess under the contract. If so, there was no necessity for the bill. The proper way for the Government, if there was a difference of understanding between them and the contractors, was—not to take advantage of their position as the Government and legislate in their own favor, but to refer the matter in dispute to arbitration, as provided for in the contract, with a view of arriving at some amicable settlement of the point in dispute. The company, he believed, had never refused to deal reasonably with the Government, and they were told the other day by the Commissioner of Railways that they had done all that was necessary for the accommodation of the Albany people at present. If no additional imposition was placed upon the company by this bill, what was the use of the bill? If the Government or the Commissioner already possessed this power of re-opening streets, and the Company were bound under their contract to do all these things, what occasion was there for the bill? As a matter of fact they knew there was no such power, they knew there was no such obligation—they knew that the first clause of the contract did not refer to streets at all, but to accommodation roads for the convenience of those occupying lands intersected by the railway. He defied any lawyer to read that clause, and say that it referred to streets. He had been twitted with holding a brief for the company in this matter—he did nothing of the kind; he had never been consulted