

# Legislative Assembly,

Friday, 23rd September, 1898.

Message (Appropriation): Supply Bill (£300,000), first reading—Local Inscribed Stock Act Amendment Bill, first reading—Coolgardie Goldfields Water Supply Construction Bill, second reading, in Committee, progress reported—Adjournment.

The SPEAKER took the chair at 7.30 o'clock, p.m.

PRAYERS.

## MESSAGE (APPROPRIATION): SUPPLY BILL.

A message from the Governor was received and read, recommending an appropriation of £300,000 out of the Consolidated Revenue Fund, and from moneys to the credit of the General Loan Fund, for the service of the current financial year.

Supply Bill introduced by the PREMIER, and read a first time.

## LOCAL INSCRIBED STOCK ACT AMENDMENT BILL.

Introduced by the PREMIER, and read a first time.

## COOLGARDIE GOLDFIELDS WATER SUPPLY CONSTRUCTION BILL.

### SECOND READING.

THE PREMIER (Right Hon. Sir J. Forrest): In rising to move the second reading of this Bill, I do not propose to say much, as I do not suppose there is any great objection to the principle of the Bill. The object is to give power to construct and maintain the necessary reservoirs, to give power to divert and intercept water on the catchment area, and to vest the catchment area in the Director of Public Works: also to take lands that may be required for the construction of this work, and to give the Director of Public Works the power of a board of health, in order to keep the water pure. Clause 7 affords protection to the Director of Public Works from actions at law in carrying out these works. The only question really controversial in this Bill is that contained in clause 7, and that can be dealt with in Committee. I do not pro-

pose to deal with this clause in the second reading of the debate, although of course I might do so if it were so desired by hon. members.

MR. LEAKE: You might tell us something about it.

THE PREMIER: It does not touch the principle of the Bill, the object of which is to give authority to the Director of Public Works to construct these works, maintain them, and keep the water pure; and, in any case, clause 7 can be dealt with in Committee. But, if hon. members would like to have the discussion on this clause at the present time, it is competent for them to deal with it. I think it is not desirable to discuss that point now because, for one reason, the Bill has been hurriedly prepared, as such a measure had not, until recently, been thought necessary. I quite agree that for works of magnitude, it is much better the Government should be armed with all authority Parliament can give them. I can assure hon. members that although this work has given me a great deal of trouble and anxiety, and, no doubt, has given other members trouble and anxiety, yet the question of riparian rights never entered my mind until a very short time ago. The other difficulties in regard to the feasibility of the scheme, the raising of the money, and the ultimate success or failure, have all been before us; but the question as to complaints of persons having river frontages below the dam has never entered my mind during the two or three years we have been considering this matter. Lately the Government have been served with an injunction with regard to the construction of this work; and ostensibly, the object is to prevent the country from being saddled with this great obligation, but I do not for a moment believe that is the principal object. The object is to get money out of the Government—to wring as much as possible out of the pockets of the taxpayers, on account of an imaginary grievance. I know the leader of the Opposition holds a brief for the other side—I do not mean a brief in the Supreme Court, but the hon. member has come here armed with authority to represent the other side of the question, and no doubt he has motions and clauses already made for him—at any rate, I have heard that he has.

The reason why this question never entered my mind was that I knew the locality so well. I know the rainfall that takes place in the neighbourhood, and I am well aware that plenty of water comes down the Helena River every year from the rainfall in the country below the dam. I am aware that the Helena flats suffer from too much water, and are often flooded. The stream runs only in the winter time, and there are pools in the summer, and so long as the pools are replenished in the winter, no great damage can accrue to any one possessing land abutting on this watercourse. That I knew these things is no doubt the reason why the question of riparian rights never entered my mind; and the point was never brought to my notice. I have had conversations during the last few days with persons of large experience of the Helena River, and I am told that the people there suffer from too much water. This information has been written, unsolicited, by Mr. Walter Padbury, an old resident of 60 years' experience. That gentleman says the people there suffer from too much water, and that no injury can come to any riparian proprietors. I have had calculations made, and I find that the area of the Helena watershed, between Guildford and the weir site, is about 68 square miles. The ratio of the stream discharged from the area below the weir, to that of the whole drainage area of the Helena River, above and below the weir, is about as one to three; or, in other words, the discharge from the watershed below the weir is about one-half of the area above the weir, although the watershed above the weir is about 569 square miles, as against 68 square miles below. That bears out what I knew, without any statistics. We see that the rainfall below the weir is quite double what it is above. From the information I have before me, the stream discharge in winter, from the area below the weir, is more than sufficient for local requirements; and in the summer there is a good supply available from the pools filled during the preceding winter. The supply afforded by these pools is never replenished during the summer by any flow from above the weir site, so that the construction of the reservoir cannot be detrimental to people below the reser-

voir. The Helena river commences to flow—and this is an important point—near Guildford, before it flows at the weir site; and it continues to flow at Guildford after the flow at the weir site has ceased.

MR. ILLINGWORTH: When does it flow at the site?

THE PREMIER: I have no information of the exact time it flows; but such information can be obtained, because careful statistics have been kept in regard to water flowing, for some time past. Not much blame can be attached to the Government for not having brought in this Bill sooner. The Government had hoped and intended to introduce a Public Works Bill last session; but I am sorry to say that such a measure is not even on the table this session; and that Bill would have given all the powers that are proposed in this measure. With the exception of these riparian rights which have cropped up unexpectedly, there is nothing to prevent the Government from building a dam on their own land and carrying the pipes across the Crown lands of the country, resuming what land they require, and then carrying the water supply along the railway line to Coolgardie. There is no reason whatever why the Government should not construct this work without an Act of Parliament at all. But, as I have said, it is far better to have the Act, under the circumstances. The Government have been served with an injunction in the Supreme Court, stopping their works until the 26th inst. But the injunction has not been acted upon by the complainant's solicitors—whether in their own interests or in the interests of the country I do not know. At any rate the solicitors must be given credit for the best intentions, or otherwise no doubt the works would have been stopped. The injunction, I believe, is to be heard on the 26th, Monday next; therefore hon. members will see that the Government are confronted with a difficulty which was never anticipated. It never entered my mind, at any rate, and so far as I know it never entered the mind of anyone else. The extraordinary part of the whole transaction is that although this work has been before the country two years or more, no one has ever whispered this idea to me

or to anyone else. The owner of this land has sat waiting and watching until the last moment, like an eagle ready to pounce down on his prey. He has been waiting and watching until the contract is about to be signed, when he pounces down and goes to the Supreme Court before any injury is done to him. He thinks this is the best time for him to make money out of the people of the country. That is the object he has in view—I have no hesitation in saying it; and I have no hesitation in saying that this work will not injure him at all. He knows that he is following out the principle of trying to make as much out of the people of the colony as he can, a system which has been going on too long. People whose lands have been improved by the State have not hesitated to make a demand for prices ten times the value of the land they held, before the expenditure of the people's money made it what it is worth. Not satisfied with the value which has been put on their land by the expenditure of the people's money, they take every opportunity of trying to fleece the country.

MR. MORAN: Introduce a "betterment" Bill, then.

THE PREMIER: We want to introduce something to stop these land sharks from robbing the country, for people have been robbing the country for a long time past—getting ten times what their land was worth before the increased value was placed upon it by the works carried out by the Government. If I speak strongly, I feel strongly. The country has been robbed, it is true, by people asking ten times the value of their land before public works were constructed and made them valuable. I should like to see a law introduced to alter this, for I see no reason why the country should be fleeced in this way. I will give hon. members an instance. The other day the proprietor of a piece of land—he does not reside in the colony, but that does not matter much, and if he did I suppose it would be the same—applied to the Government for compensation. The Government had built a railway through his land, and had cut it up into two or three pieces, and he said this had done him a great deal of injury. This man wrote asking

the Government to give him a good sum to compensate him for the damage done. I wrote to him, and I said I was ashamed of him; that the land was worth nothing until we put the railway through it and gave it a larger value—five times as much as it was worth before, and that I could not understand a public man, as he was, asking for five or ten times more in compensation than the land was worth before we built this railway through it. This is the principle that has been going on for a long time. The people will resent it; they will not stand it much longer; it is getting too bad, and this is about the last straw that will break the camel's back. The gentleman who has gone to the Supreme Court, trying to stop this great public work, is not content with making thousands and tens of thousands of pounds out of the increased value put upon his land by the construction of railways at Helena Vale and all about there—not content with what he has made in this way, he wants more from the country because we intend to build a reservoir 13 miles from Guildford and several miles away from any land he owns. He knows that plenty of water comes down to serve all the requirements he has at the present time, and all the requirements he is likely to have. He has an artesian bore on his land. The Government lent him a bore, to enable him to get artesian water. The Government, with a little expenditure, could put down a bore and make the Helena River run all the year round. I do not suppose it would cost £1,000 to put a bore down at the foot of the Darling Ranges that would make the Helena River run the whole of the year. Yet this man—a friend of mine, he ought to be, and I suppose he is a friend of mine, but not a political friend—tries to fleece the country.

MR. ILLINGWORTH: Is he not a political supporter?

THE PREMIER: I denounce him all the same.

MR. LEAKE: Who is he?

THE PREMIER: Mr. James Morrison. You know him, I am glad to say.

MR. LEAKE: Poor old James Morrison!

THE PREMIER: He has had a good deal out of this country, somehow or another. The Midland Junction rail-

way workshops increased the value of his land.

MR. ILLINGWORTH: Very ungrateful, is it not?

THE PREMIER: After all he has got out of this country he is now trying to stop a great public work, and to stop it at the last moment. If he had come to us as soon as he had bought the land, I would not have minded; but he has left it until the last moment, and then he has gone to the Supreme Court, not giving notice to the Government that he was doing so. That is not acting as a patriotic man ought to act.

MR. ILLINGWORTH: He is a great friend of the Government.

THE PREMIER: He is not a friend of the Government in this case. A careful study of the question of the water supply goes to show that no such injury would be done to the catchment area below the weir. It goes to show that the water commences to discharge sooner, and continues to discharge water later below the weir than above it. In addition to this the discharge from the catchment area below the weir is *pro rata* very much greater, in consequence of the greater rainfall there, than the discharge from the portion above the weir is, the areas being respectively about as 1 to 8, while the discharge is as 1 to 3. It will be evident in view of the fact that the discharge from the area above the weir sometimes reaches 150 million gallons per diem that the discharge from the area below is very great, far greater than the wants of the landowners below the weir, and in point of fact it comes to this, that the discharge from the area above the weir would only take place at times when the landowners below do not want it; that is to say, when they have ample water from the area below the weir, and when consequently the water from the area above the weir would be likely to do them injury rather than do them good. As a matter of fact, in summer time all that the landowners below the weir have to depend upon are the pools which are filled during the winter rains, and the discharge from the area below the weir is more than ample to fill these pools and to keep them filled by the winter rains; and as I have already stated, the discharge from the portion of

the catchment area below the weir will fill the pools sooner and continue to fill them later than the discharge from the catchment area above the weir would do.

MR. ILLINGWORTH: Charge them for betterment, then.

THE PREMIER: If the Government were once to consider the question of compensation in a matter of this sort, where would it end? It would be interminable. It would be a means of expense to the country, and really are we going to trust ourselves in the matter of this sort to those imaginary and visionary claims made by anyone who has a frontage to the river, or anyone who uses any of the water at the present time? After all, supposing we insert in the Bill that compensation should be paid, what would be the result? We would have to go to the court to have it tried. It seems to me if it is the desire of the House that this question should be tried, if hon. members do not know sufficient about it, and think more evidence is required in order to come to a conclusion, the best thing to do is to get the evidence ourselves. Let us have a Select Committee on the question. Let us decide it ourselves rather than allow the courts of law to deal with a matter of such vital importance, not only in regard to the people in one part of the country, but especially to the people on the gold-fields. When we come to the clause in the Bill, I am quite prepared to deal with it, and am quite prepared to hear what hon. members have to say in regard to it. If hon. members do not want this clause in the Bill, they will say so. I am not going to make it the *sine qua non* of the Bill, I am going to accept the verdict of this House. The time has come when the House should exercise some influence and some decision in regard to the way in which claims are made against the Government—that is, against the people. It is time for us to say that this land is worth nothing, or very little. If we are going to trust ourselves in a sea of legislation, in the hands of the Supreme Court or the Privy Council on this question, I think we will be doing wrong. We had better test the question ourselves. We know all the facts that surround the case better than the Privy Council could know. We know the

Helena River, and we know it in flood time, and in summer time when there are only small pools in the river. I think the House will be acting unwisely if we leave the door open to litigation by these land corporations and land-sharks, who are doing everything they can to screw every sixpence out of the country. I really lose patience with men who make claims of this sort. The claims are preposterous. I consider they are not warranted in any way. No injury has been done to the land by the dam being built past the face of the range, seeing that so much water falls on this side of it. It is only another attempt to get money out of the people of the country. It is said that the object is to delay the scheme. I do not believe a word of it. There is no such idea as that. The scheme is nothing. The object is to get money out of the Government for an imaginary wrong. I have much pleasure in moving the second reading of the Bill.

MR. LEAKE (Albany): The right hon. gentleman seems to have lashed himself into a fury, not over the principle of the Bill, but over the effect of clause 7.

THE PREMIER: No one is opposed to the principle of the Bill.

MR. LEAKE: And, after all, I am not astonished at this, because, if you look at clause 7, you will see it has peculiar aspects, and one of those is the denying to a citizen his just rights. Of course, that is only in keeping with what has been done before by the Administration. We know how ready they are to deny justice to many people; and, if they can, by any chance, do that through the medium of a statute, they seem to be better pleased than ever. I am not opposed to the second reading of this Bill, and I do not know that it would be necessary to say anything concerning it, had it not been for what has fallen from the Premier; and there is no doubt, from what he has said, that he has clearly anticipated the difficulty before him, and has at once seen that the *crux* of the whole question lies in clause 7. We have had an interesting attack made upon a gentleman named James Morrison. I am not quite certain where he lives, but I believe there is such a person living somewhere on the Helena River. If there is,

and if he happens to have some nine miles of frontage, perhaps it is not unnatural that he should have some regard for his own personal interests, and should consider whether or not the stoppage of flow of this water past his premises will affect him. But Mr. Morrison, I presume, is not the only settler on the Helena River.

THE PREMIER: He is the only one who has moved in the matter, at all events.

MR. LEAKE: Yes; but you do not know who is pulling the strings, nor who is behind him.

MR. MONGER: He is alone in this matter.

MR. LEAKE: Perhaps he has not conferred with the member for York (Mr. Monger). Whether he is alone or not, I think we have a perfect right to consider his interests, or the interests of any other individual who may be affected by the scheme.

THE PREMIER: You are getting paid, I expect, to look after them.

MR. LEAKE: Well, it does not matter whether I am retained or not. We are here in the Legislature, and we are discussing a principle. What does it matter whether we are privately interested or not? I might reply that the hon. gentleman is interested because he happens to be Premier. I do not blame him for getting warm, and saying all sorts of nasty things about other people; but there is no reason why a word should not be said for the principle involved. There can be no doubt that vested rights are affected—whether to a larger or a smaller degree is not the question before this Assembly; but it is admitted that vested interests are affected, or it is claimed that they are affected; and where any vested interests are affected, it naturally follows that compensation is allowed. We have already recognised that principle in the Railways Act. It is interesting to know that the Government have, at this late hour, apparently awakened to the importance of the position, and have recognised now the enormous claims—and I agree with the Premier, the extortionate claims—that have been levied upon the Government where the railways run in respect of the land which has been taken. But who is to blame for that? Not the people who make the claims—

THE PREMIER: Oh, indeed!

MR. LEAKE: The Government who leave the loopholes for them are to blame; the Government who do not take those ordinary and necessary business-like precautions which might be expected of them, to prevent these extortionate claims. When we consider for a moment that these claims are arbitrated upon and settled, not immediately the railway is determined upon, not immediately the surveys are made, but possibly two or three years after the railway has been built or opened for traffic, can it be wondered at that a claim which in its inception might have been settled for a few pounds—

THE PREMIER: No, no.

MR. LEAKE: In the course of delay grows into hundreds and thousands? I will give just one little instance. Some hon. members in this House have perhaps heard of the town of Northam. It was contemplated some years ago to run a railway through the town of Northam; and, with much unction, the settlers in the locality, represented by a very enterprising gentleman, came forward to the Government with an offer that, if the railway was run through Northam instead of through the town of York, they might rely on the compensation demanded being either nothing or next door to it; that they might rely upon the land being practically given. These promises were made; and, curiously enough, the railroad was ultimately built through Northam. Many months elapsed before any claim for compensation was made. Then things progressed at such a rate, and land values were so much enhanced and aggravated, I may say, by this railway trespass, that the Government were, all of a sudden, very much surprised by claims being made for thousands and thousands of pounds for the compulsory taking and severance caused by the railway. So, instead of the land being granted for nothing, it cost the Government I do not know how many thousands of pounds. So much for rural philanthropy! I believe there were some promises in writing given to the Government that the railway might run through certain lands in or about Northam; and, whilst the Government lived in a fool's paradise for some months in the belief

that these were town lands, it was ultimately ascertained, on closer enquiry, that the land through which it was said the railway might run for nothing was several miles from the centre. There is an instance of how the Government was mulcted in heavy damages through what is apparently and without doubt the gross carelessness of the department. Then, we see what heavy compensation has been given in respect of other places. Curiously enough, we have not even yet heard of the compensations which are to be paid for the Bridgetown railway.

THE PREMIER: They are very bad, too.

MR. LEAKE: Certainly, and they will be worse in proportion to the delay.

THE PREMIER: I do not think they will.

MR. LEAKE: The whole of Bridgetown might have been bought up for £400 or £500 at the time the railway was started, whereas now perhaps it will cost £20,000 or £30,000 for compensation.

THE PREMIER: No, no.

MR. LEAKE: Well, divide it by 2, and say £15,000.

THE PREMIER: Is not that too bad—that the country should pay these enormous amounts?

MR. LEAKE: It is monstrous! It is iniquitous! It is difficult to find language strong enough to express one's feelings concerning it.

THE PREMIER: Well, Parliament must come in and stop it.

MR. LEAKE: Parliament? Let the Minister do it. If the Minister were alive to the necessities of the occasion, directly he made up his mind to run his railway in a certain direction he should, like any other business man, go and find out the value of the land he is going to take, and pay for it straight away.

THE PREMIER: He has to come here and get a Bill first.

MR. LEAKE: He has to do nothing of the kind. I happen to have been in the Government service, and I know a good deal of how these things are done. I have been on both sides in these arbitration cases, and I know a good deal about them; and I say without hesitation that the exaggerated claims for compensation are owing to the faulty manner in which the department goes about the business: and there is not a man in this House who will get up and contradict me,

unless it be the Commissioner of Railways; and, I regret to say, his opinion will not carry weight to the extent of a snap of the finger.

THE COMMISSIONER OF RAILWAYS: Not with you.

MR. ILLINGWORTH: Nor with anybody else.

THE COMMISSIONER OF RAILWAYS: We have to do it before the actual work starts. We gave the hon. member (Mr. Illingworth) the opportunity of doing that once, and he never did it.

MR. LEAKE: If you ever did give anybody an opportunity of helping you, when the assistance was forthcoming, it was rejected.

THE COMMISSIONER OF RAILWAYS: We know all about it.

MR. LEAKE: If the hon. member knows all about it, it is marvellous to me that he has not applied an ordinary and speedy remedy, as he might have done, instead of wasting tens of thousands of pounds, as has been done. I am sorry one hon. member is not in his place, but it would be interesting to know what the member for West Perth (Mr. Wood) has to say upon this subject. He knows something about it in his business capacity, and so forth.

THE PREMIER: There is a combination of individuals to fleece the country. That is more like it.

MR. LEAKE: Yes; you have encouraged the combinations to grow; and that is what the Government do with regard to these compensations. The Government were warned weeks and weeks ago about these very Bridgetown compensations; and we will see in a few months how they will swell up. Take the compensation paid in Bunbury: it was simply marvellous.

THE PREMIER: Nothing, compared with what is was in other places.

MR. LEAKE: You paid for swamp land there so much per foot, that it was suggested by the arbitrators that you were buying it by the gallon.

THE PREMIER: All these compensations are about the same, I assure you.

MR. LEAKE: If the statement is reliable, it is a curious one—the statement to the effect that this point comes upon the Premier as an absolutely new one.

THE PREMIER: Does it really?

MR. LEAKE: Well, I should like to know where his legal advisers and where his engineers are. Why, it is as essential to have a statutory authority to construct a work like this as it is in order to construct a railway. There must be interference with rights-of-way, and so forth; and even now there will have to be fresh statutory authority for the laying of the pipes.

THE COMMISSIONER OF RAILWAYS: We lay them on our own land.

MR. LEAKE: But directly you cross a road, you require statutory authority, or else anybody can come along and break your pipe. If you take the trouble to consult your Attorney General, he will tell you what I am telling you. But some men know more than their professional advisers, though that is not often the case. If no damage has been done, and if no damage can possibly accrue to the riparian owners along the Helena River, then why should we burl enquiry? Why fear enquiry? All that is suggested is that any person who has a real or, for the matter of that, an imaginary claim against either the State or an individual, has a perfect right to ventilate it; but this clause 7 precludes that. It evades the whole question, and tells the landowner, in so many words: Whether you have a claim, good, bad, or indifferent, it shall not be listened to, and you shall have nothing. I am not prepared to say that Mr. Morrison, or anybody else, can establish such a claim as will justify any tribunal in awarding pecuniary compensation. It may or may not be that it is a question of amount, and if the matter were decided to-morrow, or within a fortnight or two, the chances are that ample justice would be done between all the parties: but the longer the delay, the greater is the danger of claims being increased. If, as the right hon. gentleman tells us, there will be ample water to fill the Helena during an ordinary season, notwithstanding this dam, then there will be no compensation, or very little. If, instead of valuable land being flooded, it is drained and kept dry, the owner of the land can, of course, have no cause of complaint.

MR. HARPER: Will not the land be improved?

MR. LEAKE: It may be that this work will improve Mr. Morrison's land.

THE PREMIER: We have improved it enough already by railways.

MR. LEAKE: Then make him pay, if you can; but here is an attempt to deprive a citizen of his rights. You are taking something from him without giving any compensation, and we have to accept the *ipse dixit* of the Minister that no harm will or can be done. I think it is to be regretted that this matter should not have been faced more openly.

THE PREMIER: You would have it. I wanted to leave it to the Committee.

MR. LEAKE: I am never afraid of threshing things out in the House, either on second reading or in Committee, and I am glad the right hon. gentleman did favour the House with his views on this important question. I am only speaking now, so that I may give members full warning of what will happen when we are in Committee, and enable them to prepare their minds for the discussion before them. It would never do, where a matter like this is concerned, for members to say: "We have had no opportunity of considering this matter, and we ought not to be asked to decide it." The matter is discussed on the second reading, and next week, when we debate it in Committee, members will no doubt be prepared to consider the subject, and do ample justice. My own impression is that inasmuch as vested rights are interfered with, it should be open for the party affected to go before some tribunal or other to assess the damage, if any, that has accrued. That is all that is suggested. If you like, in this Bill, to limit the possibility of his claim, do so; but do not deny him justice. If it is done here, it may be done some other time; and when we legislate, we should be careful to be guided by the truest, best, and highest constitutional principles.

HON. H. W. VENN (Wellington): I think other members, like myself, have been rather surprised at the manner in which the Premier treated this question on a motion for second reading. I certainly would have thought that the principles laid down in the Bill could have been quietly argued out, either from the legal right side or the wrong side of the question, without in any way using lan-

guage generally that may hereafter cause some severe heartburnings. I do not think any member is quite right in imputing to anyone else outside this House improper motives. We, of course, have heard incidentally that a certain gentleman, whose name has been mentioned, has taken action. Some of us have laughed over the action, and have not treated it seriously. Some people would perhaps say it was a sort of "try on," to see whether there was anything behind the principle he was advocating, or trying to advocate, under the cloak of endeavouring to do what he says he is trying to accomplish—retard the work in the best interests of the country. I do not know whether we would be quite right in exercising the privilege we have in this House in using very strong words, calling this gentleman a land-shark, a land-grabber, and all that sort of thing. I am almost inclined to believe the Premier will, when he comes to think of it, regret that he used those words in conjunction with that gentleman, because this question can be and will be approached on its merits by the House, and I have no doubt that when the Bill is passed, we shall be satisfied we have protected the interests of the country, and also those of the gentleman named. I do not intend to say much on the principle of clause 7, but I think we should be careful not to set a precedent of legislating against the undoubted rights of individuals in the country. If we do it in this case, it may lead to great hardship at some other time. Wherever you have a body of independent Englishmen, it does not matter whether in a legislative tribunal or elsewhere, looking into a subject, and they recognise the responsibility thrown upon them, the right thing is generally done. It is seldom you will find them doing wrong. The Premier seems to complain of this gentleman not having made his application before. Some people rather think it well to let works go on for a considerable time, because, when they are advanced, persons seem to think the whole thing is invested with a greater importance that at the outset. One might say it is only a matter of expediency whether or not they take the matter up at an earlier date. No one knows better than the member for Albany (Mr Leake)



—because I have consulted him on various occasions, and he knows the law—that the Government could not go beyond the law. It is beyond the power of the Director of Public Works to go and purchase land before he has authority to do so. First of all he has no money. If the law is bad, and I think it is, though I cannot exactly say in what way we are going to alter it, I believe the administration of it has been pretty good. But that is not the particular point. We have to consider this law of arbitration. It is self-interest, in which capable solicitors attending the arbitration court are concerned, that has mulcted the Government. Members must know that all these great amounts that have been taken from the Government have not been in relation to rural land; for in regard to rural land, the law is on the side of the Government, as they can go from one end of Australia to the other, and as long as they do not take from anybody beyond one-twentieth of his holding, they can pass through the very best of his land and pay no compensation; but the moment they touch a half-acre or a quarter-acre block in a town, probably not worth £50 or £100 before the advent of a railway, that land is valued at some thousands. It is not exactly the administration of the law, but the law itself, that is absolutely faulty in this respect. Therefore, I think the hon. member opposite was a little wrong. I do not think he quite meant to say the administration of the law in regard to land resumption has been altogether faulty on the part of the Government, because I really believe they have acted as well as they knew how, and sometimes they have rather exceeded the law in the interests of the country. With regard to the Bill before the House, we all recognise it is a very important measure, and I do not think the Premier was singular in stating it had never dawned upon him there would ever be any great compensation to pay for taking the water away at Mundaring. I do not think many of us thought very much damage would be done, inasmuch as we knew there were certain other creeks that would give the owners along that river as much water as they were likely to require. At the same time, we are face-to-face with the fact that the owner really avers that

there has been, or will be, great damage done to his property. It is a difficult matter to settle, inasmuch as the gentleman in question owns, I believe, nearly the whole of the frontage.

THE PREMIER: One side

HON. H. W. VENN: I do not think it would be difficult to settle that, but I am of opinion it would be very drastic indeed to pass clause 7 as it stands. If the clause be passed exactly as it is, neither that gentleman nor anybody else will have the slightest chance of exercising any right at all, whether he has a right or not. We should be very careful about a question of that kind. Our desire is to do what is right to individuals and to the Government, and I have not the slightest doubt that, in protecting the Government in this particular instance we will protect the rights of the individuals also. I feel sure the views I have expressed in regard to the principle will be entertained by the majority of members in this House.

MR. ILLINGWORTH (Central Murchison): In considering the provisions of this Bill, and particularly clause 7, we must not allow the assumption that certain people desire to make an unfair or unjust claim upon the Government. We have no right to assume in this Legislature, at any rate, that any claim made by an individual is unjust, and that if such claim is unjust, we are not, by statute, to settle that claim. We would be going far out of our way as legislators if we took on ourselves to prevent any action which ought to be settled by the Supreme Court or courts of the country. Leaving out particular persons who have been mentioned, there may be other persons in poor circumstances who have claims; and this clause is exhaustive in its character. It is provided that "no person" shall have any right of action for wrong done heretofore, and, it may be presumed, hereafter.

THE PREMIER: No one has complained.

MR. ILLINGWORTH: It does not follow that because there is no complaining people are not suffering. Are we by an Act of Parliament to take upon ourselves to deprive individuals of rights which they possess as British citizens? Surely Parliament can trust the justice of the courts and the judges whom Parliament

has created. If the cause of the country be good it can be settled in the court, as cases of private individuals have to be settled. Are we to use the iron hand of this House to crush the rights of the people? We are here as legislators to see that justice is done to everybody, and are we, because we possess legislative powers, to be despotic and take upon ourselves to pass a clause of this kind, simply because it is rumoured that some claims are to be made? The claims may be for £50,000 or for 50s., so far as we know.

THE PREMIER: £70,000, I think, is the sum.

MR. ILLINGWORTH: Never mind about the amount, because it does not affect the principle.

MR. MORAN: The Government could buy the land for that amount.

MR. ILLINGWORTH: And perhaps might make money out of it; but that is not the question. No doubt the Bill is a necessary measure, which ought to have been before the House years ago. But we have no right, as a Parliament, to take upon ourselves administrative work which belongs to the Supreme Court. How do we know that persons are not suffering because of the action of the Government, and have at the present moment good and just claims against it? It may be that the claim is that of a poor man for £50, or that of a rich man for £5,000; and are we to take upon ourselves to lock the doors of the Supreme Court? If, as suggested, an endeavour was made to fleece the country, why not put the name of the person in the Bill, and deal with him directly? That, of course, I only suggest as an absurdity. But why should we put in the Bill a clause forbidding any individual from defending himself against a despotic Government? I am the last person to allow any individual to gain any advantage over the Government; but, at the same time, we should not go in for this kind of legislation, which is simply legislation of terror. Let us maintain our rights as a Government, as we would have to do as individuals. Parliament must accept its responsibilities just in the same way as any individual, and Acts of Parliament ought not to be passed which would have the effect of robbing people. Supposing a man had a just claim against the Government,

this clause would rob him of his right in the Supreme Court. The people of the country do not want us to pass clauses which will have the effect of robbing any man of his right. We are here to protect the rights of the people. We can deal with clause 7 in Committee, and some alteration will have to be made. We must not legislate in a panic, or because some man may be doing an injustice. I do not know whether the allegations against these individuals are true or false, but supposing they are true, we should not legislate in a panic. I trust that when we go into Committee, the Attorney General will be able to put this clause into such a shape that it will not deprive individuals of their rights, while at the same time he protects the State from any injustice. Let us legislate in a proper manner, and not interfere with the rights of individuals. The principle contained in this clause is one which ought not to be affirmed by any Parliament in any part of the Queen's dominions.

MR. MORAN (East Coolgardie): I will not say more than half-a-dozen words on this Bill. The Supreme Court has power to extend this injunction.

THE PREMIER: Very likely the works may be stopped on Monday.

MR. MORAN: Supposing this injunction should be continued, what would happen? The House ought to consider the rights of the thousands of individuals, as well as the rights of one individual.

THE PREMIER: The injunction is in force now.

MR. MORAN: Yes; and if it be continued by the Supreme Court, in all probability two years would elapse before a pick could be put into the ground.

THE PREMIER: Hear, hear.

MR. MORAN: It is all very well to talk about robbing men of their rights, but the State has sovereign rights, even over those of the Supreme Court. These sovereign rights are not recognised in the United States, but they are recognised in every British community. Of course, these sovereign rights of the State should be exercised with the greatest caution, but they are no doubt there for certain purposes. The interests and health of the country, as a whole, ought to be considered. An injunction has been granted,

and who can say that it may not be in force for another two years?

THE PREMIER: It ought to be in force now.

MR. MORAN: The injunction is passive now, on the advice of the solicitors on the other side.

THE PREMIER: That is so.

MR. MORAN: But the injunction might extend over two years, and would any hon. member be prepared to advocate that the State should not exercise its sovereign rights for two years? Are hon. members prepared to admit the State shall not advocate sovereign rights for two years? Is the House not the best grand jury of the colony? I only wish I could have cases of my own decided by this House instead of at the law courts, because I would get swifter judgments and as much justice, though, I admit, not greater justice.

MR. WILSON (Canning): In debating clause 7, I cannot help thinking what would be the course taken if a private firm had introduced a Bill for the purpose of constructing this Coolgardie water scheme. Would hon. members, for a moment, support a clause to prevent right of action against a firm who were going to construct the water works? In this legislation we ought not to burk the claim of any citizen who thinks he has, or who may actually have, cause of action against the Government. So far as I can remember, riparian rights in the old country have been held to be sacred. There have been possibly more law cases and greater law cases fought over riparian rights in the old country and in European countries, than over any other question.

MR. MORAN: We do not want too much law.

MR. WILSON: I, too, object to too much law: but our law courts are for the purpose of settling these disputes, amongst others. If no damage is done to any person the Government need not fear going into court.

MR. MORAN: How long would it take to settle the case?

MR. WILSON: That is not an argument. If the law is slow, that is not an argument for doing away with the rights of individuals.

MR. MORAN: We do not want to stop the scheme for two years.

MR. WILSON: That is not the question we are discussing; but, personally, I would not mind seeing the scheme stopped for ten years. The point is whether these persons who have land on the Helena will suffer damage by the blocking of the water. If they have any claim for damages, they are entitled to have the claim duly considered in the law courts. I myself think very little claim for damage could be made, and that very little damage will be done. I understand there is almost as much water flows into the Helena below the dam as flows into it above, and, therefore, the landowners below the dam site will not have cause to complain of having the water taken away from them. I know as a fact that the Helena River does not run all the year round, but for many months ceases to run, and there are simply pools of water. Under these circumstances, I cannot see that Mr. Morrison, or any other landowner, will have any great claim against the Government for damages; but still if people think they have a claim, I submit they are entitled to advance that claim in the way they think best. As we would not for one moment think of legislating to prohibit a landowner proceeding against a private company constructing a work of this description, we have no right to debar a man from proceeding against the Government. We shall do wisely when in Committee to strike out clause 7, and stand by the consequences, and if Mr. Morrison has a claim against the Government, let us have it tried in a court of law and settled.

MR. KINGSMILL (Pilbarra): While I am not at all enamoured of this scheme, and doubt as to whether it will not prove a millstone round the neck of his colony, still as the fiat has gone forth that the work shall be proceeded with, I do not intend to oppose the Bill. The principal argument seems to hang round clause 7. I think a clause of this sort is necessary or advisable in a Bill of this kind; but I must decidedly state that clause 7 does not fulfil my idea of what that clause should be. I should be the last man in the world to support any legislation that would take from any subject the right to sue for any damage done to that sub-

ject by the Crown; but I also take into consideration the fact that the ordinary process of law in this colony, and in every other colony, is necessarily very slow. Furthermore, a suit, if given against the individual—that is, if the individual is cognisant of what has happened in these colonies—the suit would undoubtedly find its way to the Privy Council. The member for the Canning (Mr. Wilson) said that riparian rights are sacred in England; but riparian rights are an altogether different thing in England from what they are in Australia; and the Privy Council, when dealing with a case of Australian riparian rights, would look at the matter with English eyes, and according to English law. It is, therefore, my intention, when dealing with clause 7, to provide for the consideration of the rights of any claimant who has a claim in reference to riparian damages at the hands of the Director of Public Works, being referred either to a commission, a Select Committee, or an arbitrator; and I fancy that would be a more just way of dealing with this matter than that proposed in the Bill, and would also result in a far speedier settlement of the claim. I shall support the second reading of the Bill.

MR VOSPER (North-East Coolgardie): Although I shall vote for the second reading of the Bill, yet I think that in Committee clause 7 should at least have the benefit of the most careful consideration hon. members can bestow upon it. I look on the principle involved in the clause as being a grave one indeed. I am sorry to say rather too much of this legislation has been before this Parliament previously. I object to clause 7, first because it is a direct interference with the working of our judiciary system; for it is not right that Parliament should interfere with the operations of the Supreme Court. Recently there was a disturbance in South Africa because the Volksraad did something similar to what the Government are trying to do here. It is a wrong thing for the Government to be following the legislation of such a republic, in interfering with the course of law. Again, it appears to me in this case there has been a right asserted—whether that right exists or is good in law or equity is entirely beside the question—still the right

is assumed: therefore, if we pass the clause as it now stands, it will amount to confiscation. This House has no right to go lightly into anything that amounts to confiscation of property. In times past, as I have said, too much of this legislation has been passed, which has interfered with the power of the Supreme Court. Legislation was passed in this House with reference to the case of Baker v. Traylen, which debarred the plaintiff from obtaining his rights in the Supreme Court.

THE PREMIER: He was trying to blackmail a member.

MR. VOSPER: It does not matter; he was acting within his legal rights. The history of that case reflects a shame and a disgrace on Parliament—I have no hesitation in saying so—and that Bill, passed only after a struggle, is a very bad precedent to follow. Again, in more recent times, there was the Hainault case. Certain men had jumped a claim, acting on their miner's rights, and the right hon. gentleman knows that after a considerable struggle in the House, those in opposition to the Hainault Bill succeeded in getting compensation for the men before the Bill was passed.

THE PREMIER: Which they did not deserve.

MR. VOSPER: That does not matter. This House wanted to destroy their right, and, being at the end of the session, those against the Bill had more power than they otherwise would have had. The same argument applies to the alluvial diggers and the ten feet regulation. That was nothing more than an attempt at confiscation. In this case, if the action is by a wealthy man and a big landowner, how do hon. members know whether some smaller person might be made to suffer in consequence of this Bill? This Assembly should not be continually committing itself to actions of this sort. As to what has been said by the Premier in reference to land-sharks, no one has more sympathy with those remarks than I have, and, except for the extreme violence of the terms of the Premier's speech, I might have made that speech myself. But there is this difference: I should have been sincere, but I do not believe the hon. gentleman was. The right hon. gentleman speaks in these terms of land-grabbers

and land-sharks just when it suits him, and at other times he does not say anything about them.

THE PREMIER: I have said it a good many times.

MR. VOSPER: I would like to ask what the Government would do if we proposed to carry the Premier's denunciation of landlordism to its logical conclusion. Would the Government carry a land tax or an absentee tax?

THE PREMIER: There is no absentee tax anywhere that I know of.

MR. VOSPER: I do not know whether there is or not. I am simply asking the question whether the hon. gentleman would be prepared to carry his argument to its logical conclusion.

THE PREMIER: It is not the same at all.

MR. VOSPER: I am simply asking whether the hon. gentleman would carry his principle to its logical conclusion? I could not imagine the Premier supporting an unimproved land tax; yet that is the logical outcome of his remarks just now.

THE PREMIER: Not at all.

MR. VOSPER: What is the doctrine underlying the single tax? Because certain land belonging to certain individuals increase in value in consequence of works performed by the State, the State should therefore receive back the increment.

THE PREMIER: I did not say anything about that.

MR. VOSPER: That is exactly what the Premier did say. He said persons had made large fortunes by the efforts of the community, but he put it in a different way.

THE PREMIER: Persons should not ask for unreasonable things.

MR. VOSPER: What the Premier said was that whereas Mr. James Morrison had received considerable benefit from the Government carrying railways through his land, the Government should have the right to confiscate his rights in this case. The single tax does not go so far as that. After all is said and done, the followers of Henry George are far less revolutionary than the Premier himself, when it suits his convenience. When the Premier makes a statement of this kind, he shows how utterly unwilling he would be to carry the thing to its logical conclusion.

All this is largely a political dodge, a species of trick and loud-voiced humbug, leading members astray from the issue at stake. Some time ago the member for East Perth (Mr. James) introduced a Betterment Bill. That would have done away with these huge claims for compensation; they would never have been brought before the country at all; yet when that Betterment Bill was offered to the House, hon. members rejected the measure contemptuously. I shall certainly vote against clause 7, not because I think the claim made by Mr. James Morrison altogether a just one, or that we should take special steps for the protection of the individual, but because the principle here is wrong. It means taking back for the benefit of the State any benefit which the owner has derived from the Government constructing works. When the Bill is in Committee, I hope the clause will be changed for something more just.

MR. OLDHAM (North Perth): I intended to leave this particular clause to be discussed when we come to the Committee stage, and I should not have attempted to address the House if it had not been for the Premier and the member for North-East Coolgardie (Mr. Vosper) referring to the case of Baker v. Traylen. It was said in that case that the plaintiff was trying to levy blackmail. I know something about that case, and I distinctly and emphatically say the plaintiff was not trying to blackmail a member of this House. The facts are well-known to hon. members. The hon. member, instead of being blackmailed, had for a considerable number of years been blackmailing the country, for he had been receiving work while occupying the position of a member of the Parliament of this country. He was doing work for the Government, not in the particular case in which the action was brought, but he was doing work for the Government year after year, going to the Government Printing Office and demanding work in order to make a profit. I do not appear to-night as an advocate of what the Premier calls "land-sharks." I was particularly gratified, from my own point of view, at the manner in which he dealt with gentlemen of the calibre of Mr. Morrison and others; but I certainly think this is an extremely dangerous principle to put into any Bill. We might easily have a

Government in the future which would be desirous of extending this principle in a manner which the present Government do not anticipate, and probably in that case the members of the present Government would be the first to cry out against it. I am convinced that the particular claim which has been brought by this gentleman is not a good one, or else the Premier would not have been so persistent in his objection to it. The Government have always been extremely careful to safeguard the rights of property; and for these reasons, whilst I am prepared to support the Bill as it stands, I certainly think that when it comes to the Committee stage, members should insist on some alteration which will not place such a large power in the hands of the Government.

THE PREMIER (in reply): I hope we will get through this Bill as quickly as we can. I am prepared, if the House thinks it desirable, to strike out clause 7; and if that will satisfy hon. members we will soon get through the Bill. And I am also prepared to strike out clause 4, which I do not think is wanted. If hon. members agree to that, I am prepared to go into Committee with the Bill and pass it to-night.

Motion put and passed.

Bill read a second time.

#### IN COMMITTEE.

Clauses 1 to 3 inclusive—agreed to.

Clause 4—Unalienated lands within catchment area to vest in Director of Public Works:

MR. ILLINGWORTH: Was this to apply to the watershed? If so, it would be better to retain the clause.

THE PREMIER moved that the clause be struck out. It was a good clause; but if, on further consideration, it appeared that more powers were required, he would request the Upper House to move in the matter.

MR. ILLINGWORTH: Surely the Government did not intend to sell any more lands within the area?

THE PREMIER: There was a timber lease partly within the area, with which it was not desired to interfere. It was desirable to have a proviso of a less sweeping character, which could be done when the Bill was before the Upper House.

MR. VOSPER: Would it not be better to pass the clause, and let it be amended by the Upper House. It could do no harm if it passed in this Chamber, so long as the Upper House struck it out.

MR. MORAN: This Assembly was not supposed to trust to the Upper House to do such things.

THE PREMIER: All that could be done by virtue of the clause could be done by the Governor under the land laws. The Governor could reserve all lands, and vest them in anyone.

MR. ILLINGWORTH: Was not the timber lease referred to of recent date?

THE PREMIER: No; it was an old one. There were several old leases there.

MR. VOSPER: It was rumoured that a large amount of land had been taken up, in some cases by Government servants, somewhere on the other side of Northam, where the pipe-track was said to deviate from the railway line. This land was alleged to have been acquired with the intention of claiming compensation from the Government at some future time.

HON. H. W. VENN: That would doubtless be done, if possible.

MR. VOSPER: If so, it was the business of the Government to baulk that; and if the clause would have that effect, by all means retain it. He pressed for a denial of his statement.

MR. MORAN: The clause referred only to the catchment area.

MR. VOSPER: If that were so, the Government should see that provision was made to prevent "jerrymandering" with the land. If the statement were not true, he would like it denied.

MR. ILLINGWORTH: It was of the highest importance that the Government should alienate no more land in the catchment area.

THE PREMIER: That would not be done.

MR. ILLINGWORTH: The catchment area was vested in the Director of Public Works. This clause was intended, firstly, to stop alienation, and, secondly, to transfer the right of management of the catchment area to the Minister. Those two things ought to be done.

THE PREMIER asked leave to withdraw the motion.

Motion, by leave, withdrawn.

THE PREMIER moved, as an amendment, that after the word "lands," in line 1, the words "saving and excepting all existing timber leases or licences" be inserted. The Government had no desire, during the currency of these leases, to dispossess the holders. There were no pastoral leases in the area, and no land would be sold. All the area had been reserved, and could not be sold. The proposed amendment would give effect to what had already been done. The powers of the Crown were ample without the clause; but it was desirable to retain it in the Bill.

MR. MORGAN: Was it not dangerous to allow any private individuals to have rights inside the catchment area?

THE PREMIER: Clause 6 gave all necessary powers to the health board. It should be remembered that some people had bought land within the area.

HON. H. W. VENN: Would it not be better to omit these words? Clause 6 gave to the Director of Public Works the power and authority of a board of health. It occurred to him (Mr. Venn) that no one at all should be located on the catchment area, and the Government should make up their minds to buy people out completely—leaseholders and others, too. This was a large catchment area that would be wanted for all time, and it would be better to have the whole of it as national property.

THE DIRECTOR OF PUBLIC WORKS: With regard to securing lands, there were a great number of private owners. In South Australia there were on the catchment area of the Happy Valley water works 132 holdings; and of course the Government there were reducing the number as well as they could. That was the practice also followed elsewhere; and the course adopted in South Australia was that of strict supervision, and we should have to adopt the same course here. There was no catchment area in Australia clear from residence holdings.

MR. ILLINGWORTH: They were a great nuisance.

THE DIRECTOR OF PUBLIC WORKS: The Government were doing all they could, but were not able to get rid of them except at great expense. In one case £12,000 was asked for a poison

lease. People knew about the state of things as well as the Government, and they asked these fancy prices.

MR. VOSPER: These leases terminated at some time.

MR. MORAN: Let a stiff tax be put on. THE DIRECTOR OF PUBLIC WORKS: If they complied with certain conditions, the land became their own at the end of a certain time.

A MEMBER: What about timber leases? THE DIRECTOR OF PUBLIC WORKS: No timber leases had been granted since it was decided that this area should be preserved. Any number of applications had been sent in, but had not been complied with.

MR. VOSPER: It would be a good thing to insert a clause in the Bill to provide for compulsory purchase.

THE DIRECTOR OF PUBLIC WORKS: The Government possessed that power already.

MR. VOSPER: If the Government had the power, he hoped it would be enforced.

HON. H. W. VENN: The sooner the poison leases were dealt with, the better. Holders of poison leases on the catchment area knew that the Government would desire to obtain possession of the property, so they themselves would want to become the owners by carrying out the specified works, which might be injurious to the catchment area. If they once became the owners of the property, their idea would be to sell it. If the Government were not going to allow people to enter upon the land for cultivation purposes, and these holders got it ready for those purposes, the compensation to be paid would be very great. He was inclined to think the Director of Public Works had better get hold of the property.

THE PREMIER: There was not so much of it.

HON. H. W. VENN: The desire not to be mulcted met with his sympathy, but he did not see a way out of it.

MR. OLDHAM: It would be better to leave the clause as it stood; and the argument advanced had been in the direction of securing freedom of the water from pollution. It was desirable that timber leases should not exist anywhere on the catchment area.

THE PREMIER: The leases had been given, and the Government could not get rid of them. At any rate, that was so with regard to one.

MR. OLDHAM: Supposing one of the holders of a timber lease were to erect mills and contaminated the source of the water supply, then surely the Government could buy the timber lease.

THE PREMIER: The Government would not renew those already in existence.

MR. OLDHAM: They had about 27 years to run.

THE PREMIER: Oh, no.

THE DIRECTOR OF PUBLIC WORKS: Only the last concessions. The others had very short terms.

MR. OLDHAM: Would it not be possible to remove people who had poison leases, by compelling them to fulfil the conditions?

THE DIRECTOR OF PUBLIC WORKS: The conditions were being fulfilled. He would like to explain, with regard to the area spoken of, that the Government had not lost sight of the necessity of clearing these people off the land, if opportunity presented itself, but there were not many occupants. There were a few small holdings along the river, and some of them had already been secured. Opportunity would be taken to secure others as soon as possible. In regard to the large concessions, such as poison leases, there was one case in which an offer had been made to the Government, and it was now under consideration. The House would help the Government very much more, perhaps, by not laying down a course they should pursue, but leaving them to do the best they could under the circumstances. He would, as he had said, prefer to see the catchment area clear of all holdings, because it would relieve the Government of a great deal of expense, and no doubt cause the water supply to be much purer than it could possibly be, even with the best supervision, if a number of holdings were continued. The Government had the powers of a water company, and they would not permit pig-farming and other things which had been mentioned to be carried on.

MR. ILLINGWORTH: If the land were vested in the Director of Works, power could be exercised.

MR. MORAN: How could another man's land be vested in the Director of Works?

THE PREMIER: Clause 6 conferred the power of a board of health over the whole area, whether fee simple or not. Whilst it was advisable to have this on the statute book, it was nevertheless a fact that the Crown at the present time possessed all the powers given in the clause. The Crown could make a reserve, and then the Governor could vest the reserve in anyone, and it became his property. He intended to move that the word "unalienated" be struck out, and the word "Crown" inserted. No timber leases in existence would be renewed. The poison leases were under a very old Act; not the Act of 1887, but the previous one, and the holders had a right to purchase after 21 years. By paying 21 years' rent, fencing in the land, and clearing the poison land, they became entitled to the fee simple. An offer had been made in regard to two blocks—the sum mentioned being £12,000. Most of this catchment area was Crown land. There was a timber concession to the Canning Jarrah Company, a corner going into this catchment area, and there were a good many years yet to run. Some portion of the Canning Jarrah property was always in the way when a catchment area was under consideration, the company being such a large one, and having so much space everywhere. Some members might have thought, from remarks he made, that he was in favour of unduly interfering with the rights of individuals, but that was not really his wish, all he desired being to see that the Crown did not get the worst of it. He did not want to injure any individual. He would withdraw his former amendment.

Amendment, by leave, withdrawn.

THE PREMIER moved, as an amendment, that the word "unalienated," in line 1, be struck out and "Crown" inserted in lieu thereof.

Put and passed.

THE PREMIER moved, as a further amendment, that after the word "lands," in line 1, the words "saving and excepting all existing poison leases or timber leases" be inserted.

MR. ILLINGWORTH: There was no reason why these leases should not be vested in the Director of Public Works.



As the leases fell in they would become the property of the Director of Public Works.

THE PREMIER: If that were the case it would be all right.

Further amendment put and passed, and the clause as amended agreed to.

Clause 5—Power to take lands under Lands Resumption Act, 1894:

MR. VOSPER said he must ask the Director of Public Works the same question as put a moment ago. His information had been confirmed from another source, that certain land which lay between the dam site and Coolgardie had been taken up by public officials.

THE PREMIER: The whole dam site had been pegged out by a lot of prospectors.

MR. VOSPER: That was quite possible, too; but what he wanted to know was whether the statement he had made, and which was gaining currency in the city, was true. He was told that this land had been taken up to the north of Northam. Did the scheme follow the railway all the way?

THE PREMIER: Yes; it had been decided not to go from the railway.

MR. VOSPER: What compensation would be paid for giving up this land?

THE PREMIER: Nothing.

MR. VOSPER: Then there was no danger from the source he had mentioned, and that was all he wanted to know. He desired to save the country from being tricked.

Clause put and passed.

Clause 6—Powers of Local Board of Health:

MR. MORGANS asked whether the powers given under this clause would not interfere with the right of men owning leases on this catchment area?

THE DIRECTOR OF PUBLIC WORKS: No rights would be interfered with, further than that the lessees would have to comply with the conditions of the Health Act.

MR. MORGANS: Suppose a man who held a timber lease decided to cut down timber, would the effect not be to pollute the water? And then, again, if the holder of a poison area determined to cut down 100 acres of poison weeds, would not that pollute the catchment area? If the powers under the clause

were fully exercised they must interfere with the rights of individuals.

THE PREMIER: Then those individual rights must give way.

Clause put and passed.

Clause 7—No action to lie for anything heretofore done in relation to the said works:

THE PREMIER moved that the clause be struck out.

MR. MORAN: Before any fire was taken out of the Bill, it would be just as well to have an expression of opinion from the Attorney General with reference to the matter of the injunction. If the ordinary suit would lie and continue, the ordinary consequences must also continue. Would the Bill override an injunction? Would the Supreme Court have the power to grant an injunction, even after the passing of this clause?

THE ATTORNEY GENERAL said he could assure the Committee that, once this Bill was passed, no Supreme Court or judge would grant an injunction.

MR. MORAN: Could an injunction be granted?

THE ATTORNEY GENERAL: No; and that would be the answer to any application.

MR. MORGANS asked whether it would be possible for any one interested by some process, to bring his case before the Privy Council in the face of this Bill.

THE ATTORNEY GENERAL: Any suitor would have to first bring his suit in the colony. He might take it then to the Privy Council; but, in the meantime, no judge would grant an injunction to stop this particular work.

MR. MORAN: There would be no power to grant an injunction?

THE ATTORNEY GENERAL: No.

MR. MORGANS said he looked with a great deal of doubt and anxiety on any proposal to wrest constitutional rights from the hands of any man. It would be a dangerous proceeding, opening up possibilities of serious abuse in the administration of the law. As a resident of the colony for some years, he had observed a tendency to bleed the Government in a manner that was absolutely disgraceful. Several cases of the kind had come under his personal observation, and one striking example occurred very recently. The Government ex-

tended the privilege to a municipality to use water gratis, and the officer of that municipality allowed the water to run one night over a man's garden, which injured a few cabbages; and that gardener brought an action, and recovered £2,000 damages from the Government.

**THE PREMIER:** The plaintiff recovered £1,000 damages, and £500 costs.

**MR. LEAKE:** The member for Coolgardie had got hold of the wrong story. The hon. member was thinking of Barrett's case, which had nothing to do with the waterworks at all.

**THE PREMIER:** It was a scandalous case.

**MR. LEAKE:** It was iniquitous.

**MR. MORGANS:** It did not matter what the action arose from. The fact was that the Government had to pay £1,500 to this particular person.

**THE PREMIER:** That was so.

**MR. MORGANS:** And it was an iniquitous robbery. Other cases had come under his notice, and every hon. member would admit that the Government had been bled in the most scandalous manner by all kinds of suitors. In fact, traps were laid for the Government.

**MR. VOSPER:** And the Government always walked into the traps.

**MR. MORGANS:** That was so; and he was bound to say that, after a residence of some years in Central America, where that kind of thing might be expected, he had never heard of so many repeated cases of imposition on the Government as in Western Australia. It was something appalling, and really something must be done by the Government to defend itself against these scandalous cases which were constantly brought against them. He would not say one word about judges or juries, but it was an undoubted fact, and this was not peculiar to Western Australia, that whenever an action was brought against the Government, the Government was bound to lose, whether it had or had not justice on its side. What were the facts with regard to this case? He had been told that Mr. Morrison expected £70,000 compensation for this land. He did not know whether the land was worth that or not—he would not give that amount for it—but if Mr. Morrison's idea was that the land was worth £70,000, then his idea must be very exaggerated, and wherever a man had an

exaggerated idea, and made an exaggerated claim, it naturally followed when he brought that claim against the Government, the Government had to pay an exaggerated price. He would be very sorry to see Mr. Morrison deprived of his rights, but the Government must take some steps, not only to prevent a delay in this work, but to protect themselves from being made the victims of excessive claims. In order to do this, he suggested that the following words be added to the clause:—  
"No action shall lie at the suit of any person for anything hereafter done by or with the authority of the Director of Public Works in relation to the said works; but the Government shall appoint a commission to enquire into the validity of any claim with respect to the riparian rights of landowners below the dam, and report to the Legislative Assembly, in order that steps may be taken to ensure justice being done; all such claims to be made within one month from such date." That would tend to conserve the rights of everyone.

**THE ATTORNEY GENERAL:** We would be flooded with claims.

**MR. MORGANS:** It seemed to him that unless we left the door open for claimants, we would be refusing to them a constitutional right. Unless claimants were protected in some way, he would not vote for the clause.

**MR. LEAKE:** The clause was to be struck out.

**THE PREMIER:** One had a desire to do something to stop these ridiculous claims against the country. He had heard to-day, from more than one authority, that seven persons had gone out into the hills to-day to peg out mineral leases or mineral claims, even over the very site of the dam. These people thought they could interfere with the work, and were likely to get something out of the Government. He thought he would be able to check these claims; at any rate, he hoped so. That did not alter the fact that there was a terrible desire on the part of people to get their hands into the public purse. Proceedings like this made a man's blood boil. He hoped the Bill would be sufficiently strong to enable the Government to proceed with the work. He took it that the Government would be open to law-suits. He had

not the slightest doubt that hon. members would find that the colony would have to pay a good many thousands of pounds for their desire to see imaginary rights preserved; rights which we knew, as well as any jury or any judge, did not exist. We knew what these imaginary rights were. We knew the Helena River; we had known it for 30 years, and we had the evidence of those who had known it for 60 years; and we ought to be capable of judging whether the properties on this river were injured or not. Still, members would not trust their own knowledge or that of anyone except jurymen in the box, presided over by a judge. He did not like legislation himself, but he did not want to take away rights from anyone. At the same time, these people had no rights, and this House would say so if it had to judge the case.

MR. OLDHAM: Bring in a Bill to deal with James Morrison, then.

THE PREMIER: Hon. members would not do that. If it had not been put into the minds of other people, there would have been only one claim. Now every riparian proprietor would make a claim, and the Government would have to fight the claims as best they could. If that was justice, then all he could say was that Parliament ought to be able to judge for itself whether any rights were being invaded or not, rather than put the country to a great expense, which would be the end of it.

MR. KINGSMILL: The Premier was rather foolish in moving that the clause be struck out. An amendment could be made, something like that suggested by the member for Coolgardie (Mr. Morgans). He would remind the Premier that an arbitration case or an inquiry before a commission was likely to occupy much less time than a law case. Once any case involving riparian rights went to the Privy Council, excessive damages would most likely be given against the Government. It would be better if we provided that claims should be settled by arbitration or commission, as that would be a shorter and more satisfactory way of dealing with claims. The amendment suggested by the member for Coolgardie stipulated that all claims should be made within one month from the date of the passing of the Act. That was a useful

provision, because it would enable the Government to find out within a month exactly how they were likely to stand.

MR. KENNY: Before the Premier decided to press for striking out the clause, it would be as well to propose some provision that would at least modify the claim now being made against the Government. A great deal had been said about a principle being involved in this case; he failed to see any principle except the principle of blackmail. He had a thorough knowledge of the land about which the claim had been made, and he endorsed everything the Premier had said. There appeared to be a desire that under no circumstances were we to interfere with the liberty of any person in appealing to the Supreme Court. He quite agreed with that, but circumstances altered cases, and we ought to be prepared to meet the circumstances. If the Committee had been decided on this question the clause would have been carried. This claim which had been made against the Government was nothing more nor less than an attempt at blackmail. In dealing with the Government, claimants were dealing with the people, and we should not forget that the people's money was attempted to be taken out of the Treasury. By voting to strike out this clause, he would feel he was endorsing one of the most unfair and dishonest claims ever made on the Government.

MR. LEAKE: No claim had yet been made against the Government. It was only in view of some possible claim being made that no obstacle should be placed in the way of that claim in order that it might be decided by the proper tribunal. The member for Coolgardie (Mr. Morgans) must have been mistaken when he said that a claim was to be made for £70,000.

THE PREMIER: That was the value of the property, he heard.

MR. LEAKE: We might be sure the property would be worth more than that. In view of what the hon. member for Pilbarra (Mr. Kingsmill) suggested, he (Mr. Leake) had a clause which he thought would take the place of clause 7; it was to the effect that if there was any claim, it should be settled by arbitration.

THE PREMIER said he would rather go to the court than to arbitration.

MR. LEAKE said he had an alternative proposal to the effect that compensation be settled, as was done under the Railways Act, by arbitration.

THE PREMIER: That was not desirable.

HON. H. W. VENN: Better have the Supreme Court than arbitrators.

MR. LEAKE: Then why not refer the claim to the Full Court straight away, with the three judges sitting at *nisi prius*?

THE PREMIER: No alternative was wanted. Let the clause be struck out.

MR. LEAKE: But in striking it out, men were deprived of their right to claim compensation.

THE PREMIER: How so?

MR. LEAKE: The Attorney General would agree that, if a petition of right or a claim was lodged against the Government, it would only be necessary to plead the statute in order to bar any right to compensation.

THE PREMIER: If that were so, it was a good thing.

MR. JAMES: What about Wilkinson's case?

MR. LEAKE: To strike out the clause meant giving nothing to claimants. The Committee should say honestly whether they were going to give the riparian proprietors any right to make claims. To strike out clause 7, and not substitute another, would mean to completely wipe out those proprietors.

MR. JAMES: No. What about Wilkinson's case? The claim could still go to the Secretary of State.

MR. LEAKE: The claimants would not be likely to do that. Wilkinson's case came before the Supreme Court, and his claim was held to be practically worthless.

MR. JAMES: The petition of right was granted by the Colonial Secretary, though doubtless in a most improper way.

MR. LEAKE said the hon. member did not follow his argument.

MR. JAMES: The hon. member maintained that the Government would refuse to allow petitions of right.

MR. LEAKE: No. What he said was that if a petition were allowed, or a claim made for compensation, the answer to the petition or the claim would be the statute, because the statute authorised

the work. Did not the hon. member say that the defence would then be complete?

MR. JAMES: No.

MR. LEAKE: Then the hon. member had the Attorney General against him. If the Government could plead that the work was done by virtue of the statute, that would be a complete answer; and, unless the claimant could prove negligence, he would have no claim.

MR. WILSON: What about claims in respect of railways?

MR. LEAKE: In those cases, rights were specially reserved to the parties to claim by way of compensation under particular sections of the Railways Act.

THE PREMIER: Did not the hon. member object to the presence of this clause?

MR. LEAKE: Yes; but something was required in its place. The Government were trying to affirm that, inasmuch as it was not contemplated to take the land under the land resumption clauses, no claims for compensation could be entertained, seeing that the Lands Resumption Act authorised compensation to be paid only when the land was taken. This Bill contemplated something less than the taking of land. Its effect would be to deprive a man of some valuable easement or advantage; and there was nothing in the Lands Resumption Act to justify a claim for compensation for loss of an easement. Give claimants the power to sue or claim before the Supreme Court. Unless either of the clauses he had suggested were substituted for the clause as it stood, the riparian proprietors would have this privilege or easement taken from them, and would receive nothing in return.

THE PREMIER: The privilege was being denied them.

MR. LEAKE: Progress should be reported, on this clause. He would then put his two proposed clauses on the Notice Paper, for the consideration of the Attorney General.

THE PREMIER: A new clause could be inserted on the report stage.

MR. LEAKE: No. He had no desire to spring anything on the House. The Government should place no obstacle in the way of a fair and proper hearing being given on this point. If the Committee desired that in no circumstances

should compensation be given to the riparian owners, let it be declared emphatically, as in clause 7. If, on the other hand, it was meant that any claim for compensation should be adjudicated upon, let proper machinery be provided.

MR. ILLINGWORTH: Some provision of this sort was required, that any claim for riparian rights under this Bill shall be referred to a Select Committee of this House, and that it shall sit as a court of arbitration, and its decisions will be final.

MR. JAMES: In connection with this scheme, some provision other than that afforded by the ordinary tribunals of the colony should be made, for the purpose of assessing whatever damage had been done. When members talked about riparian rights, they were using an expression totally inapplicable to the greater number of the rivers of this colony. As understood in England, the phrase meant the right to use the river as a highway, as a navigable river, or to have access to it for such purpose. But, in the case in point, the value of the river during the winter was comparatively small, for the ordinary surface rain was then sufficient to supply all water required for farm stock. In summer, perhaps, difficulties might arise if the flow of water were interfered with, as the water-holes on the estate would be lessened in value and permanency; but no interference with riparian rights would even then take place. It was as if we said to the landowner: "You have a natural well in a certain spot; we intend to interfere with, or divert to some extent, the supply of water thereto, and you must dig a well somewhere else." The observation of the member for Pilbarra (Mr. Kingsmill) was very apt, that if such questions were taken home to the Privy Council as questions of riparian rights, this country would be blackmailed, in consequence of the entire ignorance of English judges as to physical conditions in this colony.

THE PREMIER: Hear, hear.

MR. JAMES: We would not be deliberately blackmailed, but it would be done through ignorance. There was no desire to deprive men of their legal rights, but certain provisions must be made by which the Government should have certain rights for the carrying out of the

scheme for the good of the community. The expenditure already involved or anticipated was so enormous that Parliament should do its utmost to see that no unduly inflated claims could be urged against the Government. It was impossible to conceive any sort of claim more capable of undue inflation than the claim for the loss of so-called riparian rights. Such a claim might be brought forward now, demanding an assessment of damages on the assumption that the loss sustained would be a permanent loss. The claimant would say he was now losing so many thousand gallons of water, and that he would lose that during the rest of his tenure, which was a freehold tenure. He might demand compensation based upon that assumption; but, when the work was finished, the amount of damage might be considerably lessened, and the permanent damage could then be ascertained; for the extent to which the flow of water to the claimant's estate had been interfered with would then be obvious. The landowner mentioned in the debate no doubt recognised that fact. We must protect the interests of the community. The amendment suggested by the member for Central Murchison (Mr. Illingworth), that there should be a tribunal to which such claims, if *bona fide*, might be referred, was highly desirable. None could question the fairness and the generosity of a Committee or Commission appointed by the House. In other parts of the world, in the mother country, Parliament, or part of Parliament, was the final legal court of appeal. Great questions involved were determined in some instances by the lords, as a practice had grown up of referring such legal questions to the law lords; but, theoretically, the House of Lords itself, as part of the Parliament of the country, was the final court of appeal. A Committee of our own Assembly would not treat any claimant in an unfair or ungenerous spirit; and no such intention had been manifested in this or any other discussion of a similar character. But some provision was necessary to protect, not the Government or the House, but the country, from claims that could not be substantiated as between man and man, claims known to be grossly unfair, and which, if allowed, would lead to the country being mulcted

in monstrously heavy damages. Some tribunal other than the ordinary ones must be appointed to assess damages. There could be no suggestion of casting reflections on the courts. Every similar Act provided some special tribunal. It was obvious that the ordinary tribunals were not sufficient; and doubtless the member for Albany (Mr. Leake) would agree in expressing a strong dissatisfaction with the manner in which arbitrations had been conducted in the past, and would support him in saying that, when speaking as lawyers about riparian rights, they were talking of a matter which to the legal mind conjured up a vision of valuable claims, the loss of which would mean incalculable damage; though they knew, even as laymen, that the real damage was very often inappreciable. In a court of law, the judge naturally spoke as a lawyer. When talking about riparian rights, he turned up the text books, and read the definition, failing to distinguish between such rights in a country where the claim arose, and the rights in countries where riparian rights had grown up, and had been to a certain extent crystallised. How different were the conditions in England from those found here! Even our own judges did not always recognise the conditions obtaining in this colony; and the ultimate court of appeal, the Privy Council, would be a tribunal totally ignorant of local conditions, and while having the utmost desire to do us justice, it would be liable to do us gross injustice. This had happened in the past in connection with the limited amount of litigation referred to the Privy Council. In a great question like this, all must agree that machinery must be provided by which claims could be determined, and an appeal made to this House, the most generous tribunal in the colony. If this were done, none could say there was the least suggestion of injustice. The Government should stand by the clause.

MR. LEAKE: The suggestion of the member for East Perth, as he (Mr. Leake) understood it, was that the clause should stand as at present, but that the parties affected by the water rights should be at liberty to come before Parliament and have their claim adjusted before a Select Committee.

MR. JAMES: Or a commission, or whatever it was.

MR. LEAKE: One member suggested a Select Committee.

THE PREMIER: An appeal to Parliament.

MR. LEAKE: An appeal to Parliament, and the question settled on its merits. We saw the position we were in at the present time, and how difficult it would be for us to decide. It was almost admitted that any possible claim should be considered for what it was worth. There might be compensation paid, or there might be nothing. We had a court of arbitration under the Railways Act as a tribunal, the Supreme Court as a tribunal, and thirdly Parliament as a tribunal. Having these three matters to consider, would it not be better to report progress?

THE PREMIER: There would be this injunction on Monday.

MR. LEAKE: The hearing of the injunction would not, he thought, do more than settle the principle.

THE PREMIER: It might stop the work.

MR. LEAKE: That matter might easily be arranged between the Government and the solicitors.

THE PREMIER: They had the injunction in their hands now.

MR. LEAKE: The case was one in which he (Mr. Leake) was retained, but he was not discussing the question from that standpoint at all. As far as he understood, there was no intention to do anything but test the principle. He was perfectly certain the time could be extended so that no unnecessary trouble or obstacle would be raised in the way of the Government having justice done.

THE PREMIER: We should not run the risk of stopping the work.

MR. LEAKE: The Bill could not be got through on Monday. It had to be passed by the Council.

THE PREMIER: It could not be got through the Assembly till Tuesday, but if we got through the Committee stage at the present time, we might reach the third reading. The Government were in favour of striking the clause out.

MR. LEAKE: Yes, and the person would get nothing.

THE PREMIER: A person could always come to Parliament, if he suffered an injustice.

MR. LEAKE: It was necessary to say so, and to let it be seen that we wished to do justice to all parties. He moved that progress be reported.

Motion put and passed.

Progress reported, and leave given to sit again.

#### ADJOURNMENT.

The House adjourned at 10.35, p.m., until the next Tuesday afternoon.

### Legislative Council,

Tuesday, 27th September, 1898.

Papers presented — Joint Select Committee: Official Receiver in Bankruptcy; motion to enlarge powers (postponed)—Criminal Appeal Bill, third reading—Companies Act Amendment Bill, in Committee, clause 1 to new clause, progress reported—Adjournment.

THE PRESIDENT took the chair at 4.30 o'clock, p.m.

PRAYERS.

#### PAPERS PRESENTED.

By the COLONIAL SECRETARY: Acclimatisation Committee, second annual report. Immigration Restriction Act 1897, Regulations.

Ordered to lie on the table.

#### JOINT SELECT COMMITTEE: OFFICIAL RECEIVER IN BANKRUPTCY.

##### MOTION TO ENLARGE POWERS.

HON. R. S. HAYNES: I desire to move, without notice and by leave, "That the Select Committee appointed to act jointly with the Committee of the Legislative Assembly, to inquire into and report on

the administration of the Bankruptcy Act by the senior Official Receiver, be also empowered to inquire into and report upon the administration of the affairs of registered companies of which the same officer has acted as official liquidator." As the Committee is still sitting, it is necessary in order to save time, that leave be granted to me to bring on this motion to-night.

THE PRESIDENT: This is a Joint Committee. A message came down from the Legislative Assembly, asking this House to join with hon. members in another place in appointing a Committee, and this House cannot pass a motion of this kind unless it be assented to first in another place.

HON. R. S. HAYNES: I understand that a similar motion will be moved in another place to-night.

THE PRESIDENT: The proper way, as this Committee originated with the Legislative Assembly, is that a motion should be moved in another place first, and a message come down to us acquainting us of the decision arrived at there.

HON. R. S. HAYNES: Then I can ask permission to bring this motion on at a later stage.

THE PRESIDENT: We cannot be cognisant of what is done in another place until we are notified. Supposing leave were granted here to extend the scope of the Committee, the other House might refuse leave, and then the permission granted in this House would be of no avail.

HON. R. S. HAYNES: I was told that this was the proper practice. The Joint Committee find it necessary to be armed with fuller powers; and although they feel that what they are now asking is within the purview of the powers granted to them, still it is advisable to have the scope of the Committee enlarged by way of instruction. I understand that a similar motion is to be moved in another place.

THE PRESIDENT: If that is so, a message will come down here.

#### CRIMINAL APPEAL BILL.

Read a third time, on the motion of the HON. F. T. CROWDER, and transmitted to the Legislative Assembly.