go nearly a hundred miles without any chance of getting fresh water. That route should be put in a better condition. I think we must not rely on the Roads Boards to do this for the Government. If I am to be one of the committee, I should like now to express my opinion that we should not employ the Roads Boards any more to do the necessary work on the stock route. The members do not live on the line of route, but nearly every member lives forty or fifty miles from it. I think you will have to fall back on the Government in this matter; and, as the Director of Public Works has suggested, inspectors might be appointed, whose duty it should be to travel the route and see that the wells are protected, and that proper apparatus for each well is provided, in order that water may be obtainable when the stock arrives there, because it is tantalising to know there is water 70 or 80 feet down, and yet it cannot be got up to water the stock.

THE COMMISSIONER OF CROWN LANDS (Hon. W. E. Marmion): This question of water supply on the stock route is one of those matters that has had an interest for me during many years past, as having been concerned somewhat in the supply of fat stock from the Northern parts of the colony, and I may say that a fresh feature has established itself in the minds of some people that the coastal route, which some persons have been in the habit of regarding as the best for travelling stock, is not really the best. Indeed, that old idea is superseded by later experience. I believe myself that fat stock from Kimberley and the North-West districts will be brought Southward along the interior, and not along the coast route; and I think that possibly this committee—if the mover of this motion will not be above taking the advice of people who know, perhaps, a little more about the question than even he does—will find that a stock route can be established from Kimberley and the North-West districts by which all our goldfields can be supplied with sheep and with cattle. If that is so, I suppose it will be a good thing for my friend the mover, and a good thing for me. People are in the habit of complaining about the high price of meat, and that the consumers on the goldfields are charged too much. All I can say is that I think they have no great reason to complain at the present time. I have been trying to produce cattle and sheep a good many years, but have not yet succeeded in making money out of them. I have tried my level best to bring stock down here to sell as dear as I possibly could, and I have not succeeded yet in doing it profitably. If the hon. member for Roebourne (Mr. H. W. Sholl) can do it, I wish him success.

Motion put and passed.

MR. RICHARDSON moved that the number of members to serve upon the committee be seven instead of five, as provided for by the Standing Orders of the House.

Question put and passed.

A ballot having been taken, the following members, in addition to the mover, were elected to serve upon the Committee:—Mr. Burt, Mr. Harper, Mr. Loton, Mr. Wood, Mr. R. F. Sholl, and Mr. A. Forrest.

Ordered—That the committee have power to call for persons and papers; and report on Monday, 27th August.

ADJOURNMENT.

The House adjourned at 11·17 o'clock p.m.

Legislative Assembly,

Tuesday, 14th August, 1894.

Patents, Designs, and Trade Marks Bill: first reading—Tanks and Wells on Coolgardie Routes—Employers' Liability Bill: in committee—Telegram from Dr. Monteith re Cue Hospital Accommodation—Adjournment.

THE SPEAKER took the chair at 2·30 p.m.

PRAYERS.

PATENTS, DESIGNS, AND TRADE MARKS BILL.

Introduced by Sir J. FORREST (on behalf of Mr. Burt), and read a first time.

TANKS AND WELLS ON COOLGARDIE ROUTES.

MR. HASSELL, in accordance with notice, moved that returns be laid on the table, showing—

1. The cost of all tanks on the route from Northam to Coolgardie.
2. The cost of all wells on the route from Southern Cross to Coolgardie.

Question put and passed.

EMPLOYERS' LIABILITY BILL.

IN COMMITTEE.

On the Order of the Day for going into committee on this Bill,

THE PREMIER (Hon. Sir J. Forrest) said though he was in possession of the views of the Government with regard to the Bill, he thought the House would like to have the Attorney General present when dealing with it in committee. He was sorry to say his friend was at the present moment engaged in the Supreme Court addressing a jury. Of course, if the House desired it, he (the Premier) was quite prepared to go on with the Bill.

The House agreed to go into committee.

Clause 1.—Short title:

Agreed to.

Clause 2.—Interpretation:

MR. JAMES said the interpretation given to the expression "person who has the superintendence entrusted to him" was "a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour." He thought there was no occasion to give a special and limited interpretation to an expression in a Bill, when the plain and common sense meaning was clear. Why should they limit the meaning of the plain expression, "person who has the superintendence entrusted to him," to a person who was not "ordinarily engaged in manual labour," thus restricting the meaning of the expression? The main principle of the Bill was the recognition of the liability cast upon an employer through the negligence of the person in charge; and why should they define the person in charge as being a person whose sole or principal duty was that of superintending the work, and who was not ordinarily engaged in manual labour? The person in charge, or foreman, or superintendent, or whatever he might be called, might occasionally have to take part in the work himself. If he did so, his employer would be freed from liability under this section. It had been held in England that the driver of an engine who was also occasionally engaged in cleaning the engine was not a person who had superintendence entrusted to him within the limited meaning of that expression in this Bill, because the work of cleaning was regarded as manual labour, and the man was therefore not solely engaged in the work of superintendence. Members must know that in small industries and small contracts, such as were often entered into in this colony, the foreman or person in charge often had also to take part in the work himself, as his duties as superintendent did not occupy his whole time. In a case like that, the employer would get rid of his liability in the case of an accident to a workman. It was always a suspicious circumstance when you found words that carried their own plain meaning on the face of them given a limited interpretation; and, as he had said, injustice might arise, and had arisen, from the restricted meaning put upon these words in the present Bill. He therefore moved, in the first place, to strike out the words "sole or principal;" the expression would then read "a person whose duty is that of superintendence," and not whose "sole or principal duty" is that of superintendence.

THE PREMIER (Hon. Sir J. Forrest) said the hon. member complained because the clause made the intention of the Legislature too clear. It seemed to him (the Premier) that the more clear we made our Acts the better, and the less likely were they to give rise to litigation. He was sure the hon. member's amendment would not make this expression more clear. Who was to be regarded as the superintendent or person in charge of the work, unless some definition was put upon these words? The position the Government took up with regard to this Bill was this: for his part,

he liked to keep up with the times in legislation, and that we should endeavour to keep on a level with other countries; but he had no desire, in these early days of self-government, to see the colony, in matters of this kind, indulging in experimental legislation in advance of the legislation of other places. This was the law of England at the present time, and, though efforts had been made to alter it in the direction indicated by the hon. member, the fact remained that it had not been altered. It was the law also in all the other Australian colonies. The only colony he knew of where it had been altered was New Zealand, which seemed to have gone in largely for experimental legislation. But we had a Bill here which was the law of England at the present time, and the law throughout Australia.

MR. JAMES said the Premier was wrong. The South Australian Act extended the provisions of the Act to seamen.

THE PREMIER (Hon. Sir J. Forrest) said that was a mere detail, and had nothing to do with the present clause. Moreover, we had no seamen in this colony, and if we included seamen in the Bill it might lead to confusion and bring the Bill into conflict with the Merchant Shipping Act, and other enactments. The intention of the Government with regard to this Bill, with one exception which he would explain by and bye, was to stick to the Bill. He thought that so long as, in matters of this kind, we were as far advanced as the great old mother country, and the other colonies, we were far enough advanced, and he was not prepared at the present moment to go any further.

MR. ILLINGWORTH said the Premier told them he would be content if we kept up to the standard of the other colonies. In the Victorian Act there was a clause which provided that an accident occurring in a mine was *primâ facie* evidence that such accident occurred through negligence on the part of the owner of the mine, or, in other words, the employer. There was no such clause as that in this Bill, nor in our mining regulations; but it ought to be, and would have to be, yet. It was useless our passing an Employers' Liability Bill which would be in direct opposition to a clause which would hereafter find place in a Mining Bill. The definition given here to the person in charge of a work was a person whose sole or principal duty was that of superintendence, and who was not ordinarily engaged in manual labour. Of all men engaged in a mine, the man who was essentially engaged in manual labour was the underground manager; and the man who was most responsible for the lives of the men under his charge was certainly the underground manager. The manager of the mine itself was not one half as responsible as the underground manager, nor could there be one quarter the danger arising out of any neglect on the former's part as on the part of the latter. Yet this man was often engaged in the same manual labour as the men working under him; and, according to this clause, if an accident happened to one of these men through the negligence of the underground manager, the employer would be relieved from liability. This Bill would be practically worthless if this clause passed as it stood. If we were going to legislate for the protection of the lives and limbs of workmen, it was our duty to see that the Bill was one that would accomplish that object.

MR. RICHARDSON thought the definition would be sufficiently clear by the omission of the words "and who is not ordinarily engaged in manual labour." The person in charge would then mean the person whose sole or whose principal duty was that of superintendence; which, it seemed to him would meet the objection which had been raised to the clause. He did not see why a man should not be regarded as the superintendent or foreman of a party of men simply because he occasionally did a little manual labour.

MR. JAMES said he was willing to withdraw his amendment if the hon. member for the DeGrey would move to strike out the words he had referred to.

Amendment, by leave, withdrawn.

MR. RICHARDSON moved that the words "and who is not ordinarily engaged in manual labour" be struck out.

THE PREMIER (Hon. Sir J. Forrest) said he did not feel inclined to agree with this proposal. These words, they might depend upon it, were not inserted in the English Act, and in the Acts of the other colonies, for nothing. What was the meaning of being "ordinarily engaged in manual labour?" Surely it would not be argued, or held in a court of law, that a superintendent or foreman who

occasionally worked with his hands was not a superintendent or foreman? Even although he might be working on even terms with his fellow men he would still none the less be their foreman, and would be looked up to as such by the workmen. He hesitated, himself, to touch this Bill, or the expressions contained in it, unless some very good cause was shown for it. The Bill had stood the test of time in England, and it was the law of the Australian colonies as well. He thought we might be content to keep pace with English legislation and the legislation of the sister colonies, for the present, at any rate. As time went on, no doubt this matter would not be allowed to remain as it is—[MR. JAMES: It won't]—and the Bill would probably have to be amended hereafter. The hon. member for Nannine seemed to have an eye solely for the mining industry. The mining industry was becoming a very important industry, no doubt, but were we to disregard every other industry for the sake of the mining industry, which could be dealt with in a separate Bill? He hoped the hon. member for the De Grey would not press his amendment, but be content, in this very important matter, which had given rise to so much discussion at home and elsewhere, if we kept abreast with the legislation of those countries.

MR. JAMES said the Premier laid great stress upon our keeping abreast with English legislation on this subject, and said that this Bill was the Act of the English Parliament. If the hon. gentleman relied on a quibble, no doubt it was the Act of the English Parliament at the present moment, though he must know that an amending Act, which went further than was now proposed to go with the amendment to this clause, had recently passed the House of Commons by a large majority. It was only by experience that a country found out the defects of legislation; and it was notorious that since the Act of which this Bill was said to be a copy had been passed in England, fourteen years ago, several attempts had been made, by both Liberal and Conservative Governments, to amend that Act in the direction which he proposed to amend this Bill.

THE PREMIER (Hon. Sir J. Forrest) said the hon. member for East Perth, in all his speeches on this Bill, seemed to assume the *rôle* of a special pleader for one side. The hon. member said nothing about the employer; all his sympathies were with the other side. (MR. JAMES: The weaker side.) He did not know so much about that. He, himself, had to look at both sides,—the side of the employers of labour and also the side of those who were employed. He was not there, like the hon. member, as a special pleader on behalf of any particular class; and he would advise the committee not to be guided by anyone who came there in the capacity of a special pleader. Let them take a judicial view of the case, and look at it all round.

Amendment put, and a division called for, the numbers being—

Ayes	... ...	6
Noes	... ...	13
Majority against	...	7

AYES.	NOES.
Mr. Illingworth	Mr. Cookworthy
Mr. Richardson	Sir John Forrest
Mr. Simpson	Mr. Hassell
Mr. Solomon	Mr. Lefroy
Mr. Wood	Mr. Loton
Mr. James (*Teller*).	Mr. Marmion
	Mr. Monger
	Mr. Paterson
	Mr. Pearse
	Mr. Phillips
	Mr. R. F. Sholl
	Mr. Venn
	Mr. Randell (*Teller*).

Amendment negatived.

MR. JAMES said the clause provided that the expression "employer" included "a body of persons corporate or incorporate." He moved that the following words be added: "and the Governor, or any Minister acting for or on behalf of Her Majesty, or Her Majesty's Government within the colony." He did this so as to include the Government within the provisions of the Bill, so that in the event of an injury happening to one of their workmen, they should be liable in the same way as a private employer. He hardly thought the Government would object to that. If the legislation they introduced was considered by them to be good enough for private employers, it ought to be good enough for the Government themselves.

THE PREMIER (Hon. Sir J. Forrest) said he did not object to this amendment at all.

Amendment put and passed.

MR. JAMES said the interpretation which the clause gave to the word "work-

man" was as follows: "The expression "'workman' means a railway servant and "any person (other than a domestic or "menial servant) who, being a labourer, "servant in husbandry, journeyman, arti- "ficer, handicraftsman, miner, or otherwise "engaged in manual labour, whether under "the age of twenty-one years or above "that age, has entered into, or works "under a contract with an employer, "whether the contract be made before "or after the passing of this Act, be "expressed or implied, oral or in writing, "and be a contract of service or a con- "tract personally to execute any work or "labour." The effect of that interpretation was this: unless a man came within one of the occupations specified, he must prove that he was "engaged in manual labour" when the accident happened or he could not claim compensation, because these were the governing words which covered all cases not specially mentioned. It was proposed to amend this in England by the amending Act which passed the House of Commons last year, and he proposed to amend it here. There were occupations here, as in England, in which it could not be said that a man was engaged in manual labour, and which did not come within the occupations specially mentioned in the clause—a 'bus conductor, for instance. It had been held in England that a 'bus conductor was not a man engaged in manual labour, nor did he come within the category of the trades or occupations specified in the Bill; therefore, the employer was not liable under this Act. The same decision was given in the case of a tram-driver. He proposed to ask the committee to accept the definition given in the New Zealand Act. He thought members would agree with him that the expression "workman" should have as comprehensive a meaning as they could give it consistent with the principles of the Bill. He moved, as an amendment, that the sub-clause containing the definition should be struck out, and the following inserted in lieu thereof:—"The expression "'workman' includes any person, male or "female, whether under or over the age "of twenty-one years who, under contract "with an employer, whether made before "or after the passing of this Act, contracts "personally to do or perform any work or "manual labour of any kind, whether "technical, skilled, or unskilled, and "whether such contract be oral or in "writing, express or implied."

MR. ILLINGWORTH said he had himself intended to move an amendment in this sub-section, but, if this amendment of the hon. member for East Perth were adopted, it would meet the objection he had to the clause.

THE PREMIER (Hon. Sir J. Forrest) said he was not prepared to follow the hon. member for East Perth in his unqualified faith in New Zealand legislation. He was content to follow English legislation, but he was not prepared to follow the hon member for East Perth, who had admitted that he was a partizan in this matter, of what he called the "weaker side." He thought it would be safer to adhere to the English law, and the law of the other Australian colonies, rather than to the hon. member's views on this question. At any rate, he (the Premier) was going to stick to the Bill, and he hoped the committee would support him. If they had not gone far enough, the Bill could be altered hereafter. It was not like the laws of the Medes and Persians.

MR. ILLINGWORTH hoped that no one in that House was prepared to follow any member simply because he was a member, no matter what position he occupied in the House. Unless a member could convince the committee by argument, he did not suppose the committee would follow him, whether he be the Premier or the hon. member for East Perth. He certainly did not think the Premier had brought forward any arguments to convince the committee that this amendment was not a desirable one. Their object should be to pass the best Act they could, no matter from what side of the House the amendments came, or from what member of the House.

MR. RANDELL said the question was, were they prepared to widen the scope of the Bill so as to include all persons whom they thought should be entitled to compensation, but no wider? If the hon. member for East Perth set one of his clerks to work upon some very intricate case, and the poor clerk's brain became affected, and he became incapacitated for work, would the hon. member consider himself liable for compensation? [MR. JAMES: No.] It appeared to him that the hon. member would be liable

under this amendment, which included those engaged in work of any kind, whether technical, skilled, or unskilled. He thought that the trades and occupations specified in the original clause, and which included all handicraftsmen, went far enough. We had a number of small industries in this colony which required to be fostered, and, unless we were careful, we should make employers liable for the acts of any of their workmen, which he thought was a monstrous doctrine. Employers in this colony could not stand such stringent legislation. He might go further, and say what, perhaps, might not be very palatable in some quarters: the employer in this country was in many cases more to be pitied than the employee, and stood more in need of protection. He was prepared to give the workman all the protection he was justly entitled to, but not to inflict upon the employers of labour all the liabilities with which it was desired in some quarters to harass them. He could conceive no circumstance in this colony under which a workman would not be protected under the interpretation clause of the Bill as framed.

MR. RICHARDSON thought the definition given in the Bill was sufficiently comprehensive for all purposes. It included railway servants, labourers, journeymen, artificers, handicraftsmen, miners, and all persons otherwise engaged in manual labour, who had entered into an agreement with an employer. It would require some ingenuity to find a workman who would not come under one of these heads, and he could not conceive how a bus driver could be excluded if he had entered into an agreement with an employer. There were two sides to every question, and if they passed a Bill that would harass and destroy the confidence of employers, it was bound to react upon the employed. Employers would hesitate before accepting a responsibility which made them liable for damages which they were not able to bear, and which they would be subjected to through no fault of their own. They would naturally hesitate to employ any labour at all, and the Bill, if made too stringent, would react upon the very class whom it was intended to serve.

Amendment put and negatived.

MR. JAMES moved to add the following words to the definition of "workman":—"and shall include every person employed upon a ship, whether at sea or in port." He said he proposed in a subsequent clause to limit the remedy in the case of seamen to injuries caused in any navigable waters within the jurisdiction of the colony, and not to vessels when beyond that jurisdiction. Seamen were included in the Bill which passed the House of Commons last year, and it was agreed to by the House of Lords (so far as seamen were concerned). They were also included in the South Australian and the New Zealand Acts. There seemed to him no just reason why a seaman who suffered injuries from an accident caused by the negligence of his employer should not be able to recover compensation like any other workman.

THE PREMIER (Hon. Sir J. Forrest): How are you going to recover from the employer, the owner of the vessel?

MR. JAMES said there were provisions in existence that would meet such cases.

THE PREMIER (Hon. Sir J. Forrest) hoped the committee would not agree to the amendment. In the first place, we had no seamen in this colony, and it seemed to him that in dealing with sailors coming here in foreign vessels we ran the risk of coming into conflict with the Merchant Shipping Act. The owners of these vessels would probably be in England or in some foreign country, and how were they going to be reached? He presumed that men working in our harbours would be protected under the Bill as it stood? He could not see in what instance the amendment would apply or prove an advantage. [MR. JAMES: Coasting steamers.] Coasting steamers were not always within our jurisdiction; while they were, he presumed that those who worked on board would have their remedy in the event of their sustaining bodily injury, if they could prove negligence?

MR. R. F. SHOLL hoped the Government would stick to their Bill all through. Some of the proposed amendments on the notice paper appeared to him to be very dangerous amendments. Parliament had a duty towards employers as well as towards workmen, and it would lead to endless litigation and much ill-feeling between the employer and the employed if many of these amendments were adopted.

Amendment put and negatived.

Clause agreed to.

Clause 3—Amendment of existing law:

Put and passed.

Clause 4—Exemptions to amendment of law:

MR. ILLINGWORTH said a sub-section of this clause provided that a workman shall not be entitled to any right of compensation or remedy against his employer unless he could prove that the accident occurred through the negligence of his employer, or of some person authorised by the employer, to look that the machinery or plant employed on the works were in proper condition. He was not sure whether, in the present temper of the House, it was much use to move any amendment in this Bill; still, he felt it his duty to do so, if he stood alone. He moved that the following sub-section be struck out of the clause:—"Under "sub-section (1) of the last preceding "section, unless the defect therein men-"tioned arose from or had not been "discovered or remedied owing to the "negligence of the employer, or of some "person in the service of the employer, and "entrusted by him with the duty of seeing "that the ways, works, machinery or plant "were in proper condition." This sub-section threw the whole onus of proof upon the workman. A man might not only be injured but killed by an accident, and how was he going to prove negligence? He thought that, in most cases, the mere fact of an accident occurring was *primâ facie* evidence of negligence; and to throw the responsibility of proving it upon the injured man was, in his opinion, more than they ought to do.

MR. JAMES said his own opinion was that we should adopt in our legislation on this subject the principle so strongly advocated by Mr. Chamberlain, in England, and which was in operation in several European countries; that was, to have a system of compulsory insurance, and then provide that employers should be liable for all injuries to their workmen unless arising from their own negligence. He was satisfied in his own mind that legislation would come to that, sooner or later, though he was afraid it was not much good attempting to introduce the principle here at present. It was all very well for members to talk about the Bill being an injustice to employers, and to talk about its harassing employers; the Bill did not apply to 33 per cent. of the accidents that happened. By the common law of the land a man was responsible for the negligence of his servants—not only of his foreman or ganger, but the negligence of every servant he employed; and until workmen were so protected under this Bill, he was sure they would not rest satisfied. In his opinion, instead of the Bill going too far, it did not go nearly far enough.

THE PREMIER (Hon. Sir J. Forrest) said the intention of the mover of the amendment was this: although an employer took every possible precaution to prevent accidents, kept only the very best machinery, and did all he could, he would still be liable if an accident were to happen. He did not think the committee were going to agree to that.

Amendment put and negatived.

Clause agreed to.

Clause 5:—"The amount of compensa-"tion recoverable under this Act shall "not exceed such sum as may be found "to be equivalent to the estimated earn-"ings during the three years preceding "the injury of a person in the same "grade employed during those years in "the like employment, and in the district "in which the workman is employed at "the time of the injury:"

MR. JAMES said he proposed to move to strike out this clause, and to move another clause in lieu of it, as follows:—"The amount of compensation recoverable "under this Act shall be estimated and "determined at such amount, and in such "manner as the Court before which the "case is heard, or as the jury, or the "assessors, as the case may require, think "fair and reasonable: Provided that in "cases heard before a jury the amount of "compensation recoverable shall not ex-"ceed such sum as may be found to be "equivalent to the estimated earnings "during the three years preceding the "injury of a person in the same grade "employed during those years in the like "employment and in the district in "which the workman is employed, unless "the Judge shall, at the instance of the "foreman of the jury, upon being re-"quested by three-fourths of such jury, "direct that in his opinion such earnings "would not be a fair and reasonable "compensation under the circumstances:

"Provided further, that nothing in the "last proviso shall apply to the case of an "apprentice or articled pupil: Provided "further, that the amount of compensa- "tion recoverable under this Act shall "not exceed five hundred pounds in "respect of any one cause of action." He wished to substitute this clause instead of the present one for this reason: the amount of a man's earnings during three years might not be a sufficient compensation in some cases. Take the case of an apprentice, who might only be receiving half-a-crown a week. That apprentice might be injured for life, and all he could sue his employer for would not come to £20. Not only that, he went on principle. Why should the damages recoverable by a workman be differentiated from damages recoverable by the Premier himself? Why not extend this principle of limiting compensation to three years' earnings to other classes as well as workmen? If the principle was a fair and just one, let it be made applicable to all cases. If the Premier was entitled to go before a Court and a jury, and get what damages the Court or the jury liked to award him, why should not a workman have the same privilege? He did not, however, propose to go as far as that in this new clause; he proposed to limit the amount of compensation recoverable under this Bill to £500, and that only in cases where the presiding Judge considered that three years' earnings would not be a fair and reasonable compensation. A jury might be liable to lose their heads and give what were called sympathetic damages; therefore he proposed that a jury could not award more than three years' earnings unless the Judge certified that that sum would not be a fair and reasonable compensation, in which case the damages might be anything up to £500, but no more. Although this provision was not on the statute law of England at present, nor was it the law in any of the sister colonies, so far as he was aware, though he believed that in South Australia the amount of compensation was not limited; still, if a workman was incapacitated, surely he was entitled to fair compensation, whether his wages were high or low? A man might have a large family dependent on him, and, if his earnings were small, the damages he could recover might be altogether incommensurate with the extent of his injuries.

Motion to strike out the clause put and negatived.

MR. ILLINGWORTH said he had an amendment of a somewhat similar nature to that which the hon. member for East Perth intended to introduce if the clause had been struck out. He proposed to leave the question of damages in the hands of the Court. He thought that when a Court tried a case it might also be entrusted to assess the damages. If it was competent to decide upon the question of injury and negligence, surely it was competent to decide upon the question of compensation. As the clause now stood, the maximum amount recoverable was a sum equivalent to three years' earnings, so that a man receiving 6s. a day, and having a wife and family dependent on him, would not be able to recover more than £300, although he might be injured for life. He must confess he had not much hope of carrying his amendment, looking at the present attitude of the Government benches; still he felt it his duty to move it. He moved to strike out all the words after the word "shall" in the second line, and insert the following words: "be assessed or determined by the Court to which the claim for damages shall be made." The clause would then read: "The amount of compensation recoverable under this Act shall be assessed or determined by the Court to which the claim for damages shall be made."

THE PREMIER (Hon. Sir J. Forrest) regretted he could not agree to the amendment. He thought it was only reasonable that there should be some limit to the amount of compensation. As he had already said, there were two sides to this question, and, while he was quite prepared to do every justice to the workman, he also thought they must not altogether lose sight of the employer, who surely had some rights? The employer was not a regular wretch, deserving of no sympathy at all. In many cases in this colony the employer of labour was a hard-working man himself, whose interests deserved to be safeguarded as well as those of the workman. This amendment placed no limit at all on the amount of damages recoverable.

MR. ILLINGWORTH: Can't you trust your Courts?

THE PREMIER (Hon. Sir J. Forrest) said this was not the only Bill that limited the powers of our Courts. A great many of our Acts fixed the maximum penalty which a Court could impose, and he saw no reason why we should not do so in this case. He knew that the amount of compensation recoverable for accidents was limited in some of the other colonies. In South Australia, he believed, no one could recover more than £1,000 damages against the Government for injuries sustained by a railway accident. As to the case of an apprentice, he should like to know what employer would ever be likely to take an apprentice if his master was to be liable to be mulcted in an unlimited amount of compensation? What was the value of an apprentice's services, after all? Very little indeed, as a rule; yet it was proposed to make his employer liable to a large amount of compensation if he met with an accident. It seemed to him that some members desired to make the prospective amount of compensation to which employers should be liable so high that we should soon have no employers of labour at all. He regretted that he should appear to oppose every proposal made by the two hon. members who were taking such an active part in connection with this particular Bill; but he could see no other course open to him.

MR. RICHARDSON thought everyone must be prepared to take the risk of his own calling or employment, otherwise labour would soon come to a standstill. They must be guided in these matters by common sense and natural laws. An employer might have fifty men in his employ, and through some dreadful accident they might all be annihilated, and the employer might be stripped of all he possessed, and both he and his family left utterly destitute, while his workmen's families were provided for. They all admitted that an employer should accept a certain amount of responsibility, and no right-thinking man would wish that he should evade his responsibility, if there was gross carelessness. At the same time he thought it was only right and fair that the amount of compensation should bear some proportion to the earnings and the station in life of the person injured.

MR. SOLOMON said he agreed there should be a limit to the amount of compensation, and he thought the difficulty might be met by the addition of a few words, limiting the amount of compensation in any case to £500.

Amendment put and negatived.

Clause agreed to.

Clause 6.—"An action for the recovery, "under this Act, of compensation for an "injury shall not be maintainable unless "notice in writing that injury has been "sustained is given within six weeks, "and the action is commenced within six "months from the occurrence of the "accident causing the injury, or in case "of death within twelve months from "the time of death: Provided always, "that in case of death the want of such "notice shall be no bar to the maintenance of such action if the Judge who "tries the action shall be of opinion that "there was reasonable excuse for such "want of notice:"

MR. ILLINGWORTH said this clause provided that notice of action must be given within six weeks of an accident happening. There were cases in which it might not be possible to give notice within that short space of time. A man might be delirious or insensible, and his nearest relations would have something else to think of besides litigation. He moved that the word "twelve" be substituted for "six." He thought the Government might, at any rate, consent to one of the many amendments which had been suggested. There were cases in which a notice could not be given in six weeks. [THE ATTORNEY GENERAL: Nonsense.] No nonsense at all. A man for whom he once acted as trustee was injured through a piece of heavy iron falling upon his head, and that man was insensible for more than six weeks; and for weeks afterwards he was negotiating with the contractor for the work where the accident occurred, to avoid litigation if possible. Why should a man, under such circumstances as these, be deprived of his remedy?

THE ATTORNEY GENERAL (Hon. S. Burt) said he found that almost every country where this principle of an employer's liability was recognised, and certainly every colony in the Australian

group, except, perhaps, New Zealand, which had some new-fangled ideas of her own, had adhered to this six weeks' limitation. If a man remained insensible all that time—a very remote contingency—the Court, as a matter of course, would grant a waiver of notice, if a reasonable excuse were shown. What was a good excuse, he should like to know, if the fact of the man having been insensible all the time was not a good excuse? He thought six weeks was quite long enough for any honest man to make up his mind whether he ought to bring an action or not against his employer. If the man was not in a position to give the notice himself, there were plenty of lawyers about; and very often it would be the lawyers who would be more anxious to bring an action than the injured man.

MR. RANDELL hoped the hon. member would withdraw his amendment, and move another one, of which he had given notice, in a later part of the clause, to strike out the words "in case of death," in the proviso. If the hon. member did that, he would be prepared to support him. This would give the Court discretionary power to accept a reasonable excuse for not giving notice, in case of injury as well as in case of death.

Amendment, by leave, withdrawn.

MR. JAMES thought that, in case of death, notice of intended action should be given by the deceased's representatives within less time than twelve months, which was the time fixed by this clause. In the Act that passed the House of Commons in 1893 notice was abolished altogether. He proposed to strike out "twelve" and insert "six," and, in lieu of the proviso, to insert the following: "Provided that any such notice "as aforesaid may be given by such "workman, his solicitor or agent. Pro- "vided also, that if such workman has "sustained injury under such circum- "stances as render him physically or "mentally incapable of giving or direct- "ing the giving of such notice, or if, "in the opinion of his medical adviser, it "would be injurious to such workman "to give or direct the giving of such "notice, and so as in any of such cases "to be unable or unfit to give the notice "required by this section, then, notwith- "standing anything in this section con- "tained, such notice may be given not "later than one month after the work- "man becomes physically or mentally "capable of giving or directing the giving "thereof, or when his medical adviser "shall consider it would not be injurious "to such workman to give or direct the "giving of such notice as the case may "be. And in any such case as herein "provided for, the right of action shall "be extended to a period of three months "from the date when the person is cap- "able or fitted to give or direct the "giving of such notice as aforesaid, and "shall not reckon from the occurrence of "the accident causing the injury. Pro- "vided also, that the want of any such "notice as aforesaid shall be no bar to "the maintenance of such action if the "Judge who tries the action shall be "of opinion that there was reasonable "excuse for such want of notice, or that "the same has not prejudiced the em- "ployer."

THE ATTORNEY GENERAL (Hon. S. Burt) said he would be inclined to agree with the hon. member for Nannine's proposed amendment, to strike out the words "in case of death," in the proviso as it appeared in the Bill. If they did that, they would not want this most elaborate clause of the hon. member for New Zealand (Mr. James). The amendment of the hon. member for Nannine would accomplish the same end, and do it in a much neater way. He was prepared to accept that amendment, though he thought it would be better to provide for it in another form. All these matters required some little consideration, and it might be necessary to add something to the end of the clause. If the hon. member would accept his assurance, and let the clause pass for the present, he would bring up an amendment that would be equivalent, when the Bill was re-committed.

MR. R. F. SHOLL thought it was desirable there should be some reasonable limit fixed for bringing these actions for damages. Twelve months seemed a long time to give. The defendant might require to collect evidence which might throw the cause of the accident upon the injured man himself, and, if the time for giving notice of action were extended over too long a period, this evidence might not be obtainable; the witnesses

might be scattered all over the country, or have left the colony.

MR. JAMES said he was prepared to accept the Attorney General's assurance that the matter would be dealt with upon the re-committal of the Bill, and would therefore withdraw his amendment.

Amendment, by leave, withdrawn.

MR. ILLINGWORTH moved to strike out the words "in case of death" in the proviso, but subsequently withdrew his motion, upon the assurance of the Attorney General that he would propose an equivalent amendment when the Bill was re-committed.

Clause agreed to.

Clause 7—Money payable under penalty to be deducted from compensation under the Act:

Put and passed.

Clause 8—Mode of serving notice of injury:

MR. JAMES said that, according to this clause, the notice must be served on the employer; would it not be as well to add "or manager?" The employer might not be in the colony.

THE ATTORNEY GENERAL (Hon. S. Burt) said this was an important notice, and should be served, if possible, upon the employer, or be left at his residence or place of business, as provided in the next sub-section.

MR. JAMES said if an employer had several places of business—one here, and one in England, or in Melbourne—which place of business was the notice to be left at?

THE ATTORNEY GENERAL (Hon. S. Burt) said the clause provided that the notice might be sent by post in a registered letter, addressed to the person on whom it was to be served, at his last known place of residence or place of business. Surely that was enough.

MR. JAMES said that to send a notice by post you must know the address. There were several mining companies now in the colony, employing a considerable number of workmen, and he was sure that not one-tenth of these men knew who their employers were, or what their address was. What was the objection to having the notice served upon the manager, on the works, where the accident happened?

THE ATTORNEY GENERAL (Hon. S. Burt) said the clause was the same as was in force almost everywhere, and it had been found to answer the purpose.

Clause agreed to.

Clause 9—Actions under this Act brought in Local Courts may be removed, as other actions, into the Supreme Court:

Clause put and passed.

MR. JAMES moved that the following new clause be added to the Bill, to stand as clause 6:—"In determining in any "case the amount of compensation payable by an employer, the Court shall "take into consideration the value of any "payment or contribution made by such "employer to or for the injured person "in respect of his injury, and also the "value of any payment or contribution "made by such employer to any insurance or compensation fund to the extent to which any person who would "otherwise be entitled to compensation "has received or is entitled to receive "compensation out of such fund. In "any action the fact of any payment "or contribution having been made by "the employer as aforesaid shall not, of "itself, be any admission of liability on "the part of the employer." The hon. member said this clause was not in the English Act, but a similar clause was in the New Zealand Act; and, as it was entirely in favour of the employer, he presumed there would be no objection to it.

THE ATTORNEY GENERAL (Hon. S. Burt) said he would be prepared to accept this clause if the hon. member would put it in an intelligible form.

MR. JAMES: I suppose they can't draft Acts in New Zealand?

THE ATTORNEY GENERAL (Hon. S. Burt): Yes, they can; but the hon. member cannot copy them correctly.

Some verbal alterations having been made in the clause, it was agreed to.

MR. JAMES moved that the following new clause be added to the Bill:—"Where the personal injury to a workman, who is illegitimate, results in death, "the same rights of compensation shall "exist for the benefit of his mother, or of "brothers and sisters by the same father "and mother, as if he and such brothers "and sisters were legitimate." He thought this was a necessary and useful provision in the case of illegitimate persons who sustained fatal injuries.

THE ATTORNEY GENERAL (Hon. S. Burt) said he had no objection to it.

Clause put and passed.

MR. JAMES moved that the following new clause be added to the Bill:—"In an action against an employer, a "workman shall not by reason of his "continuing in the employment of the "employer with knowledge of defect, "negligence, act, or omission which caused "the injury, be deemed to have volun-"tarily incurred the risk of the injury. "Provided, however, that a workman "shall not be entitled to any right of "compensation or remedy against his "employer in any case where the employer "was ignorant of the defect, negligence, "act, or omission which caused his injury, "and such workman, knowing of the "same, failed, without a reasonable excuse, "to give or cause to be given, within a "reasonable time, information thereof to "his employer or to some person superior "to himself in the service of his em-"ployer. Provided also, that no workman "shall be entitled to recover damages or "compensation in respect of any injury "arising from his own negligence."

THE ATTORNEY GENERAL (Hon. S. Burt) said the clause clashed somewhat with sub-section 3 of Clause 4; nor did he see it in the New Zealand Act.

MR. JAMES said he did not wish to press it.

Motion, by leave, withdrawn.

MR. JAMES moved that the following new clause be added to the Bill:—"Where "compensation is awarded in case of the "death of a workman for an injury "sustained by him in the course of his "employment, the amount recovered, after "deducting the costs not recovered from "the defendant, may, if the Judge who "tries the action so directs, be divided "between the wife, parents, and children "of the deceased, in such shares as the "Judge may determine." The hon. member said this was another "new-fangled" idea from New Zealand, but he thought it was a very wise provision.

THE ATTORNEY GENERAL (Hon. S. Burt) said he would offer no objection to it.

Clause put and passed.

MR. JAMES moved that the following new clause be added to the Bill:—"An "action under this Act shall lie and may "be maintained against the legal per-"sonal representatives of a deceased "employer." The clause was merely intended to make it quite clear that such an action would lie.

Clause put and passed.

MR. JAMES moved that the following new clause be added to the Bill:—"Whenever an employer enters into a contract, either written or verbal, with an "independent contractor to do part of "such employer's work, or whenever such "contractor enters into a contract with a "sub-contractor to do all or any part of "the work comprised in such contractor's "contract with the employer, such contract or sub-contract shall not bar the "liability of the employer for injuries to "the workmen of such contractor or sub-"contractor, resulting from any defect "in the condition of the ways, works, "machinery or plant, if they are the "property of the employer, or furnished "by him, and if such defect arose or had "not been discovered or remedied through "the negligence of the employer, or of "some person entrusted by him with the "duty of seeing that such condition is "proper. Nothing in this section con-"tained shall take away any right of "action which the principal employer "may have against his contractor or "sub-contractor, or any right of action "which any workman may have against "his immediate employer, but the work-"man shall not be entitled to recover "compensation more than once in respect "of the same injury." The hon. member said this clause was intended to meet a case where a contractor sub-let a portion of his contract to another person; it provided that, in such cases, the original contractor should not be released from his liability in the event of a workman sustaining an injury resulting from any defect in the plant or machinery furnished by the contractor to the sub-contractor for carrying out the work. The same provision was contained in the Bill passed by the House of Commons in 1890, and again in 1893. It was also in the New Zealand Act, and it appeared to him a very necessary provision to make. Great injustice might occur if an employer or contractor could rid himself of his liability under the Bill by merely sub-letting the contract or any part of it.

THE ATTORNEY GENERAL (Hon. S. Burt) said this was a subject that

had given rise to a good deal of argument and discussion in the House of Commons, and he did not think they arrived at any decision with regard to it. He believed it baffled all their efforts to frame a clause that would meet all the objections raised to it. It seemed to him that the idea contained an element of justice about it; at any rate, a good deal might be said on the subject, though he did not think it could be dealt with at a moment's notice. There were many difficult points surrounding it. A contractor might sublet the plastering of a building to another man, and at the same time lend him some scaffolding or a ladder, and the scaffold might break down and break a man's leg. Who was responsible for the accident? The first contractor might say that he had let the plastering to another person, and that you could not come upon him as the employer of the man who broke his leg. It might be said that if a man lent a ladder or a scaffold to the person who was going to do the work for him, it was his duty to see that it was in good order; and, if a defect should be discovered, and the accident traced to that defect, it seemed only right that the contractor should be held responsible for the accident. On the other hand, the defect might have been caused after the plant had left the contractor's hands, and that the contractor knew nothing about it, or had anything to do with it. The whole question was open to a good deal of discussion. There was something good in it, but only New Zealand seemed to have adopted it. It was significant that, although New South Wales, Queensland, and South Australia had quite recently amended their Acts, none of them had amended them in this shape.

Mr. LOTON agreed that there was much to be said on both sides of this question. A contractor might sublet a portion of the work to a sub-contractor, and supply him with the necessary plant, and that plant might be in first-rate condition at the time; but, whilst it was being used the sub-contractor might take no care of it, and let it become defective. It appeared to him that under this clause the original contractor would still be held responsible.

Mr. James: Not unless you proved neglect against him.

Mr. RICHARDSON said another way of looking at the matter was this: supposing a contractor sublet a portion of his contract, and lent the sub-contractor a lot of stuff to make scaffolding, and among that stuff there was plenty of good sound material, but also some that was defective, and the sub-contractor did not take the trouble to select the good material, but employed the rotten and defective material in the erection of the scaffolding, and that scaffolding broke down and somebody was injured, why should the contractor be held liable when it could not be said to have been his fault that the sub-contractor had used that defective stuff?

Mr. R. F. SHOLL thought the clause embodied a very dangerous principle. Supposing a piece of machinery, an engine in good order, were lent by the contractor to the sub-contractor, the boiler of that engine might be rendered unsafe by half-an-hour's carelessness, and an explosion take place. The sub-contractor might say it was not in good order when he got it, and the contractor would say that it was, and there would be a lawsuit. He thought the Bill as it stood provided sufficient protection for workmen without further amendments. If the Government were going to accept all these new sections they would not know their own Bill soon. The Bill had been published and circulated, and read by those who were most chiefly concerned in it, and there had been no complaints about it, either from the employers of labour or workmen themselves.

Mr. COOKWORTHY thought if this new clause became the law of the land it would tend to make sub-contractors very careless and reckless with regard to any machinery or plant they might receive from a contractor, knowing as they would that the contractor was the person whom the law held liable.

Mr. RANDELL said he was inclined to think that the clause was not so unreasonable as some hon. members seemed to regard it. They had already accepted the principle, and this clause simply extended the application of that principle. When a man took a contract to build a house or a ship he took the whole responsibility of the contract upon himself from beginning to end, and if he liked to sublet any portion of the work, for

his own convenience and profit, he ought not to be relieved from his responsibility.

THE ATTORNEY GENERAL (Hon. S. Burt) said as the clause was a contentious one, and also an important one, and had not received much consideration, he would move that progress be now reported and leave given to sit again next day.

Motion put and passed, and progress reported.

TELEGRAM FROM DR. MONTEITH *RE* CUE HOSPITAL ACCOMMODATION.

THE PREMIER (Hon. Sir J. Forrest): Before moving the adjournment of the House, sir, I should like to inform members, if you will permit me, that a telegram has been received by the Clerk of the House from Dr. Monteith, the Resident Medical Officer at the Murchison, with reference to a question which arose in this House a few days ago between the hon. member for Nannine and myself. The Clerk has handed me the telegram, and, with the permission of the House, I will read it:

The Clerk of the Legislative Assembly.
Sir,—By the local paper of the 3rd inst. I observe Mr. Illingworth holding me as his authority for a slanderous accusation against Sir John Forrest in regard to the withholding of additional funds towards the Cue Hospital. The Government had, previous to Sir John's visit, granted £40 to the hospital, and in conversation with Sir John, in the presence of Warden Dowley, I said I thought another £30 would be required to complete the furnishing, *pro tem.*, whereupon I immediately wrote a letter to the Warden as follows: "E. P. Dowley, Esq. Dear Sir,—Will you please acquire the necessary authority to incur an additional expenditure towards furnishing the hospital to the amount of £30 over and above that already authorised to be spent, viz., £40." The authority was given forthwith by Sir John Forrest. In conversation with Mr. Illingworth in regard to this false and inhumane report, I told him, in the presence of Mrs. Monteith, that it was a lie, and Sir John had given all that was asked. Sir John personally visited the hospital, and took a deep interest in the welfare of the sick. I would request you to make this letter of mine known to the members of the Assembly and to the public. (Signed) JAS. MONTEITH, R.M.O., Murchison, August 9th.

MR. ILLINGWORTH: May I be allowed to make a statement?

THE SPEAKER: The hon. member would be out of order in doing so.

ADJOURNMENT.

The House adjourned at forty-five minutes past 5 o'clock p.m.

Legislative Council,

Wednesday, 15th August, 1894.

Railway Construction: proposals for—Casualty Ward, Fremantle: charges for use of—Civil Service Commission: report of—Mullewa Railway: completion of—Defence Forces Bill: committee—Bankers' Books Evidence Bill: second reading: committee—Adjournment.

THE PRESIDENT (Hon. Sir G. Shenton) took the chair at 4·30 o'clock p.m.

PRAYERS.

RAILWAY CONSTRUCTION—PROPOSALS FOR.

THE HON. R. G. BURGES asked the Colonial Secretary:—

1. If the Government had received any proposals from Mr. D. Diereks, on behalf of a German firm, for the construction of cheap lines of railway in this colony?

2. If so, could the Government give the information to this House?

THE COLONIAL SECRETARY (Hon. S. H. Parker) replied:—

1. Mr. Diereks called upon the Premier and explained the cheap railway system of his firm.

2. Mr. Diereks stated that he could land at Fremantle the *material* and *rolling stock* for a 2ft. 6in. railway, for about £600 a mile.

CASUALTY WARD, FREMANTLE—CHARGES FOR USE OF.

THE HON. D. K. CONGDON asked the Colonial Secretary whether the present casualty ward at Fremantle was established *first* for the use or convenience of Government employees, or was it not established for the use of the general public who might meet with accidents;