Queensland

Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 5 OCTOBER 1886

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LEGISLATIVE COUNCIL.

Tuesday, 5 *October*, 1886.

Gold Fields Act Amendment Bill—third reading.—Mining Companies Bill—third reading.—Quarantine Bill—committee.—Mineral Lands (Coal Mining) Bill—committee.—Health Act Amendment Bill—committee—third reading.—Message from the Legislative Assembly—Marsupials Destruction Act Continuation Bill.—Employers Liability Bill—second reading.

The PRESIDING CHAIRMAN took the chair at 4 o'clock.

GOLD FIELDS ACT AMENDMENT BILL.

THIRD READING.

On the motion of the POSTMASTER-GENERAL, this Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly, by message in the usual form.

MINING COMPANIES BILL.

THIRD READING.

On the motion of the POSTMASTER-GENERAL, this Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly, by message in the usual form.

QUARANTINE BILL.

COMMITTEE.

On the motion of the POSTMASTER-GENERAL, the Presiding Chairman left the chair, and the House went into committee to consider this Bill.

Preamble postponed.

Clauses 1 to 11 passed as printed.

On clause 12, as follows:—

"The surgeon, dispenser, or other medical officer, of every ship arriving from beyond sea shall truly answer all such questions as shall be put to him by such pilot or health officer, or other officer, touching the health of the passengers of such ship during the voyage, and the cause or causes of the death of any person who has died on board, or of any passenger who has died on shore in the course of the voyage, and touching the existence of any infectious or contagious disease at any port or place from which the ship has come, or at which the ship has touched.

"If any such surgeon, dispenser, or other medical officer refuses to answer any such question, or makes any false answer to any such question, he shall be guilty of a misdemeanour, and shall on conviction be liable to a penalty not exceeding three hundred pounds and also to be imprisoned with or without hard labour for any period not exceeding two years."

The HON. W. D. BOX asked the Postmaster-General the meaning of the word "dispenser." It seemed a somewhat unusual word to use in connection with a ship. If there was no surgeon or medical officer, it appeared to him that the person who should answer questions should be the master. He should like to know the position that would be occupied by a man called a dispenser.

The POSTMASTER-GENERAL said he could only say that the word "dispenser" was used in all antecedent Acts dealing with the subject of quarantine, and it had been thought advisable to continue its use.

The HON. F. T. GREGORY said the point had been raised on the second reading of the Bill and had been taken exception to by a medical gentleman. The term was usually applied to a person in a hospital or infirmary, whose duty it was to have charge of the medicines and prepare all prescriptions ordered by the surgeon. Further, it was applied to all those who had actually got a certificate of qualification as pharmaceutical chemists. They must know enough chemistry to pass certain examinations before they could be employed in the capacity of dispensers. He knew this much, that the term had a significant meaning out in these colonies during the time they were Crown colonies. For some time he had occasion to more or less communicate with the medical department, and he remembered distinctly that the term "dispenser" applied to the colonial surgeon's assistant. Whether dispensers would be qualified to make a report as required by the clause was a legal point upon which he was not quite clear.

The HON. W. D. BOX said, would the hon. gentleman inform him by what officer the questions would be answered, supposing there was no surgeon, dispenser, or medical officer? The object of the clause was to ascertain by *viva voce* examination the state of the health of the crew and passengers; but, supposing a vessel were to arrive without any surgeon, or medical officer, or dispenser, there was nothing in the clause to compel the master to answer the questions to be asked. The clause seemed to him to be necessary, but many vessels came to this country without any medical officer or dispenser.

The POSTMASTER-GENERAL said he apprehended that disease would not exist on board a ship without the master knowing of it, and there were clauses in the Bill pointing out the duties of a master of a ship. Even if a vessel arrived without a surgeon, dispenser, or other medical officer, section 29 provided that the Governor in Council might appoint a medical officer to take charge of any of the passengers.

The HON. F. T. BRENTNALL said the objection raised by the Hon. Mr. Box was anticipated in the 11th clause so far as concerned a master of a ship being held responsible for answering any questions put to him. Part of the 11th clause read—

"Shall truly answer all such questions as may be put to him by the pilot, health officer, or other officer, touching the health of the passengers of the ship during the voyage, and the cause or causes of the death of any person who has died on board."

That provided for the objection taken by the hon. gentleman. With regard to the 12th clause, he thought it referred to immigrant ships; at any rate he had known one or two cases in which certificated chemists and druggists had been placed in charge of the drugs and had been recognised as dispensers on board of immigrant ships.

The HON. A. J. THYNNE said it did not appear to him that a medical officer must be of necessity a duly qualified medical practitioner. The words "surgeon, dispenser, or other medical officer" would cover any person who was charged with the duties of looking after the health of the ship, not only the surgeon but all those who were appointed to assist him. Now, it was very important that the health officer when making inquiries as to the health of those on board should get information from different persons, and not be obliged to extract it from one person only. All persons connected with the ship should be bound to make correct answers to any question put to them. Very likely the word "dispenser" was used in the regulations applying to immigrant ships, because in most immigrant ships there was a dispenser as well as a medical officer. The words of the section would not only cover the medical officer or dispenser, but any person who was charged with looking after the health of the passengers, and it might be important that those persons should be

compelled to answer all questions put to them. He noticed the 42nd section of the Passengers Act of 1855 said :—

"No medical practitioner shall be considered to be duly qualified for the purposes of this Act unless authorised by law to practise in some part of Her Majesty's dominions, or in the case of a foreign ship in the country to which such ship may belong, as a physician, surgeon, or apothecary."

The word "apothecary" might mean a mere chemist.

Clause put and passed.

Clauses 13 to 38, and preamble, passed as printed.

The House resumed, and the CHAIRMAN reported the Bill without amendment.

The report was adopted, and the third reading of the Bill made an Order of the Day for to-morrow.

MINERAL LANDS (COAL MINING) BILL.

COMMITTEE.

On the motion of the POSTMASTER-GENERAL, the Presiding Chairman left the chair, and the House went into committee to consider this Bill in detail.

Clause 1—"Short title"—put and passed.

On clause 2, as follows :—

"Any person who is desirous of prospecting Crown lands for coal may make application in the prescribed form to the proper commissioner for a license to occupy any Crown lands described in the application, and not being of greater area than six hundred and forty acres, for the purpose of searching for coal thereon.

"Every such application shall be accompanied by a description of the land sufficient to identify it, and the applicant shall pay to the commissioner when he lodges the application a sum equal to sixpence for every acre of the land comprised in the application.

"If two or more applications are made for the same land, or comprising in part the same land, the first applicant shall be entitled to priority.

"Upon receipt of the application the commissioner shall give to the applicant a license to occupy the land for the period of twelve months from the date of the license, and to dig and search for coal therein."

The HON. F. T. GREGORY said it was pointed out on the second reading that the clause was mandatory on the commissioner, and there did not seem to be any provision in the Bill enabling the commissioner to refuse a license for and reason whatever.

The POSTMASTER-GENERAL said the hon. gentleman was quite correct, and the clause was intended to be mandatory. The license was of the nature of a miner's right, and would confer upon people the privilege of prospecting for coal on Crown lands.

The HON. F. T. GREGORY said some people might avail themselves of the clause if they had every reason to believe there was no coal to be found in the ground, in order to secure a piece of country as against someone else, and the commissioner, though satisfied that they only wished to get possession of the country under the pretext of coal-mining, would have no option but to grant a license. The land might be available for something else much more useful, and for which the Government might obtain a higher rent. However, the risk was not very great, and he had only drawn attention to the matter to show that cases might occur in which an undue advantage might be taken under the Mineral Lands Act.

The POSTMASTER-GENERAL drew the attention of the Committee to clauses 3 and 4. Clause 3 pointed out that the licensee should be entitled during the period of the license to occupy the land, and to dig and search for coal therein. He might depasture upon the land any stock used by him, or the persons employed by him in digging for coal, but must not use the land for any other purpose. That met the objection raised by the hon. member. Then clause 4 provided that the license might be renewed for another period if proper proof were made to the commissioner that the licensee had during the period of his license carried on the operation he professed to carry on when receiving his original license. It was to be remembered that during those two years the Government would receive 6d. per acre for those lands, which was a good rental for lands where coal was usually found, because, where coal was found at the present time in a marketable situation, the surface of the land was not of a very rich description. The license would not be renewed unless satisfactory evidence were given that diligence had been exercised during the first year in searching for coal.

The HON. A. J. THYNNE said that it had been held by the Supreme Court that the granting of a license implied discretionary power, and therefore the commissioner would be at liberty to exercise some discretion in the granting of licenses.

Clause put and passed.

Clauses 3 to 5, inclusive, passed as printed.

On clause 6—"Rent by way of royalty"—

The HON. J. D. MACANSH said he had been informed that the royalty paid by the private owners of coal lands was 9d. or 10d. per ton of coal raised, and he thought it would be unjust to those owners of coal-mines to reduce the royalty to people who took up land for coal-mining under the Bill.

The POSTMASTER-GENERAL said he had no information on the subject. The Bill did not deal with private land at all. It was intended to encourage the exploration of Crown lands for coal, and what effect it might have in relation to existing private contracts he had no idea whatever.

Clause put and passed.

The remaining clauses were passed without discussion, and the Bill was reported without amendment.

The report was adopted, and the third reading of the Bill made an Order of the Day for to-morrow.

HEALTH ACT AMENDMENT BILL.

COMMITTEE.

On this Order of the Day being read, the Presiding Chairman left the chair, and the House went into committee to further consider the Bill in detail.

On clause 10—"Dairies"—

The POSTMASTER-GENERAL said the Hon. Mr. Wilson had some amendments to propose, which were a considerable improvement on the measure before the Committee, and which had the full concurrence of the Government.

On the motion of the HON. W. HORATIO WILSON, the clause was amended so as to read as follows :—

1. Any health officer, inspector of nuisances, or inspector appointed for that purpose by the Central Board of Health, may at all reasonable times enter, inspect, and examine any dairy.

2. If it appears to the health officer or any such inspector that the dairy is in an unclean or unwholesome condition, or that diseased cows or other animals are milked in the dairy, or if any person affected with an infectious disease is found to be in any part of the premises on which the dairy is situated, under such circumstances that the milk in the dairy is likely to be

contaminated or made unwholesome, the health officer or any such inspector may, by notice under his hand, forbid the selling of any milk or product of milk from such dairy until the matter has been determined by the justices, and shall forthwith proceed to make a complaint to a justice accordingly.

3. Upon the hearing of the complaint the justices may give such directions as they think fit with respect to cleansing or disinfecting the dairy, or destroying or removing from it any deceased cows or other animals which are milked in it, or removing any sick person from the premises, and, if they give any such directions, shall also forbid the sale of any milk or product of milk from the dairy until such directions are complied with to the satisfaction of the health officer or inspector.

4. Any person who, after any such notice or order forbidding the sale of milk from a dairy has been given or made, and while it is in force, sells or delivers any milk or any product of milk from the dairy referred to in the notice or order, shall be liable to a penalty not exceeding fifty pounds, or, at the discretion of the justices, without the infliction of a fine, to be imprisoned for a period not exceeding six months, and any milk or product of milk so sold or delivered may be destroyed by any such inspector.

The HON. W. HORATIO WILSON moved the following new clause to follow clause 10 :—

11. (1.) Every person in charge of a dairy shall, on request, furnish to any health officer, inspector of nuisances, or other inspector authorised in that behalf, a list of his customers and any personal assistance and information which he is capable of furnishing to such officer, to enable him to discover or endeavour to discover any source of contamination or infection to which any milk in the dairy may be exposed.

(2.) Every such person shall forthwith report to the health officer or inspector of nuisances of the district where the dairy is situated, or, if there is no such officer or inspector, to the Central Board of Health, any case of infectious or contagious disease which may happen in any part of the premises upon which the dairy is situated.

(3.) If at any time disease exists among the cattle in a dairy, the milk of a diseased cow or other animal therein shall not be mixed with other milk, or be sold or used in any way for human food, or for the food of any animal.

(4.) No water-closet, privy, cesspool, or urinal shall be allowed to be within, or to communicate directly with, or to be ventilated into any place where milk intended for the food of man is obtained from cows or any other animals, or where any product of such milk is prepared, collected, deposited, sold or exposed for sale.

(5.) All utensils and vessels used by a cow-keeper, dairyman, or purveyor of milk for the reception, storage, or delivery of milk or any product of milk, shall be thoroughly cleansed with steam or scalding water as frequently as may be necessary for keeping such vessels and utensils perfectly clean and sweet, and only clean water shall be used for this purpose.

(6.) Any person offending against the provisions of this section shall be liable to a penalty not exceeding twenty pounds.

It was proposed to insert the clause to follow out a suggestion which he had made on the second reading of the Bill last week, and the object of it was to provide that any person in charge of a dairy should furnish the health officer with a list of his customers, and give such other assistance as would enable the health officer or inspector to discover any contamination or infection. Subsection 2 provided that every person in charge of a dairy should report to the health officer any case of infectious disease. Subsection 3 provided that the milk of diseased animals was not to be used. Subsection 4 provided that there should be no drainage in connection with the dairy that would communicate directly with any place where milk might be kept. Subsection 5 provided that all utensils used by dairymen should be kept thoroughly cleansed, and the 6th section provided a penalty for non-compliance with the preceding sections. He thought the clause would commend itself to hon. gentlemen as being one of a very useful character, and one that would have the effect which it was intended to have.

The HON. A. HERON WILSON said the clause appeared to him to be a very arbitrary one. Every person in charge of a dairy was to be compelled upon request to furnish any health officer or inspector of nuisances with a list of his customers. He thought that might be carried too far, and he did not see any reason for such a provision. Perhaps the hon. gentleman would explain the object of it.

The HON. W. HORATIO WILSON said he did not think hon. gentlemen would find the clause arbitrary when they considered the full effect of subsection 1. The list was to be furnished for a certain purpose, and that was to enable the officer to discover any source of contamination to which any milk might be subjected. He thought that was a very reasonable provision. The officer would only require that information when he had reason to suspect that some milk was contaminated, and under those circumstances only would the information be required. It was only right under those circumstances that the occupier of a dairy should give such information. The matter had been well thought out, and it was the opinion of medical men that such provisions were absolutely required. It was not only the opinion of Dr. Ashburton Thompson, whose opinion he quoted last Thursday, but he had submitted the question to the Central Board of Health on Friday last, and they also unanimously came to the conclusion that that was the only way of obtaining the desired information. He took the opportunity of saying that he had been very careful not to insert anything that would be in the slightest degree oppressive to milkmen. That was not the object, and he thought the clauses which had already been inserted were such that no respectable milk-vendor would in any way object to it.

The HON. A. HERON WILSON said he was perfectly satisfied with the explanation given. His object in drawing attention to the clause was to get such explanation, so that dairymen and the public generally might know what were the provisions of the Bill.

Clause put and passed.

The HON. W. HORATIO WILSON moved the following new clause, to follow the last clause, as passed :—

12. A local authority may, and if required by the Central Board of Health shall, from time to time, make by-laws for any of the following purposes, that is to say—

(1) The regulation of dairies;
(2) The cleansing of dairies and vessels used for containing milk;
(3) Regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies;
(4) Prescribing precautions to be taken for protecting milk or any product of milk against contamination or infection.

If a local authority, upon being required so to do by the central board, makes default in making any such by-laws for three months after being so required, the central board may make regulations for the purposes for which the local authority were so required to make by-laws. And any such regulations shall have the same force and effect as if they were by-laws made by the local authority.

Hon. gentlemen would see that the object of the clause was to give local authorities in any part of the colony the opportunity of making any by-laws that they might think best for the purpose of providing for the registration and cleaning of dairies, regulating their lighting and ventilation, and prescribing precautions for protecting milk from contamination. There was also power given to the Central Board of Health to require the local authority to make by-laws, and he thought hon. gentlemen would agree that that was necessary, because the power would be exercised with very great caution, and only in cases where it was necessary that such regulations should exist, and where the local authority had declined to make by-laws.

The HON. W. G. POWER said it was all very well to compel boards to make those by-laws, but he did not see how they were to compel them to carry them out. At the present time there was a by-law which compelled butchers to carry their meat hung up in covered waggons and not with the carcasses one on top of the other, covered up with a dirty cloth. That by-law was not enforced, and he wanted to know how the by-laws which a central board of health might compel a divisional board to make, were to be carried out.

The HON. W. HORATIO WILSON said the hon. gentleman showed an important reason why the clause should stand as it was. The Central Board of Health would have the power to watch the action of local authorities and might take action, whereas in the case which the hon. gentleman had mentioned, although there certainly was a by-law dealing with the subject the Central Board of Health had no power to make the municipality carry it out.

Clause put and passed.

The HON. W. HORATIO WILSON moved the following new clause to follow the last clause as passed :—

13. Any person who in any manner prevents any health officer, inspector of nuisances, or other inspector or person duly authorised in that behalf, from entering any dairy and inspecting any milk or product of milk exposed or deposited therein for the purpose of sale or of preparation for sale, and intended for the food of man, or who obstructs or impedes any such health officer or inspector, or his assistant, when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding five pounds.

The proof that any milk so exposed or deposited was not exposed or deposited for any such purpose, or was not intended for the food of man, shall be upon the party charged.

The provisions contained in the clause were merely formal, and were taken from the 97th section of the Health Act of 1884. The penalty was the same as that provided in the Health Act, and it was necessary to insert a provision of that kind in order to prevent health officers or inspectors from being obstructed in carrying out the provisions of the Act.

Clause put and passed.

On the motion of the POSTMASTER-GENERAL, the CHAIRMAN left the chair, and reported the Bill to the House with amendments.

On the motion of the POSTMASTER-GENERAL, the Presiding Chairman left the chair, and the House went into committee to reconsider clauses 1, 2, and 3.

The HON. W. HORATIO WILSON moved that the following words be inserted before clause 1 : "Part I.—Preliminary." Hon. gentlemen would see that the character of the Bill was entirely altered by the amendments that had been agreed to by the Committee, and it was necessary to insert formal words to precede the clause in order that the Bill might take its proper shape.

Amendment agreed to, and clause 1 put and passed.

The HON. W. HORATIO WILSON moved the following new clause to precede clause 2 of the Bill :—

This Act is divided into parts as follows: Part I.—Preliminary; Part II.—Cleansing rates; Part III.—Dairies.

Clause put and passed.

On clause 2—"Interpretation"—

The HON. W. HORATIO WILSON moved the addition of the following new paragraph :—

For the purposes of Part III. of this Act the term "dairy" includes any milk-house, milk-shop, or other place where milk intended for the food of man obtained from cows or other animals, or any product of such milk, is prepared, collected, deposited, sold, or exposed for sale; and also includes any dairy-farm, stock-yard, milking-yard, meadow, paddock, shed, stable, stall, or other place, where cows or other animals from which milk intended for the food of man is obtained are depastured or kept.

The object of the amendment was to properly define the word "dairy," which had been used throughout the amendments already passed. It was a very full definition, but when hon. members considered the material contained in clauses 11 and 12 they would see that it was necessary to make the meaning as extended as possible.

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

On the motion of the HON. W. HORATIO WILSON, the words "Part III.—Cleansing Rates" were inserted before clause 3.

On the motion of the POSTMASTER-GENERAL, the CHAIRMAN left the chair, and reported the Bill to the House with further amendments, and the report was adopted.

THIRD READING.

The POSTMASTER-GENERAL moved that the third reading of the Bill stand an Order of the Day for to-morrow.

The HON. W. D. BOX said : Hon. gentlemen,—The Bill has been changed a good deal, and I think it would be better to have it printed to-morrow in order that we may examine the changes. Then it could be read a third time on Thursday.

The POSTMASTER-GENERAL said : Hon. gentlemen,—The hon. member forgets that the amendments have been printed, circulated, and adopted, with only one very small amendment. If the hon. gentleman can point out anything to-morrow afternoon that will afford a reason for postponing the third reading till the following day, I shall be happy to adopt his suggestion. But there is a desire to get through as much business as possible this week; and I hope the hon. gentleman will take my word for it that there is nothing added to the Bill that is not strictly within the scope of the measure as described on its second reading.

Question put and passed.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

MARSUPIALS DESTRUCTION ACT CONTINUATION BILL.

The PRESIDING CHAIRMAN announced the receipt of a message from the Legislative Assembly, intimating that they disagreed to the amendments made by the Council, because in many cases the minimum bonus now fixed by law for the destruction of kangaroos and wallaroos was found to be unnecessarily large, and in other cases it was no longer necessary to offer any bonus for their destruction.

On the motion of the POSTMASTER-GENERAL, the message was ordered to be taken into consideration to-morrow.

EMPLOYERS LIABILITY BILL.

SECOND READING.

The POSTMASTER-GENERAL said : Hon. gentlemen,—The subject-matter that I have now to introduce to your attention is that of the Employers Liability Bill, as it is termed ; and it is one of considerable importance to many in this country. I think the Bill may be described as practically embodying the law on the same subject as is now in force in Great Britain and Ireland, with several modifications and additions thereto, That law

has been in force in those countries for a number of years—since the 1st day of January, 1881—and, from all that I understand and have learned, it has been most beneficial in its operations and results. It is just as well that hon. gentlemen should remember that the Employers Liability Act of the British Islands is not permanently on the Statute-book of the country, but is limited in its operations under clause 10, which reads as follows :—

"This Act may be cited as 'The Employers Liability Act, 1880,' and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty-seven, and to the end of the then next session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be construed as if the said Act had not expired."

That is the condition of the existence of that Act to which I think it is just as well to draw the attention of hon. gentlemen of this Chamber. I do not intend to say much about this Bill or its provisions beyond this, that it is practically, as I have said before, the measure to which I have referred with several modifications and additions, and taking the matter from the kernel point of view, if I may use the term, it simply modifies the existing law to this extent, that if a workman suffers injury through the negligence of a superintending employé who contributes to or is the cause of that injury then the employer in such a case may be liable for compensation. That is the difference. It is well known that a workman at the present time can obtain no compensation for injuries sustained by him in respect of an accident brought about by the carelessness or negligence of those charged with superintendence. I think hon. gentlemen will admit the correctness of that statement. Well, then, this Bill provides that an employer in certain cases shall be liable for injury sustained through the cause to which I have adverted within prescribed limits duly provided for in the Bill. Section 4 exhibits the circumstances under which workmen will have the right to compensation or remedy, because it will be seen that after the commencement of this Act when personal injury is caused to a workman by reason of—

(1) By reason of any defect or unfitness in the condition of the ways, works, machinery, vehicle, or plant connected with or used in the business of the employer; or

(2) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

(3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, if such injury resulted from his having so conformed; or

(4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway;

then the workman, or, in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

It will therefore be seen that the Bill places upon employers the very proper responsibility of looking carefully to the fitness, and capacity, and suitability of those whom they employ in their works, and especially should they be guarded in the matter of avocations which have inherently some danger attached to them. I say that an employer is undoubtedly the proper person to exercise judgment, and he is the proper party to see that he has suitable and reliable employés engaged in avocations in which there may lie danger from time to time. In comparing this Bill with the Imperial Act, it will be seen that section 3 contains the addition of domestic and menial servants. There is also to be found in clause 6 a reference to seamen, which will not be found in the British Act. I have, at the request of several members of this House, deferred bringing forward the second reading of this measure in order to give ample time for its consideration. That circumstance enables me to deal with this subject very shortly indeed, because I think any hon. member who has been in attendance here during the last couple of months is almost in a position to speak on each clause line by line, and the subject matter of the Bill I understand every hon. gentleman has well in hand. Beyond, therefore, recommending the Bill, which is regarded on all sides as a fair measure, I need say very little. It contains the spirit of fairness all through, and has been admitted to be a good measure not only in this colony but in our mother-land, and by other nations similar legislation has been approved of. Of course, hon. gentlemen will bear in mind that this Bill does not provide that the master shall be responsible for the ordinary occurrences of every-day life whereby servants may be injured or killed. The provisions of the Bill do not imply that at all. The 2nd subsection in clause 4, which I have already read, is very specific upon that point. It practically means this, not using the words of the clause, that a man is responsible only for the accidents which happen through the negligence of the person to whom he has entrusted his authority, but not for the ordinary negligence of fellow-servants towards each other. I know that this is a matter that has been deeply considered by all members of this Chamber, and has been very favourably received. I will therefore not detain hon. members any longer, but will content myself by moving the second reading of the Bill.

The HON. F. T. GREGORY said: Hon. gentlemen,—Although as a rule it is not desirable, in dealing with the second reading of a Bill, to go into details except by the member in charge of it, I shall crave the indulgence of the House in dealing with it to a certain extent in detail, otherwise I possibly might be misunderstood as to the views I entertain upon the subject as a whole. I may briefly state that as a whole, subject to certain amendments, I think the measure is a good one. It will not alone protect employés but employers of labour, but as I have just observed that will entirely depend upon whether this Bill is carried in its present form or subject to certain amendments to which I am about to refer. In taking the Bill up, the first thing which strikes one is in clause 3, which is tantamount to an interpretation. Clause 6, which says :—

"The expression 'person who has superintendence entrusted to him' means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour."

Now, in turning to clause 4, we find expressions which convey the same meaning, but which are differently worded, and which strike one that through this considerable confusion might arise. For instance, in clause 4, subsection 2, is the following :—

"Any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence."

Subsection 3 says—

"By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform."

Again, subsection 4 of the same clause says—

"By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer."

And again, in subsection 5 it is said—

"By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway."

Now, if the definition in clause 3 is to hold good, it strikes one that the definitions in clause 4 should be made to coincide with it, nd unless that is done considerable confusion ia likely to arise. I have only drawn attention sto this so that when the Bill gets into committee the matter shall not be lost sight of. The next point I wish to refer to is in the same clause where the term "domestic or menial servant" is introduced. Now, I have made inquiries; I have taken some trouble to ascertain what is included in Acts in force both at home and in the colonies, and I am unable to find that domestic servants are included in the same category as employés in any enactment which refers to the liability of the employer. Domestic servants are placed in such peculiar positions relatively to their employers that should they be included in the Bill it would involve every householder in a serious liability, because it is possible that there might be some slight quarrel between the master and the servant, which may possibly lead to a claim being made for compensation for some trifling injury—the employer may through the vindictiveness or spite of his employé be involved in a costly lawsuit. I will not refer longer to that point, because it may more properly be dealt with when we get the measure into committee. The next point has been touched upon by the mover of the second reading of the Bill. I refer to the inclusion of seamen in the Bill. Now, I had taken very decided views on this matter, and should have strongly protested against it, even if I had not obtained other information, and consulted with those who are deeply interested in the question of merchant shipping and with shipowners themselves. I have been furnished with a memorandum which I will read to the House as being the shortest way of condensing the views expressed by a number of shipping-owners and persons interested in shipping in the colony of Queensland. The question has been stated in the following terms by them :—

"Our objections to seamen being included in the Employers Liability Act are as follow:—

"1st. Shipowners cannot be regarded in the same light as ordinary employers of labour on the ground that their property and their servants are often beyond reach at sea exposed to dangers and risks unknown on land.

"2nd. In the course of a voyage some parts of the gear or machinery may become defective or unfit owing to bad weather, or other unavoidable causes, and under the new Act the seamen would be entitled to damages if an accident arose therefrom.

"3rd. There is no description of property so fully surrounded by legislation as shipping. From the first plate of the ship's hull laid down in the builders' yard the future owner ceases to be a free agent. He must build his ship in accordance with certain rules, with which he may not agree. He must submit his ship every six months to examination by Government and Lloyd's surveyors, whose duty it is to examine and test everything, and also see that she is well found before her certificate is renewed. He must load and stow his cargo properly, and show the maximum depth to which his ship can be immersed by painted signs on her hull. He has no free choice of servants. Masters, officers, and engineers must be picked out of a certain limited body of men holding Government certificates, and from first to last he has to submit his own judgment to rules and regulations of the most stringent character.

"4th. In face of these elaborate safeguards for the protection of life, additional burdens and responsibilities, as contemplated by the new Act, are unnecessary.

"5th. Great Britain has not included seamen in the Employers Liability Act, and it is submitted that no reason has been shown for the Parliament of Queensland adding a law to its Statute-book, unknown, we believe, in any other country of the world, and which can only apply to ships within Queensland waters.

"6th. Under the Merchant Shipping Act seamen are provided for, in case of accident, by the following clause:—

"'If the master or any seaman or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or if shipped in some British possession, to some port in such possession, or of his conveyance to such port, and the expense (if any) of his burial, shall be defrayed by the owner of such ship, without any deduction on that account from the wages of such master, seaman, or apprentice.'—17 and 18 Vic., c. 104, 228.

"Beyond this the Legislature of Great Britain has not judged fit to go."

This opinion, expressed, not by one individual, but by a body of men deeply interested in the question, though it may be said it is an *ex parte* statement, is only the natural outcome of statements made elsewhere in support of seamen being included, and it is only fair that their cause should be stated as well as that of the seamen. My own conviction in regard to the passing of any extreme measure in favour of either employers or employés is that it is likely to recoil on those whom it is intended to benefit. I look upon ultra legislation upon either side as being more mischievous and doing more harm to those it is supposed to benefit than would be done if the question were let alone altogether. The next clause to which I shall draw attention is clause 7, which provides :—

"The amount of compensation recoverable under this Act shall not exceed a sum equivalent to three times the estimated earnings for one year of a person in the same grade employed in the like employment and in the locality in which the workman is employed at the time of the injury."

To establish what exact proportion is suitable is a very open question. I am not now prepared to make any specific recommendation, but I wish to draw the attention of the House to it, so that when we consider the matter in committee we may be able to come to a fair and candid decision as to whether that amount is excessive or not. I will say now, however, that my own convictions are that it might be reduced by one year without acting inequitably in any way. Proceeding to clause 10 provision is made as follows :—

"When at the time of the happening of an injury to a workman for which he might recover compensation under this Act the workman is insured against accident under a policy of insurance, then if the employer has contributed not less than one *third* part of the premium payable in respect of the then current period of such policy, so far as it relates to the workman, the amount receivable by the workman under such policy shall be deducted from any compensation which would otherwise be payable to the workman under this Act."

Now, here I am satisfied there is a mistake made. If it is a reasonable allowance that it should be less than one-third it would imply that the accidents which occurred, which the employer would be in any way responsible for, would amount to one-third of all accidents that would take place, which would be included in policies of insurance. If hon. members take the trouble to inquire into the working of insurance companies against accidents, they will find that in nearly nineteen out of twenty cases employers are in no way responsible for them. If that is the case, why should they contribute to those accidents which have arisen from negligence for which they are not responsible. It may be said that the objection is provided against in

other parts of the Bill, but it will be found on examination not to be so. This absolutely provides that they shall contribute as high as one-third, and the statistics go to show that it should be nearer one-twentieth. If I were arbitrator between two parties, I might allow something like one-tenth, but that would be double the burden that ought to be placed on the employer. Though not engaged in any mechanical works, I have seen enough accidents to know a good deal about their causes. When in charge of public works I have seen accidents, and I know that they have very rarely resulted from any carelessness or negligence outside that of the workman himself who has suffered the injury. I have no desire to refer to specific cases, but I must, in fairness to the subject before us, make a reference to a recent prominent case which occurred, where very heavy damages were granted to a workman who had suffered the loss of several fingers. I am sufficiently acquainted with the working of machinery to speak authoritatively on this matter. I took the trouble to inspect the machinery in the case to which I particularly refer, and I am perfectly satisfied that the injury which was sustained on that occasion, whatever might have been the defects in the machine itself, was sustained through the employé's own fault. I have a full conviction in my own mind that he did a thing he had no business to do, and I could prove to the satisfaction of hon. gentlemen, if I took them to the machine, and pointed out how it did happen, and must have happened, that it was his own fault. I merely state that to show why I speak so definitely now in regard to accidents. I therefore trust that when we go into committee clause 10 will receive careful consideration as to whether one-third is a fair amount which the employer should be bound to contribute to entitle him to any consideration to the provisions of the clause. Clause 13 may be viewed by legal gentlemen as necessary, but as a practical man I cannot see the force of it. It distinctly says :—

"Any contract or agreement between an employer and a workman which, if it were valid, would have the effect of disentitling the workman to the benefit of the provisions of this Act shall, to that extent, be absolutely void and inoperative."

Though not a lawyer, if I could not make some capital out of that I am very much mistaken. At the same time do not let it be understood that I wish to fight the battle of the employer against that of the employé, for my sympathies go quite as much with employés as with employers. That they should be justly dealt with, and receive every protection at the hands of the Legislature is beyond all question, and when the matter comes before us in committee I trust the matter will receive fair and candid consideration. Before terminating my remarks on this subject, there is another matter in connection with it which, though it is outside the four corners of the measure, should not be lost sight of by the House or by the Government; the question refers to the injuries resulting from railway accidents. It must be well known to hon. members that enormous sums have been paid for compensation in carrying out the awards of juries for injuries resulting from railway accidents in the neighbouring colonies. If we were to have accidents of similar magnitude in this colony it would be enough, not only to do away with any reasonable surplus, but it might involve the colony in serious liabilities. Of course, we trust that such a thing may not take place, but as a note of warning I would like hon. members to consider the matter in connection with this Bill, in order that they may be better able to come to a just conclusion on a series of resolutions, which I propose to introduce on the subject at no distant date—namely, the limitation of the liability of the Government of this colony for compensation to persons who may receive injuries resulting from accidents on our railways. In other respects, with the amendments to which I have referred, I shall have much pleasure in seeing the Bill passed into law.

The HON. W. PETTIGREW said: Hon. gentlemen,—The law, as it at present exists, I consider requires altering, but whether the present Bill meets all the difficulties of the case I have my doubts. As the law now stands, gross injustice may be done against which there is no remedy. This Bill now before us proposes altering the law, and I hope hon. gentlemen will, in their amendments of it, look to the interest of the employer as well as to the employé. As an instance of what may be done under the law as it now exists, I shall quote a case lately before the Supreme Court. A man was employed to do certain work. He goes to a machine on which he was not employed, and which he knew nothing about, never having wrought it before, and alters it so as to make it very dangerous to work. He then tries to work it, and in doing so loses part of his fingers. He was not employed to work the machine, and had no business at it; yet that man sues the owners of that machine for loss of his fingers and gets a verdict of £750 and costs. I have read, some thirty years ago or more, of men in London who purposely went before gentlemen's carriages and came in contact with them and got themselves hurt, and thereby got damages. What is to hinder men doing something of the same sort here, but using some machine as the means of obtaining damages? Machinery, hon. gentlemen, has been the means of easing the burdens of humanity, but if the owners of machinery are to be held responsible for damages sustained by any man tampering with them, well, the sooner people stop investing in such the better for themselves. What, then, follows as a consequence? People who are now employed here manufacturing will have to cease doing so. They will go with their machinery to other countries where such impediments are not put in their way. It is self-evident to hon. gentlemen that the loss of any industry is a loss to a community and its revenue. Section 4, subsection 2, says :—

"By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence."

Now, this clause may be a means of great hardship, an instance of which I have been informed. A contractor having engaged to do certain work employs another competent man to get timber and other material to do the work. In the carrying of it out one of the pieces of timber proves defective, and an accident was thereby caused to a man. This contractor was held responsible, and had to pay for loss of time of that man, while the man who selected the timber and knew all about it escapes free. I shall refer to cases that may arise. A man has a spite against an employer, and wishes to injure him alone; but in carrying his malicious design into execution he injures or even kills some others. Suppose, for instance, he bursts a boiler; the owner of that boiler might be unable to prove that that boiler would stand double or treble the usual pressure, and at which extra pressure it burst, yet by this Bill the owner of that boiler would be called upon to pay compensation for the injuries or death of such people. Or, again, the owner of a steamer gives the loan of her for a pleasure excursion to a number of people. They are all jolly good fellows, and treat with spirits the employés of the vessel. The boiler bursts up or a collision takes place, and a lot of

lives are lost. By this Bill these workmen could claim compensation from the owners, when really the passengers are the guilty parties, and should be held liable. I mention these to show the difficulties that may arise in putting such law into execution, and if possible to suggest what may be a remedy. Refer now to clause 7—"Limit of sum recoverable as compensation"—equal to three years' earnings. I think this is a fair clause. I referred to the case lately in the Supreme Court, where the man sued for £3,000, and was awarded £750 and costs. The £750 alone is over five and a-half years' earnings of such man. If for nothing else this Bill wants passing into law to fix a limit for compensation. Clause 8—"Limit of time for recovery of compensation." These times—three, six, and twelve months—are too long. I consider that the sooner a notice is given the better. Evidence may be in existence for a week after the accident, when it may be completely gone in three months. I think that notice of action should be given within one month, or even less. In that action lately in the Supreme Court had notice of action been given within a week of the accident, the piece of timber which was thrown out of the plaintiff's hands, and which he swore was cut in two and allowed his hand to fall on to the knives and cut his fingers—that piece of timber was then in existence, and would have proved the falseness of his statement; but the defendants in that action, never dreaming that such an action could ever possibly be taken, took little interest in the matter. Anyhow, soon after a week elapsed that piece of timber was cut up and taken away, completely preventing its being a witness. It is not requisite to commence an action if even notice is given, but the giving notice enables defendants to preserve evidence. For these reasons, I consider that as short a time as possible should elapse between an accident and time of notice being given. It may be that a week would be too little, but certainly four weeks or, say, one month is abundance. Circumstances might arise when that time might be too little, but the proviso at the end would cover such cases. Then, as to the time of commencement of action, it does not matter so far as I see as to that, but six months is certainly too long; three or four months ought to be sufficient time. Then in the case of death—twelve months after death—too long altogether. Six months should be ample time. However, on these two latter I am not particular about altering. Refer now to clause 11—"Trial of actions." What is here proposed is certainly an improvement on the present practice, but I think there is room for further improvement. Permit me to refer to the late action in the Supreme Court to which I have already referred as an illustration of how this Bill may be improved in this clause. Had two practical men—men who understood about the working of machines, seen the machine in question at work, and seen likewise the way in which that plaintiff put the machine when he tried to work it—had they likewise seen the operation performed of what the plaintiff did, only not the cutting off of the fingers; had they seen all that, they would at once have seen that what was alleged as the cause of the accident had no existence; but that the accident was caused wholly and solely by that workman's ignorance and wrongdoing. Two practical men, such as I have referred to, could take evidence and settle the matter at once. Or in the event of their not being able to agree, then let the referee be a judge of a district court as in this clause. I would likewise allow a defendant to object to a particular judge being a referee. Such liberty is accorded in the selection of a jury, and the same should be accorded when one man has to settle a case. I trust, therefore, that when this Bill goes into committee it may be so amended as to admit of arbitrators with a judge of the district court as umpire. I trust likewise that it will be amended in the other instances, so that it will be fair to the employer as well as to the employé. For these reasons, I shall therefore support the second reading of the Bill.

The HON. A. HERON WILSON said: Hon. gentlemen,—This is a Bill that must be considered with very great care. On the whole, I do not think it is a good Bill for this colony. In it we have attempted too much. We are attempting in this measure what the greatest nations in the world will not attempt. I am now referring specially to the clause with regard to seamen. Although the Bill is almost a copy of the English Act dealing with this subject—which Act is said to be working well in the old country—it does not follow that it will also work well in this young colony. I have heard what the Postmaster-General said with regard to the Act working well in England, but I have also heard another and very different version as to the result of its operations, and it shows that the Employers Liability Act at home is what this measure will be here—a grand one for the lawyers. I have heard that upon the very slightest injury occurring to employés they seek a lawyer, and through him demand large sums as compensation from their employer. The employer cannot afford to pay what they ask, and therefore declines to comply with their extortionate demand. The matter is taken into court, and perhaps one-fifth or one-tenth of the amount claimed is awarded, but the employer has to pay three times that to the lawyers. I have been told that for every pound paid to the injured party two or three pounds go into the pockets of the lawyers. Is that the kind of thing we are going to advocate for Queensland? In a young colony like this, where there are, I believe, more lawyers in proportion to the population than in any other part of the world, we ought to be very careful indeed before we pass such a Bill as that now before the House. For the sake of argument it may be granted that risks with machinery in this colony are equal to those in the old country, but it must not be forgotten that the circumstances of the two countries are entirely different. I hope hon. gentlemen will bear in mind that in England, where they have thousands of competent men to choose from, it is merely a matter of pounds, shillings, and pence in getting an efficient and a reliable man, but in this colony it is very difficult indeed to obtain skilled men to take charge of machinery. We may perhaps except Brisbane, which seems to be absorbing everything for its own benefit, and perhaps to the detriment of the rest of the colony; and this is another reason why the cry for separation is raised. At the present time there are a number of unemployed people in this city, and they cannot get work. But on looking over the telegraphic news in the *Telegraph* this afternoon I find that in Maryborough only one man applied for employment in answer to an advertisement published there stating that pick and shovel men were wanted at 7s. a day. It is therefore, I contend, in drafting a Bill like this necessary to consider not only Brisbane but also other parts of the colony, and I say that at times employers in the colony cannot get competent men to work their machinery either for love or money. Applicants may state that they are capable of working certain machinery or performing certain work, and they even produce certificates from foreign firms to that effect, but their representations and their certificates are not always to be relied on. Certificates are frequently given to men because that is an easy way of getting rid of them, or because they are going to a foreign country. Consequently the employer runs a great

risk by taking such a man on trial. Suppose such a man, by neglect, through incompetency or through drink, unknown to the employer is indirectly the cause of an accident, I fail to see the justice in making the employer liable if it be proved that he took every reasonable precaution to prevent the accident. I wish to draw the attention of hon. members to this, that the whole Bill hinges on two words—"neglect" and "defect." And I contend that where incompetence exists, there neglect is more likely to arise, and where neglect is defect is more likely to creep in. I hope hon. gentlemen agree with me there. It is a very great injustice to make an employer who takes every reasonable precaution, and does everything in his power to prevent accidents by employing competent men and having his machinery protected, responsible for some action, over which he has no reasonable control, of some individual to whom he has given the superintendence of certain machinery. I therefore hope that the provision dealing with this point will be amended. As the law stands, a servant can sue his master for damages, and get damages if he proves that his master has been neglectful or in the wrong, and I consider that is a just and equitable provision. But by this Bill the whole onus will lie with the employer to show that it was entirely the fault of the party injured that the injury was caused, or that it was due to a cause over which he had no reasonable or moral control. I think it was in the other House that an illustration was given of how this will work. It was to this effect: The owner of a mine employs a first-class competent man to look after his work; that man has full power to do everything in connection with the working of the mine and can take on men and dismiss them. Suppose now that the manager, having appointed an engineer, is going down the pit, and through the negligence of that engineer something happens which causes an injury to the manager and other men below, then the employer is responsible, not only for the injuries received by "the other men," but also for what injury the manager may sustain. By this Bill the employer would be liable for compensation, although he had no reasonable or moral control over the man who caused the accident, and had nothing more to do with the accident than any gentleman in this House. Where is the justice in such a case? I have heard my friend, the Hon. Mr. Pettigrew, give his opinion on certain clauses in the Bill, and being, I suppose, next to him the largest employer of labour in either this or the other House of Parliament, I must admit that in many things I quite agree with him. But we must go a little further than the hon. gentleman went; we must not pick out one or two clauses that suit our particular purposes, but must look at the measure as a whole and see whether it will suit the whole colony. Of course, he has lately had reason to give such a Bill as this serious consideration, for there are very few who understand wood working machinery, but believe that the accident in his mill was the fault of the employé himself through his not being competent to work such a machine. I have been twenty years among wood working machinery, employing a large number of hands. I know the class of machine at which the man was injured. I saw the machine at the Hon. Mr. Pettigrew's, and I am perfectly satisfied that a competent man, understanding the working of the machine said to be defective, might work it a lifetime and never have an accident with it. There is not the slightest doubt but that the hon. gentleman was perfectly correct when he said that the accident was caused by the workman's own ignorance and fault. I maintain that if this Bill passes it will be one of the worst and most detrimental measures ever introduced and placed on the Statute-book of Queensland. It will simply prove a stumbling-block to capitalists wishing to invest in machinery or shipping, and will, as I have already said, prove a good Bill for the lawyers. I have stated that the Bill hangs on the two words "neglect" and "defect," and I trust that hon. members will agree with me that neglect is more likely to occur through incompetence, and that by neglect defects creep in. But there are wilful actions which appear as neglect or might be put down afterwards as caused through defect in the machinery, and such wilful actions it is difficult to sheet home to the guilty party, nor can they be foreseen or prevented. I will give an instance to show what I mean. My own mill is divided into two parts. A few months ago on going into the mill I found one part of the mill stopped. I asked one of the men what was the matter. He said, "We have had a break-down this morning." I inquired, "How is that?" He replied, "I cannot account for it; the mill worked all right last night." Fortunately, no one was injured on that occasion. A few days after that there was a nasty jar in the machinery, but no break-down, and on examination it was found that there was a piece of iron under the machine where it ought not to be. Our suspicions were aroused by this circumstance, and we kept a careful watch. We subsequently, within a week, discovered a piece of iron inserted in a part of the machinery where it would have caused an accident which might have resulted in the injury of one or more of the men. In the first instance, had any person been injured and an action been brought against us, how could we have proved that there was neither neglect on our part nor defect in the machinery? We could not have done it; that was a wilful action, but we could not have sheeted it home to the person who did it. Suppose a capitalist came to this colony and wished to invest in some business using considerable machinery or shipping, to oversee which he intended to appoint a thoroughly competent manager, as he did not understand the business himself, would he do so in the face of such a Bill as this? All I can say is that if he had my experience he would keep his money in his pockets, for even with the most competent men accidents may happen, which under this Bill would mean ruin to the employer, though he had done everything a living man could do to guard against accidents. It does not matter what care he may take; if an accident occurred through the neglect of his superintendent, through, say, drink, or in some way beyond his control, he, the employer, would be liable for damages. The Hon. Mr. Gregory has read a few reasons given by the leading shipowners and shipping agents in the colony for their objections to seamen being included in the Employers Liability Bill. Will hon. gentlemen read clause 6 in conjunction with clause 4? Clause 6 provides that—

> "When a personal injury is caused to a seaman or other person employed upon a ship or boat by reason of any defect or unfitness in the condition of the spars, tackle, machinery, or other apparel or furniture of the ship or boat, then such seaman or other person or his legal personal representatives, or other persons entitled in case of his death, shall have the same right of compensation against his employer as a workman or his legal personal representatives or such other persons would have in like cases against his employer under the provisions of this Act."

And clause 4 makes an employer liable for compensation in case of an injury caused to a workman "by reason of any defect or unfitness in the condition of the ways, works, machinery,

vehicle, or plant connected with or used in the business of the employer." The second objection urged by the shipowners against this Bill is that—

"In the course of a voyage some parts of the gear or machinery may suddenly become defective or unfit owing to bad weather or other unavoidable causes, and under the new Act the seamen would be entitled to damages if an action arose therefrom."

The third paragraph of the memorandum states that—

"There is no description of property so fully surrounded by legislation as shipping. From the first plate of the ship's hull laid down in the builder's yard the future owner ceases to be a free agent. He must build his ship in accordance with Government rules with which he may not agree; he must submit his ship every six months to examination by Government and Lloyd's surveyors whose duty it is to examine and test everything, and also see that she is found well before her certificate is renewed. He must load and stow his cargo with the greatest care and show the maximum depth to which his ship can be immersed by painted signs on her hull. He has no free choice of servants. Masters, officers, and engineers, must be picked out of a certain limited body of men holding Government certificates, and from first to last he has to submit to rules and regulations of the most stringent character."

Surely it is not intended to drive commerce away from the colony, but I think the provision of clause 6 will have that tendency. I will illustrate the oppressiveness of the provision by an incident which occurred in connection with my own firm. A small steamer was chartered from us by a pleasure-party to go down the Mary River. The steamer was passed by the inspecting officer as first-class, and the engineer held a certificate from the Government. The captain was a competent man. While she was returning up the river, our manager, who was in another boat, noticed the steam being blown off in the steamer for a considerable length of time. He went alongside, thinking there was something wrong, and asked the engineer why he was blowing off steam. The man answered, "It is all right." Looking at the engineer, the manager noticed he had been drinking, and going on board, asked him if he had plenty of water in the boiler. The engineer replied in the affirmative, but on rushing down below the manager found that not only was there no water in the boiler, but the boiler itself was red hot. Had he not gone on board at the time he did, and the engineer had turned on water, perhaps every soul on board would have been sent into eternity in a very short time. That would have been due to neglect on the part of the engineer. But what had the owners to do with it? Yet they would be responsible under the Bill. Are we going to ruin capitalists? Again, I would refer hon. members to clause 6. It provides that "when a personal injury is caused to a seaman or other person employed upon a ship or boat, by reason of any defect or unfitness in the condition of the spars, tackle, machinery, etc., he shall have the right of compensation against his employer. There is not a word said about latent defect; that is what cannot be foreseen; but the Bill says, "by reason of any defect." Now, I will give another instance of the way in which this will work. In 1877 I went from New York to Liverpool in the "City of Berlin," one of the finest steamers then afloat. The vessel left New York in as fine a condition as possible. We had a splendid passage, but within 600 miles of the Irish coast the shaft suddenly broke. We drifted about for several days until some other steamer was signalled and towed us into port. Now, suppose anyone had been injured by that break in the shaft, according to this measure the owners would have been liable, because it was afterwards proved that there was a defect in the welding of the shaft. But the owners had nothing to do with that. It was welded and turned under the inspection of the Government and Lloyd's surveyors. It was passed in New York as perfect, yet because it had that defect the owners would have been liable if there had been anyone injured. These are a few things, gentlemen, that require serious consideration, and I hope hon. members will not be in a hurry to pass this Bill. As I said before, it will be a great impediment to capitalists willing to invest in machinery, and it will be another stone around the neck of those already possessed of machinery in this colony. Goodness knows we have had enough to bear during the past few years, and one is almost inclined to believe that the present Parliament is ready and anxious to ignore the capitalist and those who use machinery. I therefore hope and trust that this Bill will not pass, but be left over until a committee of inquiry have had time to examine experts and given employers of labour and owners of shipping a chance of expressing their opinions.

The HON. A. J. THYNNE said: Hon. gentlemen,—This Bill is undoubtedly one of considerable importance. It is of importance inasmuch as it proposes to make some alteration in the relative positions of employers and their servants, but it appears to me, and I think hon. gentlemen, when they come to consider the matter carefully and calmly, will agree with me that this Bill is an attempt to put the law in a condition which it ought to have been in for many, many years past. Now, if we look at the natural relations between master and servant, their natural duties one towards the other, we will see that by a series of what many call judge-made laws, or rather a series of decisions, the judge-made law has varied from what might have been a natural law between the two parties. The master has a right to claim the full amount of service from the servant, and he has also the right to claim his obedience to all reasonable and proper orders. The servant, on the other hand, is equally entitled to have for his work his wages, and in return for that strict duty of obedience he is entitled to claim ample and proper superintendence on the part of the employer. I contend that in these few words I have put the relative position of master and servant in their proper light, and I say that the exception to that rule which would have been introduced is one that cannot be entertained or supported. If a master chooses for his own profit or his own convenience to depute the duty of superintendence to other persons, he ought not by that means to avoid the responsibility which ought otherwise to attach to him.

The HON. A. HERON WILSON: And what is to become of the capitalists?

The HON. A. J. THYNNE: Capitalists, if they do not understand the business in which they are proposing to embark, had better not embark in it. It would be far better for this colony in many ways if men did not come here and embark in businesses which they do not understand. There are very few things which have injured the colonies so much as men coming out here ignorant of certain lines of business, entering upon them with a very hazy idea of the way to manage the business in which they embark, and ending in injury and disaster. That injures the reputation of the colonies, and it does harm to the colonies themselves. However, that is altogether beside the question. This Bill, hon. gentlemen, has been very properly described in very apt words by the Hon. Mr. A. H. Wilson as hinging upon two words—"neglect" and

"defect." Now, if any man is guilty of neglect which tends to the injury of another he ought to be responsible for it. If any man by his neglect has a defect in the machinery which he owns and which causes injury he ought to be responsible for it; otherwise how can he expect that people will perform their duty without negligence or without carelessness unless they are made responsible for their negligence? My hon. friend, Mr. Wilson, has said that we ought to have a committee of inquiry before we pass this Bill, and I do not think I can do better than refer to the report of the select committee appointed by the Imperial Parliament to make inquiries as to the Employers Liability Act of 1880. This is a report which has lately been brought up, and I will read some portions of it:—

"Pursuant to the instructions of the House your committee have taken much evidence as to the operation of the Employers Liability Act, 1880. They have examined employers and workmen engaged in the leading industries, ship-owners, seamen, and fishermen, and legal witnesses of experience. A general concurrence of opinion was expressed as to the advantages which the workmen have derived from the existing Act. The apprehensions as to its possible results in provoking litigation and imposing heavy charges upon employers have proved groundless, while a useful stimulus has been given to the establishment of provident funds and associations—in many cases liberally supported by the employers. The following resolutions will supply the groundwork for further legislation:—

"1. The operation of the Act of 1880 has been attended with no hardship to the employers, whilst it has been of great benefit to the workmen, and it is desirable that such Act should, with certain amendments, be renewed and made permanent."

The next is a reference to a clause which has been commented on in the present Bill—

"2. No contract or agreement made or entered into with a workman shall be a bar, or constitute any defence to an action for the recovery under this Act of compensation for any injury, unless on entering into or making such contract or agreement there was other consideration than that of such workman being taken into or continued in the employment of the defendant."

Then with regard to the question of insurance—

"Such other considerations shall be—

(*a*) That the employer shall have contributed to an insurance fund, for the benefit of such workmen, against every accident arising in such employment."

Then there is a long paragraph which refers to a certificate that the amount contributed is a reasonable proportion. The term workman is in a further part of the report defined in the same words as have been adopted in the present Bill, and the report winds up by saying:—

"Your committee do not consider it necessary under existing circumstances to amend the Bills which have been referred to them, and have, therefore, agreed to report them without amendment."

So that hon. gentlemen will see that in Great Britain, where the manufacturing interest is more largely represented in Parliament than in any other country, they have by a unanimous report of a select committee—by unanimity of opinion expressed by experts and people interested in the question—reported in favour of the continuation of the Acts and of making them permanent. I do not think that any light that can be thrown on the subject here by people who are to a great extent under grave apprehensions of future difficulties, and also, I think, under very grave misapprehensions, and I say that their evidence would in no way weigh against the evidence which has been furnished by the committee of the Imperial House of Commons. Three hon. gentlemen have made allusion to a case which has brought this subject a little more prominently before the public than it otherwise would have been, but I do not think I would be justified in going into the details of the case. It is one that took two days each time to have investigated, and it would take a very long time indeed to go into all the circumstances affecting the case, but I regret very much that my hon. friend Mr. Pettigrew should have used a few words which I am sure on calm consideration he will regret having used. I hope that the hon. gentleman is able to allow an opponent to believe in the truth of his own statements, and that it will not be for him or anyone else in this House to accuse any man of having given false evidence. I must again refer to what fell from my hon. friend Mr. Gregory. He says he has seen the machine in question, and he concludes that it was impossible for any accident to have occurred in the way in which it was described. Now it is a pity that the hon. gentleman was not able to throw what light he could on the subject—before the Chief Justice and the two juries who investigated the case, but I may put on the other side the fact that the most careful investigation was made; a most searching investigation; one of the most searching inquiries into the truth that I have had experience of for a long time back, and I do not think hon. gentlemen will attach any weight to the opinions which have been expressed this evening when it is remembered what a very careful investigation was made. But I would point this out with regard to that case that if this Bill had been in force at the time, the Hon. Mr. Pettigrew would have had the advantage all on his own side, inasmuch as the amount which he would have been responsible for would have been limited to a much less sum than that which was awarded against him. For that reason I can claim the hon. gentleman's support for this Bill.

The HON. A. HERON WILSON: Look at subsection 4 of clause 5.

The HON. A. J. THYNNE: That was one of the defences raised by the hon. gentleman in his case, that the defendant had contributed to the injury, and the jury found that he had not contributed to the injury, so that the effect of this subsection 4 actually does not alter the law in any one iota from what it is at the present time. If a man has contributed himself to the injury he has sustained he cannot get damages; he has no right to an action against his employer if he has contributed to the injury himself. I do not think the hon. gentleman who is interrupting me quite apprehends the full meaning of the clause to which he refers. If he understood it fully or properly I am quite sure he would not make the interruptions he has made. Now, I will refer to what my hon. friend Mr. Gregory has said with regard to this shipping matter, and it seems to me that the shipowners are under some misapprehension with regard to the points that I have referred to. In the first place the seamen would not be in any way entitled to compensation through neglect on the part of the master or officers of the vessel. Under clause 6 their right to recover damages is limited. They cannot recover unless on account of the defective condition of the ship or her fittings. If that defective condition arose after leaving port, if it arose through stress of weather or other causes, how could the employer be charged with neglect? One of the reasons raised against this Bill by the shipowners is that they are under special restrictions. There are only a limited number of persons whom they can employ—certificated masters and engineers—but instead of complaining about that, I should think they ought to be very well pleased at it, because so long as they have properly qualified officers so long are they relieved from responsibility of the action of those properly qualified

officers, speaking in a general way. If I have a properly qualified captain in charge of my vessel, and he makes a mistake or error of judgment, surely I am not responsible for his negligence, for I have taken all precautions to obtain competent servants. So that really these very reasons that are given in opposition to this Bill are the very greatest protection to the shipowners. I will now refer to clause 10, to which I think my hon. friend, Mr. Gregory, made some allusion with regard to the premium to be paid by the employer. Now, if an employer has undertaken the responsibility of paying damages for neglect or defect of his machinery or negligence of his superintendent, he will still have the benefit of the amount of this insurance, although he has only contributed one-third the amount necessary to acquire it. On the one hand, it is said, why should the master be expected to contribute to the accident fund, but on the other hand might it not be asked why should the servant be expected to contribute anything to the accident fund to indemnify his employer? So that it is a question which has to be looked at from both points of view. There are two people, one on each side anxious to come to a fair arrangement, and it is for us as far as possible to hold the balance between them. While the employer gets the benefit of the policy for the premium of which he has only paid one-third, we find also that the employé gives up two-thirds of the premium and gets nothing extra from the employer; so that there is give and take on both sides. There is nothing unfair in the proportion set down. It may in some cases be above, and in others below; but it is impossible to put down a scale of rates which will meet every possible contingency with mathematical accuracy. With regard to clause 13, I may say that this Bill is really intended to amend the unfairness which exists in our present law; it is really a declaratory Bill, and it would be futile for us to pass a measure which might be defeated and made a laughing-stock hereafter. It is not long since we passed the Settled Land Act, in which it is provided that anything done with the intention of evading its provisions, shall be of no effect. And hon. members, though interested in the question, being large employers of labour, ought as well to consider that at times particular interests have to give way to public requirements. As another instance, I may refer to a Bill passed only to-day, in which amendments were introduced by the Hon. W. H. Wilson, seriously affecting the position of men carrying on the business of dairying. They are subjected to serious restrictions, and they might be considered harassing under some circumstances; yet it is for the public good that such legislation should take place. And this measure will, I am sure, if passed into law, prove as great a boon to both employers and servants as it has in Great Britain. I shall support the second reading, and I trust to see the Bill soon come into force.

The HON. W. HORATIO WILSON said: Hon. gentlemen,—I somehow think that employers unnecessarily alarm themselves with regard to the object and scope of the Bill, and that it will not affect them so nearly as they imagine. There is one comfort I have in connection with it, and that is that the Hon. Mr. Pettigrew, who is the largest employer of labour in Brisbane in his particular line, though he has spoken against the Bill on a great many points, has announced his attention of voting for the second reading. And I have no doubt that when the measure comes to be fully considered we shall come to the conclusion that it is a very good Bill, and one that ought to be passed. With regard to the law of master and servant at the present time, I think I am correct in stating that a servant cannot sue his master for injuries received during his service, because in the first place he accepts the supposed risks incident to the service and consequently the risk of a fellow-servant causing him an injury. The master has to take reasonable precautions to ensure his servant's safety, but he is not bound to take more care of his servant than he would of himself. He would, however, be responsible to his servant for direct negligence, if such could be proved, but this is a difficulty, as masters seldom superintend work. It is well known that this difficulty arises in large establishments, where the masters do not in any way superintend the labour of their employés. Public companies carrying on business as iron-workers, coal-miners, and so on have to depend entirely upon superintendents; and the object of the Bill is to provide that these superintendents, who virtually take the place of the employers, should be careful and not allow the men under their charge, who are subject to their orders, to suffer injury through their neglect. It is well known that a master would be liable to a third party if his servant in the course of his employment injured such third party. If a member of the general public was injured he would be liable for any damage caused by the negligence of his servant, but if a servant was injured by the negligence of his fellow-servant the employer would not be liable. Of course, that is an anomaly which is supposed to be set right by the Bill. A workman is actually placed at a greater disadvantage than a member of the general public under the present law; and the reasons are—first, that a servant is supposed to be acquainted with his fellow-servant's qualifications and disposition, and can protect himself against his incompetence; second, that a servant accepts the risk incident to his employment, and this includes his fellow-servant's incompetence. Thus arose the well-known defence set up by masters—common employment—which was that every man in the employ of a particular master was held to be the fellow-workman of every other man in the same employ, no matter what might be his functions. The attention of the English Parliament was called to the hardship inflicted on workmen by this rule, and in 1876 the matter was referred to a select committee formed for the purpose of considering the hardships under which workmen were suffering. They sat and reported, and that report was referred in the following year to another select committee, who again reported to the House in favour of a change in the law, and it was upon that report that the legislation followed which is embodied in the Employers Liability Act of 1880. This Bill seems to me simply to give increased rights to workmen to enable them to bring actions against employers for injuries they may receive, against which the employer might have guarded. It is intended to make the master responsible for the injury which happens through the negligence of those to whom he deputes his powers as a master instead of carrying them out himself. That is really the principal object of the Bill—that if the master chooses to appoint another person to take his place he must necessarily be responsible for what that person does. The Bill restricts the defence of common employment which has hitherto been set up, and puts a workman in the same position as a member of the general public. The 2nd subsection of clause 4 states that when personal injury is caused to a workman by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence, the workman, or his legal representatives, shall have the same right of compensation as if the workman had not been in the service of the employer. It is surely a sound principle that

the master should be liable for the neglect of those to whom he deputes his authority, because the servant is bound to render obedience to orders, and the Bill does not make employers liable for the negligence of servants generally, but only for the neglect of supers and persons placed in authority over the workmen. The measure is not confined in its principles to British laws, because in other countries—Italy, Germany, and France—the master is liable for compensation to at least the extent provided by the clauses in the English Act. There are certain clauses in this Bill not in the English Act, such as clause 6, relating to seamen; clause 10, as to insurance, and clause 13, which does not permit contracts to be entered into outside the Act. The Hon. Mr. Thynne has already dealt with the 6th clause regarding compensation to seamen, and I will only say that I quite agree with his remarks upon that section. With regard to clause 11, which provides that all actions in the future shall be brought in a district court, I will notice one or two points. The jurisdiction of the court is extended to meet any case that may be brought for any amount, and it is provided that every such action shall be tried by a judge without a jury. When we go into committee it may be thought better that the judge should be assisted by a jury in the ordinary way. And supposing the parties would like to have the case tried by a jury, I do not see why we should not give power to either party to call for a jury. I agree with clause 13, which provides that employers and workmen shall not be able to contract themselves out of the Act, because if they can do so, we had better not pass the Bill at all. Altogether, I think the Bill can be made a very good one in committee, and I shall support the second reading.

The HON. W. F. TAYLOR said: Hon. gentlemen,—The present Bill is, in my estimation, a very necessary one. It has been rather too much the habit of employers of labour to leave their workmen to shift for themselves the best way they can, and expect them to do work with imperfect machinery or machinery in a bad state of repair. I have known a number of accidents which have happened from these causes; of course employers say it is the fault of the men. Workmen are sometimes laid up for weeks, and perhaps months, and perhaps maimed for life, and the only compensation or condolence they get from the employer is the remark that they ought to have taken better care of themselves. In the great majority of cases, where the employer has been sued for compensation, no legal action would have taken place had the employer come forward in a liberal spirit and paid the necessary expenses of the injured man; but in most cases the man is shifted off to the hospital as fast as possible, and in all probability the employer does not even pay for the cab hire. A case came under my observation not long ago. A firm here had a little boy as an apprentice. He lost the top of his thumb; they took him at once to a medical man, but refused to pay the medical man's fee, though it was a very moderate one. Cases like this are constantly cropping up, and they show the necessity for such a Bill. I really think the measure is by no means too stringent, and that it does not favour the workman at the expense of the employer. Subsection 4 of clause 5 states distinctly that the workman will not be entitled to any compensation if the injury is caused by his own negligence or his unfitness for the work. It is always competent for the employer to prove in such a case whether the workman was unfit for the work he undertook to do. This clause appears to me to be a very great safeguard against oppressive legal proceedings on the part of the employés. With regard to clause 6, referring to compensation, I consider it is a very necessary clause. It is too much the habit, and it has been so in the old country—and I believe in this—to send vessels to sea imperfectly found with tackle and not in good order, but with a great many defects. We hear about a great many accidents, but there are many which we hear nothing about; and under this clause seamen will be entitled to recover damages when it is clearly shown that the owner has not exercised proper care or provided proper machinery and tackle for his vessel. I hope to see the Bill passed, and I think it cannot be very much improved upon.

The HON. A. RAFF said: Hon. gentlemen,—I rise to say that, although generally approving of this Bill, I altogether disagree with the 6th clause, which includes seamen, and it is not only on the ground that that provision is not in the English Act that I object to it. It was stated just now by the Hon. Dr. Taylor that vessels go to sea with their machinery wrong and improperly equipped, and on that account the owners should be liable for damages in case of injury to the seamen. I think it is a law of this colony that no vessel is allowed to go to sea that is supposed to be in the least unfit in respect to its machinery or otherwise. The Government appoints an inspector, and he is bound to report when anything is wrong, either with the hull or machinery of a vessel, and the Collector of Customs is instructed when such a report is made not to clear the ship. I think it is altogether beyond the scope of an Employers Liability Bill to include the owners of sailing vessels and steamers, who have no control whatever over the vessel after she leaves the port, and who are bound by the laws both of Great Britain and all the colonies to have the machinery inspected when any alteration is made; and no ship is allowed to go to sea without a certificate. I entirely agree with the remarks made by the Hon. Mr. Gregory in regard to the 6th clause. I do not think that the owners of a vessel should be liable for the actions of a captain, or for an accident caused through his negligence, or some defect in the machinery resulting from his neglect. The owners cannot always be on board, and they have a responsible man there in the shape of the captain, who has a certificate and is supposed to be competent. I do not agree with what the Hon. Mr. Thynne has said, that the owners are not made liable under this Bill for the actions of their captain. They are liable for his actions.

The HON. A. J. THYNNE: I must correct the hon. gentleman as to what I did say. What I stated was that the negligence of an officer on board a vessel is not included as is the negligence of superintendents in other parts of the Bill.

The HON. A. RAFF: There may be negligence on the part of the captain or unfitness in the spars and machinery of the vessel, and this unfitness may be caused through the negligence of the captain or through stress of weather or other circumstances. For the reasons I have given I do not think the owners should be made liable for damages in such cases.

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

The committal of the Bill was made an Order of the Day for to-morrow.

On the motion of the POSTMASTER-GENERAL, the House adjourned at five minutes past 9 o'clock.