Court was satisfied that it was such an action as could be established against a private individual. Then notice of the action must be served on the Secretary at his official place of business thirty days before it commenced The Secretary could turn at once to any information concerning the circumstances of the case and the character of the claim, to be found in his own or any other department, and could call in the legal advice of the crown officer, and could tender amends or decline to do so. If he declined, and the suit went on, there was another guard; the plaintiff was required to give security for costs to the amount of £40. The same pleas could be made in defence as by individuals, and the Government had every privilege of defence allowed to an individual.

Mr. Gray continued to point out the guards provided by the Bill against persons suited; and argued that such a law would have the effect of making the Government careful in its selection of officials, choosing them rather for their ability than for merely party services. He said that a similar Bill was before the Nova Scotia Legislature, but that having procured a copy of it he found that it was not surrounded by the same guards as this Bill. He had commenced by laying down the principle that for every wrong there should be a remedy; he should conclude with another—that the Govt. which sought to build its prosperity on acts of injustice should have the same liability to be called to account both in courts of law and before public opinion, to which private individuals who resorted to similar means were subject.

The Speaker said that he admitted the principle that there should be no wrong without a remedy by right and not by supplication; and if he failed to prove that there was now a remedy by right as good, as effectual, and as constitutional as that of this Bill he should be content to vote for it. That House was the tribunal before which the aggrieved could appear, and ask to be righted. However much a tribunal such as contemplated by the Bill was needed in countries under despotic governments, in this country, with its free and constitutional government, no such tribunal was needed. That House was the best jury, and not only could a new trial be had before it every year, but every four years or oftener a new trial could be had before a new jury. This jury was elected by the whole people, from the whole people. That House was the highest tribunal in the land, and it was not giving the people rights but restricting their rights to turn them over to any other. Mr. Gray's analogy between the railroads of this country and those of other countries did not hold good; when we had railroads built by private companies the people would have a remedy against them. The initiation system had made no change in the right to petition; there remained the same right to petition as ever, the only change made was, that instead of coming in by one door the petitions had now to come in by another. The House would stultify itself, and pass a direct vote of censure upon itself to take the right out of its own hands, and give it to seven men. In Nova Scotia a similar Bill had been introduced; but there were many things in Nova Scotia which he could not admire. Even in the United States, with its licentiousness of democracy, the legislatures had not given persons power to bring an action against the Government. No men would gain so much by the passage of this Bill as the lawyers. If the principle was acknowledged the application of it could not be narrowed down; the remedy should exist against every Bye Road Commissioner as much as against the highest official. If the principle was not carried out they would deny the correctness of Mr. Gray's maxim that there should be no wrong without a remedy. If he wished the Bill to be defeated he should allow it to pass just as it was. It referred to the property of the Province. The law recognised the property of the Crown, but did not recognise the property of the Province. In the eye of the law there was no property belonging to the Province; and if an execution was issued against the property of the Province it would be of no effect. The yielding up of the right of initiation of money grants had not at all deprived claimants of the opportunity of redress; the majority of the House could now, as ever, make such decision, and order such reparation, as they thought right. The only change was, that instead of coming direct to the House with his petition for relief, the person aggrieved went first to the Government; and if they refused to relieve him his petition could be brought before that House by address, and the merits of the case investigated. This system had worked in the Imperial Government. He would ask the hon. member from Gloucester, who had been so long in the House, if it had not worked here?

Mr. End said that there were no Government railroads in Great Britain.

Mr. Speaker said that the advocates of this Bill could talk of nothing but railways. Why not apply the principle to the Postal Department? It must apply also to every Bye-Road Commissioner. Nine persons out of ten having a petty contract on the Bye-Roads would slur the work over, and bring an action against the Provincial Secretary for his pay. They would need ten Attorney Generals and ten Solicitor Generals to defend the suits. Juries would say, "Oh! it's only the Treasury," and in nineteen cases out of twenty would give a verdict for the plaintiff. When one individual sued another they had equal chances; but when an individual sued a corporation the sympathy of the jurors were with the individual; and they would be still more against the Government.

Mr. End said that jurors were on their oaths.

Mr. Speaker.—Oaths! Did they not find witnesses on their oaths contradicting each other flatly, and giving exactly contrary versions of a fact? People saw things through their own eyes, and each in his own way. A law of this kind would do more for him than any office. To try the suits which would be brought under it would occupy thirty-three Judges sitting from January to December. Every one was willing to make as much as possible out of the Public Treasury. There was Mr. Gray himself, who had offered a right of way to the railroad, and afterwards demanded damages. The feeling of the country was to get as much out of the Government as possible. The Bill did not include Appraisers of Railway Land Damages; but there was a question in his mind whether under it Sheriffs would not be liable to actions. There was no instance of a similar law in any part of the world; and in a country with free and representative institutions it was an anomaly and a contradiction. A law like that would cost much more than our Great Roads. If the principle of the law was correct, there were too many guards around the use of it. It should not be surrounded with difficulties and conditions which would prevent its being available to the poorest man.

Mr. Wilmot said he should support the principle of the Bill, though there were many of its details which he was not prepared to support. He should like especially to see the principle applied to the Railway. In defence of the action against the Province, he alluded to the fact that in some places actions lay against hundreds of towns for damages sustained by reason of the badness of highways.

Mr. Gray said that he had desired not to introduce the subject of railway land damages into this debate; but so much had been said about them, and the Speaker having referred to his own case, he should now make an explanation. In 1850 he was one of those who took an active part in the railway agitation, and he was prepared to make every exertion, and lend every aid, to the prosecution of the enterprise. In 1851, when the European and North American Railway company was formed, some took stock in it, and others gave land; he was one of those who gave a free right of way through their property. Years passed on; he expended money on the improvement of his land, in clearing it, and building upon it. In 1856, when the Railway Bills passed, the Company was considered defunct, so much so that the money paid in by stockholders was returned to them. Those who had given money got it back; he resumed his land; he wanted to know the difference between the two. It was understood that the company and its proceedings were totally abandoned. How then did it lie in the mouths of those who drew out and pocketed their stock to censure him for taking back his land? The whole character of the work had changed. He had applied to the proper tribunal, and it had ordered the appraisers to go on his land and value the damages; the appraisers went, and allowed him nothing. He made no complaint, but was prepared to abide by the decision of the proper tribunal; he should never have alluded to the matter had not others brought it up. And had those who took stock in the company allowed it to go, and not have drawn it out, they should never have heard from him concerning his land.

The Attorney General said that when the Bill passed in 1856 it was then publicly stated that most of the proprietors of land in the line of railway would give up their claims to damages; and this was one of the reasons why he abandoned his measure for the assessment of the land damages upon the localities through which the railway passed.

Mr. Gray denied this; and said that it was understood that the matter was entirely abandoned. It never was assumed that when the railway became a Provincial work, and every one was taxed to pay for it, that particular individuals should not only bear their share of taxation, but should give their lands besides.

The Attorney General reiterated his statement; and after a few words more the subject was dropped, and progress was reported.

Hon. Mr. Tilley gave notice that on Thursday he should again move the House into committee of supply.

Hon. Mr. Tilley laid upon the table dispatches concerning the disallowance of the Bill repealing the grant to King's College.

WEDNESDAY, March 9.

APPOINTMENT OF LEGISLATIVE COUNCILLORS.

Mr. Gilbert moved the resolution of which he had given notice for an address for information concerning appointments or recommendation of appointments, to the Legislative Council since the last session.

The Attorney General replied that he would save the hon. member the trouble of moving the address by informing him that no appointment, provisional or other, had been made, nor no recommendation for appointment.

Mr. Gilbert pressed the address on the ground that he wished the matter to appear on the journals. Members of the Government opposed it on the ground that it was unnecessary, as if he wished any further information it would be given him without the address. The motion was lost, 11 to 19.

SHRIEVALTY OF ST. JOHN.

During the discussion of the above, some allusion was made to the appointment of Mr. Harding to the shrievalty of St. John, which drew from Mr Tilley an explanation.

Mr. Tilley said that he never had any communication with Mr. Harding, directly or indirectly, relative to the shrievalty, until after he himself had been elected, after accepting the Secretaryship, and after the close of the short session. On the 8th of July Mr. Harding wrote to him mentioning a rumor that another person in St. John was to get the office. He (Mr. T.) replied on the 11th of July to Mr. Harding that he had made no promise respecting the office to any person whatever; but that having been applied to concerning it by a gentleman of St. John, he had replied that when an appointment was made he should consider the claims of Mr. Harding superior to those of any other person.

Mr. Gray said that the rumor in St. John was that the Government were on the eve of appointing another gentleman to the office, but owing to the absence of the Lieutenant Governor the appointment was not consummated; and that Mr. Harding hearing of it had enclosed to Messrs. Tilley and Fisher copies of letters which he had received from them respecting the appointment, the effect of which was that the contemplated appointment was revoked, and Mr. Harding received the office.

Mr. Tilley said that this was wholly incorrect. No other appointment was contemplated by the Government, and there was no question as to the appointment of Mr. Harding. Mr. H. had enclosed him his letter.

The Attorney General said he was quite satisfied that he had not made any such promise to Mr. Harding as that alluded to by Mr. Gray.

CLAIMS ADJUDICATION BILL.

The House went again into committee upon Mr. Gray's Bill for the adjudication of claims against the Province.

The question that the Bill be read section by section was carried, no one dissenting. The question was then put upon the first section.

Mr. Chandler would not apply the principle of the Bill to the ordinary departments of the Government. But if the Government chose to become common carriers they ought to accept all the responsibilities of that position. He would make the Railway Board subject to an action the same as any individual or corporation; but he would not go an inch further. He doubted whether there was not now a remedy by action against the Board; but whether or not this was so, he would support a declaratory Bill making them liable to an action.

Mr. Smith said that this was the most important Bill that had ever been brought before that Legislature. Its policy was entirely new; and it struck at the very root of the constitution, and was subversive of all the principles which they had been taught to revere. Such a law would open the floodgates of litigation, and bring ruin and desolation on the land. There was not a contractor under the Government throughout the Province but who, were his demands not granted, would bring an action against the Government. Where was the necessity for the Bill? Could Mr Gray point to a single instance of injustice? If he had one instance to show, or if after a year or two, when the railway was in operation, any cases of great injustice arose, there would be some excuse for the Bill. Could he point out any country, with free and liberal institutions, in which such a law was established? Even in England, where there were innumerable contracts and agreements with the various departments, it had never been thought of. The Government had always been common carriers in respect to the Post Office. The yielding up of the initiation was no reason for this Bill; for though the initiation had been long in Great Britain in the hands of the Government, they did not there find such a law necessary. He objected to the use of the word "supplicate" in reference to applications to the Government or Legislature for redress. The subject did not *supplicate*; justice was his right, and he *commanded* it. Beside this Bill all other legislation paled into insignificance. The sympathies of a jury would always be with the individual and against the government, and an impartial trial would be an impossibility. There would be actions against the Crown Land Office innumerable; actions against the Treasurer; actions against every department of the Government It was not necessary to pass a Bill to incorporate the Railway Board; the House might adopt a resolution authorizing the Government to indemnify parties for losses. The House had better pause before they passed a Bill like this.

Mr. End said that if the Bill was novel it arose from the novel position of the Province; there was no case of the Government of a country assuming the position of common carriers but those of this Province and of Nova Scotia. The remedy was peculiar, because the circumstances were peculiar. He would not carry the principle so far as Mr. Gray, but would confine it to the Railway. Objection had been made to the guards which had been thrown around the action; he did not think that they were necessary, but he presumed that Mr. Gray inserted them to meet the cry that the Bill would lead to immense litigation. The opponents of this Bill said that there never had been any complaints of want of liberality on the part of the House to those who applied for redress; that they were wont to do more than justice. But this was the very thing of which the people complained; they thought that many thousands of pounds had been paid which would never have been adjudged by a court of law. It was true that when the Government refused the petition of an applicant the House could get the papers before them by address, and could investigate the matter; but they would be delicate about coming to a conclusion which would reflect upon the Government. He was not afraid that there would be the amount of litigation which was predicted; the costs of law suits would prevent that. The same argument as to the amount of litigation would apply to the power to bring actions of any other kind. When he could believe that there should be a wrong without a remedy, and that there was a better mode of securing justice than trial by jury, he should oppose this Bill. The Government were not the best judges between their servants and other parties. If his servant was the cause of damage to another person he (Mr. E.) was not the proper judge between the two, especially if his servant could command half a dozen votes in the County of Gloucester.—(Laughter, and cries of hear, hear.) He had sitten on committees of that House to decide upon charges against Supervisors and Commissioners of Roads. They had no power to send for witnesses, or administer oaths; they had but the allegations of interested parties. He had long felt that they were not proper tribunals, and that it would be much better for the parties to go before the common tribunals of the country. It was said that this Bill was not needed because there had been as yet no cases of the injustice against which it was intended to provide. But he thought that this was the very time to legislate upon the subject, when there was no particular case before them which might excite party or personal feeling, and prevent a calm and impartial consideration of the subject. The remedy by application first to the Government, and then, in case of their refusal of redress, to the House, he thought worse than the disease itself.

Mr. GILMORE said that he was forced to the conclusion that this Bill was correct in principle. All that Mr. Smith had said about the amount of litigation which it would produce was an argument in its favor; for it only showed that claimants against the Government could not get their rights now. The people no doubt had a right to demand justice from the Government and House; but *demanding* and *getting* were different things. He saw no reason why the Queen should not be sued in the Courts in which she could sue. If a claimant went before the Government there might be a difference of opinion; four Executive Councillors might be against his claim and three in its favor; and thus when the matter was brought up on the floor of the House these three would have to support the decision of the Government against their own convictions.—He did not think there could be a difference of opinion as to the propriety of applying the principle of this Bill to Railways; his mind was fully made up about that. He did not believe that questions were decided so fairly here as in courts of law (loud cries of hear, hear.) He did not believe that this country was going to be ruined by giving the people justice. He knew that there were principles which although correct could not be carried out in practice.

Mr. SMITH.—"Do you know any case of injustice done to claimants by the House?"

Mr. GILLMOR said that he did. He referred to the case of the Bear and Wolf Bounties in Charlotte which the House had refused to pay. The holders of the certificates could not get their case entertained; whereas if this Bill was the law of the land he believed that they could sue the Government and recover. The House might generally do justice to the friends of the party which was in the minority; but it would be inclined to do more than justice to the friends of the majority. Let the consequences be what they might he should support the Bill. The objection that the principle was new was of no force; they should not always wait to follow in the track of others; but should try to originate something themselves.

Mr. MCADAM said that if this Bill passed the day would come when they would be sorry for it. He believed that there was no sincerity in any man who could vote for it

Mr. GILTMOR said that this was a very broad assertion. If the hon. member did not now know the force of language he should study it. He had dictated long enough to that House. (Here Mr. Gillmor was interrupted by cries of order.)

Mr. Hanington supported the Bill, so far as respected railways, in a brief speech. In England claims were settled by the respective departments, and never came under the notice of the leader of the Government. He should say, "Let justice be done, though the heavens fall." The expense did not frighten him. After the trial of a few causes both the Government and claimants would be taught common sense, and would ask but justice from each other. He would go for the Bill if all but railways were excluded. Such a law would make the Government more cautious in selection of officers for the railway, and thus prevent many claims which might otherwise arise.

Mr. McMillan said that after hearing the arguments he had made up his mind to vote for the Bill, if applied to railways only.

Mr. Wilmot briefly supported the Bill, so far as regards railways, but would go no farther at present.

Mr. Lewis opposed the Bill. That House was the place for claimants to come. He felt that if this Bill passed the lawyers would take full possession of this country.

Mr. Allen said that so far as regarded railways he meant to support the Bill, but no farther. He did not think that the fact of the principle being novel was any objection. They had lately seen a novel principle introduced in allowing parties to a cause to give evidence. Neither did he think the provision of this Bill, which required notice to be given to the Provincial Secretary, novel; the same notice was required in the case of suits brought against Justices of the Peace. He was not prepared to go further at present than to apply the principle to the railway. The case of the Charlotte Bear Bounties, referred to by Mr. Gillmor, was a good instance of the necessity for this Bill; if those claims could be investigated by a court of law it might come to a very different conclusion to that at which the House had arrived. The House was not the best tribunal for the investigation of such matters: it had not the machinery requisite. With regard to the expense, he held that it would cost less to try these claims in a court than in that House; for he could very well remember when two or three days of the House, at a cost of two or three hundred pounds, were spent in investigating a petty claim of fifteen or twenty pounds. How were the Executive to ascertain the merits of any claim? They would appoint one of their number to inquire into it; so that after all they would have to rely mainly on the opinion of one man. People were not so fond of law suits that they would rush into them as fancied by some honorable members; very few men but would take less than the law allowed them rather than rush into a suit. It had been said that there were no instances of individuals being allowed to sue the state. He differed from that opinion; and he would quote Judge Story of the United States, to show that he was right, In his Commentaries on the Constitution of the United States, vol. 3, page 541, in a note, he says:—"A suit against the state has been allowed in Virginia and Maryland, and some other states by statute." It appeared therefore that there was a remedy by action against the Government in some of the States He should also quote from the same volume the opinion of this eminent jurist, on the necessity for such a remedy. On page 54[illegible] of the same volume he says:—

"It has been sometimes thought that this is a serious defect in the organization of the judicial department of the national government. It is not however, an objection to the constitution itself; but it lies if at all, against congress, for not having provided, (as it is clearly within their constitutional authority to do,) an adequate remedy for all private grievances of this sort, in the courts of the United States. * * * * No such judicial proceedings is recognized as existing in any state of this Union, as a matter of constitutional right, to enforce any claim or demand against a state. In the few cases in which it exists it is a matter of legislative enactment. Congress have never yet acted upon the subject, so as to give judicial redress for any non-fulfilment of contracts by the national Government. Cases of the most cruel hardship and intolerable delay have already occurred, in which meritorious creditors have been reduced to grievous suffering, and sometimes to absolute ruin by the tardiness of a justice which has been yielded only after the humble supplication of many years before the legislature. One can scarcely refrain from uniting in the suggestion of a learned commentator, that in this regard the constitutions, both of the national and state governments, stand in need of some reform, to quicken the legislative action in the administration of justice; and that some mode ought to be provided by which a pecuniary right against a state, or against the United States, might be ascertained and established by the judicial sentence of some court; and when ascertained and established the payment might be enforced from the national treasury by an absolute appropriation."

The Attorney General said that he had been in the House twenty-two years, and yet had seen none of those difficulties which the Bill was intended to provide [illegible] appeared to him a most extraordinary bill, more especially as they had not such in England or in Canada, although in the latter country they had government Ca[illegible] All other portions of the Bill except [illegible] referred to Railways seemed to be rec[illegible] with little favor by the House. It [illegible] lead to a sea of litigation. With re[illegible] to the carrying on the Railways he tho[illegible] that the Government should as soon as [illegible] road was constructed get rid of it by le[illegible] it out, when this Bill would be no lo[illegible] necessary. As there was but fifteen

of the Railway in operation at t
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Mr. Scovil supported the Bill.
Mr. Mitchell supported the Bi
it related to the Railway.
Progress was reported, and th
adjourned.

Correspondenc

PLEASANT VALE, Feb. 7t

MR. EDITOR,

SIR,—As the *Woodstock Jou*
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