ADDRESSES OF COUNSEL.

TUESDAY, 21ST SEPTEMBER, 1920.

Mr. P. J. O'REGAN examined.

The Chairman: Whom are you representing, Mr. O'Regan?—I am representing the New Zealand Miners' Federation.

Will you make a statement?—Well, sir, there is not very much to add to what I stated last session. I went into this matter very fully then before this Committee. However, I would point out that what is asked for in these Bills is quite a simple proposal. The Workers' Compensation Act, which has been in force since 1908, does not take away from an injured man any rights which he had prior to that Act becoming law. The Act gives him compensation for injuries arising from accident not attributable to the negligence of any one, but at the same time, if he desires it, he can still sue for damages at common law or otherwise, and he will probably do that if he has a chance of establishing negligence. But with regard to miners the position is this: A judicial decision has been given by the Full Court of New Zealand that if a miner is injured by an accident in or about a mine, and he accepts weekly payments under the Workers Compensation Act, he is thereby denied the right given by section 268 of the Mining Act, 1908, and section 60 of the Coal-mines Act, 1908, to bring an action for damages independently of the Workers' Compensation Act. If he accepts payments under the Workers' Compensation Act, in other words, he is deemed to have "taken proceedings" under that Act, and is consequently precluded from taking proceedings under the Coal-mines Act or the Mining Act. These Bills provide that when a miner accepts a weekly payment under the Workers' Compensation Act he shall not be deemed to have lost his rights under the Mining Act, 1908, or the Coal-mines Act, 1908, but that he will still be able to claim damages, but such payments will be deducted from whatever amount he may ultimately receive as damages. Personally I believe that it is only right that the law should be brought into line with the provisions of section 43 of the Workers' Compensation Act, 1908.

You went into the whole position last session?—Yes. I dealt with the matter fully before this Committee last session.

You have seen Mr. Pryor's statement?—Yes. I replied to that last session. Mr. Pryor suggested that section 60 of the Coal-mines Act, 1908, and sections 267 and 268 of the Mining Act, 1908, should be repealed altogether. Now, if you examine these sections you will find that the mine-owner is made answerable for the negligence of his servants or agents—a most important amendment of the common law. That has been incorporated in the mining legislation since 1874, but its importance is less since the abolition of the defence of common employment generally. The practical difference, however, lies in the fact that there is no limitation of damages under the Mining Acts, whereas, apart from them, the maximum damages recoverable on account of a fellow servant's negligence is £500. These points are obvious to members of the legal profession, and both Mr. Myers and myself are on common ground with respect to them. Section 62 of the Workers' Compensation Act, which abolishes the defence of common employment affords a remedy independently of the Mining Acts. But now we come to the important qualifications that the section, while abolishing the defence of common employment, expressly limits the amount of damages recoverable to £500, except in the case of death. Of course, in the case of a fatal accident due to the neglect of a fellow-servant there is no limitation. That point has been settled by a case taken recently to the Privy Council. But in the case of injuries not having fatal results, no matter how serious the incapacity may be, the amount of damages is limited to £500. If the sections in question were repealed, as has been suggested, the right which miners have enjoyed for forty-six years of being able to bring an action for unlimited damages in case of injury as a result of a fellow-servant's negligence will be taken away from them. No matter how serious or how grievous the injury may be the maximum amount which an injured miner could receive would be £500. I have in mind the case of a boy in the South for whom I acted. He had both his legs taken off at the thighs. That accident was brought about by the negligence of a fellow-worker. I took proceedings under the Coal-mines Act and the case was settled for £1,000. If section 60 were repealed the boy would have to be satisfied with £500. I think that no member of the Committee would look upon that amount as adequate for such serious injuries as that boy received. The Committee will thus see that the repeal of these sections would seriously curtail miners' legal rights. It will be a real grievance to the miners of this country if anything of that kind is done, and it will be my duty to bring the matter before them and explain the position clearly. For my own part I believe there is a much more feasible and satisfactory suggestion, one which I have made myself on more than one occasion, and which has been stressed by me to the Hon. Minister of Labour: that is to abolish the defence of "common employment" altogether by repealing the limitation prescribed by the Workers' Compesation Act. All that can be done by repealing a few lines of the Act. Repeal that provision, abolish that limitation, and you may then repeal these special sections as applicable to miners. I think that is all I have to say, sir.

Mr. Parry: Is it correct to say that the amendments now proposed will not interfere in any shape of form with the rights enjoyed by other workers if they become law?—Certainly not.

That is to say, the original intention of the Workers' Compensation Act was not to interfere with any of the rights the people then possesed?—Quite so.

That all the rights they then possessed would be safeguarded?—Yes. The policy of the Workers' Compensation Act is not to curtail any remedies existing indepedently thereof. The Workers' Compensation Act provides what I may call a supplementary remedy. It expressly preserves any rights existing independently or antecedent to the passing of the statute. After the Workers' Compensation Act had been in force in England it was decided—and that decision was followed in New Zealand—that when an injured man accepted weekly payments under that Act he "took proceedings" thereunder, and he thereby debarred himself from the independent remedy which the statute had reserved for him. That was remedied in 1908 by section 43 of the Workers' Compensation Act. That section made it clear that, although the injured man had accepted weekly payments under the Workers' Compensation Act, if he subsequently was advised that he had a good case independently of that Act, the acceptance of the weekly payments does not preclude him from going on with the action for damages. If he is injured by the negligence