

and for the liberty of the subject, and this might be regarded as an assurance that he would be careful in the matter. There seemed no ground for impugning the justice of the convictions, nor the righteousness of the sentences which had been passed. All the House was asked to do was to supplement the powers originally confided to Mr. Foss. He thought the Legislature was the more bound to come to the assistance of the Government, as it was pretty well known where the blame lay, and that no blame was attached to the present Administration. The glowing description of the financial position of the Colony was fully warranted, and it was a subject for thankfulness, raised as the country had been from a state of indebtedness to one of great prosperity.

MR. BURT moved that the debate be adjourned until Monday, 16th April.

Agreed to.

The House adjourned at four o'clock, p.m.

## LEGISLATIVE COUNCIL,

*Monday, 16th April, 1883.*

Railway from Beverley to Albany: Mr. Audley Coote's proposal—Perth Station Master, and the appointment of Staff Officer of Volunteers—Natives convicted by Mr. Fairbairn at the Gascoyne and the Murchison—Report of Commission on loss of Buoy off Kingston Spit—W.A. Timber Co., Transfer of Concessions—Papers and Correspondence relative to Kimberley Land Regulations—Address in Reply: adjourned debate—Native Convictions Validity Bill: second reading; in committee—Adjournment.

THE SPEAKER took the Chair at seven o'clock, p.m.

PRAYERS.

RAILWAY FROM BEVERLEY TO ALBANY: MR. AUDLEY COOTE'S PROPOSAL.

SIR T. COCKBURN-CAMPBELL, in accordance with notice, asked the Colonial Secretary, "Whether he could

"inform the House what steps had been taken by the Government to conform to the wishes of the House in regard to obtaining from Mr. Audley Coote an alternative proposition respecting the projected railway from Beverley to Albany?" It would be in the recollection of hon. members that last Session a proposal for the construction of a railway, submitted to the Government by Mr. Coote, was presented to the House, but it was the general opinion among hon. members that the proposal in the form in which it was then submitted was one which the Legislature could not entertain. He (the hon. baronet) had therefore moved a resolution, to the effect that in the opinion of the House it would be desirable to ascertain what terms Mr. Coote might be willing to offer for the construction of the proposed railway under an alternative system of a smaller guarantee of interest coupled with grants of land, such a system being more in consonance with the object which the House had in view. He now wished to ask the Colonial Secretary what steps the Government had taken in the matter.

THE COLONIAL SECRETARY (Hon. M. Fraser) laid on the Table, for the information of the House, all correspondence which had passed, to date, between the Government and Mr. Audley Coote. He might state, in the first place, that the Colonial Secretary (Lord Gifford), under date 26th September, 1882, wrote to Mr. Coote informing him that the general opinion of the Legislature was that at the present time the Colony was not in a position to accept his first proposal, and asking him on what terms he would be prepared to construct the line on the alternative system, which he had mentioned, of a smaller guarantee of interest, together with grants of land along the line. Mr. Audley Coote replied: "First permit me to refer to the speech of Sir T. Cockburn-Campbell, in which he refers to the guarantee of interest, and with which he couples the cost of working expenses of the railway, and to explain that these expenses on the guarantee principle are borne by, and are at the risk of the company, the Government merely guaranteeing the interest on the cost of construction, viz., 3½ per cent. on £1,000,000, or £32,000 a year for 25 years, which therefore is the

"extent of their liability. Although Mr. Clayton Mason's estimate is £700,000, in round numbers, it appears certain from the information I have been able to obtain that the construction of the line, with all incidental expenses, will cost the whole sum upon which I have asked that the guarantee should extend. The only alteration I can make in the guarantee is that the sum of 3 per cent. on £1,000,000, viz., £30,000 a year, be guaranteed for 25 years, and that a subsidy be given of 2,000,000 acres of land, to be selected from any of the Crown Lands of the Colony, and not restricted to the route of the proposed railway. Should the Government think £30,000 a year will fall too heavily on their resources, I now offer an alternative proposal with a view to enable the Government to get their railway constructed and open for traffic at the least possible cost to the country. That is, instead of a guarantee of interest, the Government to give a bonus of £600,000 in cash and 2,500,000 acres of land to be selected in any part of the Colony. You will not fail to see that, should the Government prefer the giving of a bonus to that of a guarantee they will get their railway constructed, properly equipped, and worked at a cost to them of only £24,000 a year, and the land the company would select will also enhance the value of the public estate by the introduction of foreign capital and labor. The company would require to select their land in blocks of not less than 5,000 acres, in forest or open country. The Government to grant in fee simple the land about two chains wide along which the railway would go, and also sites for station purposes along the line and at the termini. The whole of the material for the purposes of working and constructing the railway to be admitted into the Colony free of duty and of wharfage or other charges. The railway company's property to be exempt from taxation until it pays a dividend of 10 per cent. on the capital invested." On the 11th January of the present year, Lord Gifford replied to the above letter and to a subsequent one confirming it, in an official communication informing Mr. Coote that nothing could be done in the matter pending the meeting of the

Legislative Council. On the 26th February Mr. Audley Coote wrote again, reiterating his offers and asking whether a personal visit to the Colony about the time the Legislature would be in Session might not tend materially to forward the enterprise in view. He stated that he had become aware of Mr. Hordern's proposals, and of Colonel McMurdo's expected arrival, and assured our Government that, with the experience he had gained of railway construction on the guarantee and land grant principles, he felt certain of being able to place some proposition before them which would be acceptable to the country. The reply he received was to the effect that, while our Government were not likely to remain unassisted by proposals for the construction of railways on the land grant system, no negotiation was definitely pending, that his own proposals would, if practicable, be submitted to the Legislature, and that should he think proper to come to the Colony he would be regarded in the character of an ordinary visitor, and without any official or other priority with the Government.

#### PERTH STATION MASTER AND STAFF OFFICER OF VOLUNTEERS.

Mr. SHENTON, in accordance with notice, asked the Colonial Secretary, "If the report was correct that the Perth Station Master had been appointed Staff Officer of Volunteers?" The hon. member said he did not ask the question in any spirit of hostility, in any way, towards the gentleman who held the appointment of Station Master, but having heard that it was the intention of the Government to appoint him to succeed Captain Phillips, as Staff Officer, while, at the same time, retaining his position as Station Master, he thought they had a right to ascertain whether such was really the intention of the Government. He was aware that the members of that House had no power in any way to interfere with any appointments made by the Executive Government; at the same time, that did not debar them from commenting upon any appointment which they might consider detrimental to the public service. If the report in this instance be correct, he thought, looking at the in-

creasing importance of the passenger traffic on the Eastern Railway, the appointment would be an unwise one. He thought it would be most injudicious to give the Station Master at Perth any appointment that would call him away from his duties as Station Master, especially on those days when there was a probability of increased passenger traffic on the line. His attention had been more particularly called to this on the day of the late review held at Guildford. An unusually large number of passengers travelled on the railway that day, and the Station Master, instead of being at his post at Perth, was attending to his Volunteer duties. He considered that, as the lives and safety of so many passengers were dependent upon the proper management of the railway on such occasions, the supervision of the passenger traffic should not be left in the hands of irresponsible subordinates.

THE COLONIAL SECRETARY (Hon. M. Fraser), in reply, read a letter addressed by the Inspecting Field Officer (Colonel Angelo) to His Excellency the Administrator, stating that since recommending Captain Wilkinson for the appointment of Staff Officer, he had come to the conclusion, upon reflection, that such an appointment might meet with public opposition on the score that it might interfere with Captain Wilkinson's duties in connection with the Railway Department. Captain Wilkinson had placed himself entirely in the hands of the Government, but, under the circumstances, he (Colonel Angelo) now thought it was his duty not to recommend the appointment, and, meanwhile, until the Government were prepared to fill up the appointment, he would himself discharge the duties of the office.

MR. BURT: What's the date of that letter?

THE COLONIAL SECRETARY (Hon. M. Fraser): To-day, April 16th.

MR. BURT: Thank you.

#### NATIVES CONVICTED BY MR. FAIRBAIRN AT THE GASCOYNE AND THE MURCHISON.

MR. S. H. PARKER, in accordance with notice, asked the Colonial Secretary, "Whether there were any Aboriginal Natives at Rottnest now undergoing sentences of imprisonment passed upon

"them by Mr. Fairbairn at the Gascoyne or the Murchison. If so, the number of such Natives, dates of respective sentences, and terms of imprisonment. Also the authority under which Mr. Fairbairn had acted in sentencing these natives?"

THE COLONIAL SECRETARY (Hon. M. Fraser) said the papers asked for would be prepared, and ready to place on the Table at the next Session of the Legislative Council.

#### REPORT OF COMMISSION ON LOSS OF BUOY OFF KINGSTON SPIT.

MR. BURT, in accordance with notice, asked the Colonial Secretary, "To lay on the Table the Report of the Commission lately appointed to inquire into the circumstances of the loss of the Kingston Spit Buoy, off Rottnest, in connection with the wreck of the s.s. *Macedon*."

THE COLONIAL SECRETARY (Hon. M. Fraser) laid on the Table the report asked for.

#### W. A. TIMBER COMPANY: TRANSFER OF CONCESSIONS.

MR. BURT, in accordance with notice, asked the Colonial Secretary, "To lay on the Table all correspondence with the Government in connection with a proposed transfer to a new Company of the concession held by the W. A. Timber Company."

THE COLONIAL SECRETARY (Hon. M. Fraser) laid the correspondence asked for (including telegrams) on the Table.

#### PAPERS AND CORRESPONDENCE RELATIVE TO THE KIMBERLEY LAND REGULATIONS.

MR. MARMION, in accordance with notice, asked the Colonial Secretary, "To lay upon the Table of the House all papers and correspondence having reference to the Kimberley Land Regulations, including the Memos. written by the Members of the Legislative Council in response to the request of His Excellency Sir W. Robinson, and any Despatch or Despatches written by the Governor to or received by him from the Secretary of State upon this subject." The hon. member said his

object in asking for these papers was not for the purpose of eliciting any discussion on the subject this Session, but in order that the House might be placed in possession of the views expressed by certain hon. members in response to the request of the Governor, and that the public generally might obtain some little information on the subject before the next Session of Council.

THE COLONIAL SECRETARY (Hon. M. Fraser) replied:—"That the papers and correspondence, of an early date, having reference to the Kimberley Land Regulations had already been printed and placed in the hands of hon. members. The memos. asked for, he would now place on the Table. With regard to the Despatches, he was unable to give copies of them until a reply—which was shortly expected—had been received from the Secretary of State."

MR. MARMION moved, That the memos. referred to be printed.

Agreed to.

#### ADDRESS IN REPLY.

#### ADJOURNED DEBATE.

MR. BURT said: Having moved the adjournment of this debate when the Council met, I feel it somewhat incumbent upon me to say a few words with reference to the Speech with which His Excellency the Administrator opened the Session. In that Speech we were told that we had been summoned together to consider a certain difficulty that had arisen with respect to the legal status of Mr. Foss, at the Gascoyne, and also with respect to his power to pass certain sentences upon native offenders. His Excellency informed us we had been called together to consider this difficulty, and he asked us to apply our minds to the rectification of a mistake, arising from an informality in the appointment of Mr. Foss. The difficulty which has arisen appears to have assumed this shape: some 63 convictions have been made by Mr. Foss, and I believe 38 prisoners have already been received and are now undergoing various terms of imprisonment on the strength of those convictions. From the papers which have been submitted to us I gather that the mistake which His Excellency the Administrator alludes to, is a mistake made in respect of the

appointment of the magistrate who sentenced these offenders. It appears from these papers that a question has arisen, whether under the definition of "Itinerant Stipendiary Magistrate" he had certain powers, or whether he would have had the powers that he lacked under that definition if he had been designated "Resident" or "Police Magistrate." Inasmuch as His Excellency speaks of merely correcting a mistake which has arisen through informality, I take it he merely seeks to validate Mr. Foss's action to the same extent as his action would have been valid had he been appointed in the first instance under the designation of Resident Magistrate. What validity his convictions would after all have possessed had he been appointed Resident Magistrate instead of Itinerant Magistrate is a question I shall not touch upon on this occasion, for I gather from His Excellency's Speech that the only informality he alludes to is the mere fact of Mr. Foss having been appointed an Itinerant Stipendiary Magistrate instead of a Resident Magistrate. I am sorry to find from these papers—and I think I am right in the conclusion I have come to—that an attempt has been made to fix this mistake upon the gentleman who has lately been appointed Chief Justice of this Colony (Mr. Onslow), but who was then Attorney General. I think I am not wrong in saying that a perusal of the papers laid before us with respect to this matter must lead to the conclusion that an attempt has been made to lay the onus, to fix the blame, of this informality upon the shoulders of the gentleman I have named. But what are the real facts of the case? I find in a minute of Governor Robinson's, written on the margin of a draft letter, apparently prepared by Lord Gifford, who was then Colonial Secretary, the following words with reference to the title by which Mr. Foss, who was then about to be appointed, should be designated: "Consult Attorney General as to title necessary to meet the requirements of law. My own opinion is, Police Magistrate would be best." Now to anyone who peruses these papers and gives them his careful consideration—and particularly this draft letter—it will be apparent that the advice of the Attorney General was never taken as to the powers which Mr. Foss was to

exercise, in any way; he was merely asked to say what in his opinion would be the best title to give to the Magistrate who was about to be appointed to this new district, and the Governor, in soliciting his opinion on this point, informs him that he (the Governor) considered that the best title to give Mr. Foss was that of "Police Magistrate." It appeared that Lord Gifford, who drafted the letter, considered that "Itinerary Magistrate" would be the most appropriate designation, but His Excellency questioned this, in a minute on the margin of the letter, and asked the Attorney General (Mr. Onslow) what he thought would be the best title; and the Attorney General, thinking probably that "Itinerant Stipendiary Magistrate" would be a more high-sounding title for an official from whom so much was expected, suggested that he should be called by that title. But Mr. Onslow was not consulted in any way as to the powers which the gentleman rejoicing in this high-sounding title would be legally vested with. Under these circumstances, I think it was very bad policy indeed to try to fix the blame for the mistake which was made as to Mr. Foss's appointment, upon the late Attorney General, who was in no way called upon to advise the Governor in the matter of the powers to be exercised by Mr. Foss. I say it was very bad policy to attempt to do this, in view of the fact that the mistake was one—I can hardly say of the late Administration, but of Sir William Robinson himself. And I say this mistake arose entirely by reason of a wilful disregard of the advice of this House. It will be in the recollection of hon. members that, in the course of last Session, the hon. member for Geraldton in his place in the House, drew the attention of the Government to the action of another Magistrate (Mr. Fairbairn), who was then at the Murchison, sentencing native offenders. The hon. member pointed out most distinctly that in his opinion Mr. Fairbairn's convictions were illegal; but he was simply sneered at for his pains. I find, on reference to *Hansard*, that the hon. member, in the course of the debate on the Native Question, speaking of some correspondence which had passed between Mr. John Brockman and the Colonial Secretary, with reference to Mr. Brockman's

jurisdiction as a Justice of the Peace, made use of these words: "In that case "the Government appeared to have taken "a perfectly correct view of the law on "the subject; but, at the same time, he "must state that he did not think they "had acted in accordance with the law "when sending up Mr. Fairbairn, who, "not having been duly gazetted, had no "power in the world—so far as he (Mr. "Brown) was aware—to inflict the sentences of imprisonment which he had "passed upon these natives. For his "own part, he was very glad that Mr. "Fairbairn had punished the offenders, "but inasmuch as he was not a Resident "Magistrate of the district, he (Mr. "Brown) doubted very much whether he "had any legal right to pass the sentences he did upon them; in fact, he had "no hesitation in saying that all the "natives who had been sentenced by Mr. "Fairbairn had been illegally sentenced." That was what the hon. member for Geraldton told the Government last Session, and with what effect? "We'll let them off, then," remarked the Attorney General. That was the only attention paid by the members of the Government in this House to Mr. Brown's warning,—"We'll let the niggers off, then." The hon. member was met with a sneer. I find that the hon. member did not confine himself simply to stating his bare opinion on the subject, but he asked this House and the Government to pass a Bill which, had it become law, would have obviated the necessity of our assembling here now, for the difficulty we are called on to deal with would never have cropped up. It will be in the recollection of the House that the hon. member for Geraldton introduced a Bill last Session to amend the Ordinance 12th Vict., No. 18, dealing with the summary trial and punishment of native offenders. On the second reading of the Bill, the hon. member explicitly explained its objects. The hon. member said "the "object of the Bill was simply to empower two justices to try, and, upon "conviction, to sentence to imprisonment "for a period not exceeding three years, "all native offenders who, at present, can "only be so sentenced by a Resident "Magistrate,—the longest period to "which any other two justices (or half a "dozen justices) can sentence native

"offenders being six months. In some 'parts of the Colony,' the hon. member continued, 'offences are committed by natives in places where no Resident Magistrate may be found within hundreds of miles, and it would be obviously inconvenient, and often a great source of expense, to have the offenders brought before such magistrates.'" The second reading of this Bill was agreed to *sub silentio*. Not a word of opposition was offered to it by the members of the Government in the House, and there was such a general consensus of opinion as to the desirability and the expediency of such a Bill that, as I have already said, it was agreed to *sub silentio*. It evoked no discussion at any stage of its progress through the House, and was apparently as acceptable to the occupants of the Government benches as it was to hon. members on this side of the House. But what was the result? On the very last day of the Session they were curtly told, in a Message from the Governor, that he had vetoed the Bill. No reason was assigned by His Excellency for withholding his assent from the Bill—a Bill which, apparently, was so far in accord with the feeling of every section of the House that it was passed without a single word of opposition. And yet if that Bill had been allowed to become law, this House need not now be in Session. The difficulty we are now called to deal with stared the Government in the face at that time, as regards the appointment of Mr. Fairbairn, but the Government ignored it. They would not take advice nor warning. It is therefore idle for anyone to say that the late Administration—not the late Administration but the late Governor himself, for the members of the Government having seats in this House, by their silence, gave their tacit assent to the principles of the Bill—I say it is therefore idle for anyone to attempt to throw the blame of the present difficulty upon anyone but the late Governor himself, who is directly responsible for the mistake we have met here to rectify, and that mistake has arisen from a wilful disregard of advice tendered by this House. It appears, as I have already said, from the Speech of His Excellency the Administrator that the Council has been summoned simply to

rectify an informality in the appointment of Mr. Foss, who, it is said, ought to have been designated a Resident Magistrate instead of Itinerant Stipendiary Magistrate, and that we are not to deal in any way with the larger question of the entire illegality of the sentences passed upon these natives. I must say it appears to me His Excellency the Administrator has taken a new departure since he called this House together. If hon. members will look at the 13th paragraph of His Excellency's despatch to the Secretary of State they will see why the House was called together. His Excellency says:—"The Legislative Council has been called to meet the difficulty pointed out by Sir William Robinson, and in the usual notice which is sent to members they are told that 'the business of the Council will be confined to the amendment of the law with respect to the appointment of Resident and other Magistrates. This form of instruction will not, I apprehend,'" His Excellency says, "prevent the Government embodying two Bills,—one to provide for the immediate difficulty, the other, a more comprehensive Bill, defining, with greater legal accuracy, 'the powers of a Resident Magistrate.'" I am therefore bound to say that the Administrator has clearly departed from the original intention of the Government in calling us together, seeing that the only Bill proposed to be introduced for our consideration is one to rectify an informality in Mr. Foss's appointment. We are to have nothing to do with the other and more important question, but to content ourselves with this very harmless, and it appears to me useless, piece of legislation. Sir William Robinson, in his letter of the 23rd March, addressed to His Excellency the Administrator, appears to have contemplated that the measure would be a very sweeping one indeed. "I fully recognise," Sir William Robinson says, "the expediency of *ex post facto* legislation in such a case as this; but really it appears to me, as I have said in my telegram, that you should not turn loose such a number of unruly natives in the district from which they have been sent, and certainly I would not do so without first inviting the Legislative Council to legalise the convictions. This will, at all events,

"enable you to detain the prisoners until you can consult the Secretary of State" as to the propriety of giving permanent duration to the law, should you feel doubt on the point." Certainly the legislation which, judging by the Bill before us, we are likely to have to deal with, will not be of this sweeping character, but, as His Excellency the Administrator puts it, merely of a "curative" character; it will, in fact, be simply directed to validate Mr. Foss's sentences to the extent that they would have been valid if he had been appointed a Resident Magistrate. For my own part, I think the Government will be driven to legislate much further than this, and will find that this Bill in no way meets the difficulty of the position in which they have placed themselves, by sneering at the advice given to them by this House. It may be pointed out, with very little difficulty, that if we merely give to the sentences passed by Mr. Foss the validity of sentences passed by a Resident Magistrate, they will have no validity at all; but I do not propose at this stage to go into that question, beyond pointing out that the law on the point is clearly laid down by the Acting Attorney General in the papers before us. So far as the little Bill before us is concerned, I do not know that I shall offer any opposition to it, so far as it goes; at the same time I wish to be clearly understood that I do not think it in any way meets the difficulty we have to deal with. The Speech of His Excellency the Administrator also refers to the subject of steam communication, in connection with the loss of the *Macedon*, and the despatch of the *Rob Roy* on special service to the North-West. It would appear from the papers which have been presented to us that although the contractors, at the present moment, have not a single steamer on the coast, between Albany and Champion Bay, and only one (the *Rob Roy*) employed in the colonial service at all, they are still in the full enjoyment of their £7,500 a year subsidy. I believe their contract with the Government is to have three steamers working on the coast, and connecting us with Adelaide and Melbourne; but at present we are without one, so far as the general public are concerned, and yet Messrs. Lilly & Co., we are told, are to have their full subsidy paid them, and

this, I am surprised to find, on the joint recommendation of the Colonial Secretary, the Postmaster General, and the Superintendent of Police. These gentlemen in their report say they think the subsidy ought to be paid on the understanding that the contractors "make all efforts" to replace the *Macedon*, and to carry out certain services by other means. I think the House and the general public would have considered it a more just arrangement, so far as the Colony is concerned, if some portion of the subsidy had been deducted, pending the service contracted for being restored, and the *Macedon* replaced. I should like to know when the Government will consider it right to inform Messrs. Lilly & Co. that they have had ample time to "make all efforts" to renew the service which they are paid for performing. The position at present is this: the contractors may be, for aught we know, "making all efforts" to replace the *Macedon*, and so long as they continue to draw £7,500 a year, whether they have another steamer or not, will probably continue to "make all efforts." But that is not what the public want. The public want something for their money, and do not see the fun of paying Messrs. Lilly & Co., or anybody else, £7,000 or £8,000 a year, for nothing. His Excellency the Administrator also deals slightly with the financial condition of the Colony, and, referring to the published returns of Revenue and Expenditure, says: "This prosperous state of the Treasury Chest points in a remarkable degree to the prudence and economy which has been exercised in the control of expenditure by the late Administration." Well, Sir, that the late Administration did latterly make strenuous efforts in the direction of economy I am perfectly willing to admit; but I say they had entered upon a course of great extravagance, until they were drawn from it—fortunately for the country—by this Council. I say that, most unhesitatingly. And I say this also: however well-directed their efforts latterly may have been in the exercise of prudence and economy, the "prosperous state of the Treasury Chest" is due mainly to the enterprise of gentlemen like the hon. member for Fremantle—who has been twitted in this House as being a "land-jobber"—to the

enterprise of gentlemen who have devoted their capital and their energies in the settlement of our Kimberley District. I think the flourishing condition of our revenue is to be traced to the enterprise of those persons, both in this Colony and out of it, who have expended their money in opening up this new country, and not to "the prudence and "economy which has been exercised in the "control of expenditure by the late "Administration." The real cause of the prosperous state of the Treasury Chest is to be found in the direction I have indicated, and, so far from the late Administration being entitled to any credit in the matter, it is notorious that they sought by their misdirected efforts to stifle that very spirit of enterprise—they called it "land-jobbing"—which has led to the present prosperous state of the Treasury Chest. I defy them to point out a single case of "land-jobbing" in connection with the settlement of this district. So far as our experience of the settlement of the district has gone, it clearly shows that the work has been taken up by people who have a *bonâ fide* intention—and who have shown their *bona fides*—to carry out the work of settlement; and, in my opinion, the Government would do well to assist these people in the way which this House always advocated they should be assisted, namely, by a relaxation of the land regulations.

MR. S. H. PARKER said there were one or two matters in the Administrator's Speech with reference to which he should like to say a few words, and following in the wake of the hon. member for Murray and Williams he might state that, in his opinion, the late Attorney General (Mr. Onslow) was not entitled to any blame whatever with reference to the mistake made in connection with Mr. Foss's appointment. It might be said that the argument suggested in support of the position taken up by the Government, as shown by the papers on the subject before the House, was, that if Mr. Onslow had in the first place recommended that the title to be conferred on Mr. Foss should be that of Resident Magistrate, all that followed would have been in legal form. But he would point out this fact to the House, and particularly to the Government: before you can appoint a Resident Magistrate to a dis-

trict there must be a Magisterial District already defined, in which such Magistrate is to exercise jurisdiction. This position appeared to be recognised by the present Administration, for, before Mr. Foss was re-appointed and gazetted as Resident Magistrate, the Administrator, by proclamation in the *Government Gazette*, defined the new Magisterial District—that of the Gascoyne—where Mr. Foss was to be stationed. It was clear, therefore, so far as Mr. Onslow was concerned, he could not, when the question of Mr. Foss's title was referred to him, have recommended that he should be styled Resident Magistrate, seeing that the part of the Colony where he was going to exercise Magisterial functions had not then been declared a Magisterial District,—was in fact unknown, and included in another Magisterial District, that of Geraldton. Apart from this, it appeared to him that Governor Robinson ought to have been fully aware of the fact that neither Mr. Foss nor Mr. Fairbairn would have any power as Resident Magistrates to inflict sentences of three years upon the natives. He believed His Excellency was fully aware when Mr. Fairbairn went up that he would have no such power; but still he allowed him to go, and no attempt was made to consult Mr. Onslow then. And it was not Mr. Foss alone, but also Mr. Fairbairn, who had been sentencing these natives, many of whom, he believed, had already "done" a good deal of their sentences. He had no doubt if Mr. Onslow had been consulted as to the legal status of Mr. Foss, he would have found out that even as a Resident Magistrate he had no power to pass a sentence of three years; he could only do so when acting in conjunction with another justice, thus forming a special tribunal. The Bill introduced by the Government, and styled on the minutes as the "Native Convictions Validity Bill," was certainly wrongly so styled, for it did not validate, nor seek to validate, the conviction of any native who had been sentenced to more than six months; for, as he had already said, if Mr. Foss had been appointed Resident Magistrate in the first instance, he could not have legally sentenced any native to a longer term than six months. So that if this Bill became law such convictions would not be vali-



dated; and they would just be as bad as they were originally, and Mr. Foss was in the invidious position of having sentenced these men without any jurisdiction whatever. He believed it was true that it had been customary for Resident Magistrates to sentence prisoners to three years, and the Government might be of opinion that if they gave Mr. Foss the status of a Resident Magistrate from the time he was first appointed, that would validate his sentences; but that was an erroneous idea, and if any philanthropic person were to think proper to move the Court on a writ of *habeas corpus*, to release these prisoners, the fact of passing the present Bill would in no way prevent their being at once released. Therefore so far as the present Bill was concerned he could conscientiously support it, for in reality it was of no value whatever. It was a poor harmless little thing at the worst; if it could do no good it could do no harm, and if it was likely to prove a salve to the troubled consciences of the members of the Executive, he, for one, would not deprive them of it. But so far as remedying the mistake made in the appointment of Mr. Foss went—or rather so far as legalising his sentences went—the Bill was utterly worthless. As to the allusion made in His Excellency's Speech to the loss of the *Macedon*, and the consequent derangement of the coastal service, he must join the hon. member for Murray and Williams in expressing his surprise that, while the contract with Messrs. Lilly and Co. was to the effect that they should provide us with three steamers, in consideration of a yearly subsidy of £7,500, they were still drawing the full subsidy, although, properly speaking, there was at the present moment no steamer on the coast at all. It appeared from the papers submitted to the House that this consideration was shown to Messrs. Lilly & Co. in view of their agreeing to pay a few hundred pounds for establishing overland communication. This concession it would appear was made in consideration of the unfortunate accident to the *Macedon*; but if the Government proposed to continue to deal with Messrs. Lilly & Co., in this liberal spirit, and to continue the subsidy irrespective of the number of steamers employed, why, it appeared to him, that

so far as Messrs. Lilly and Co. were concerned, the fewer steamers they employed the better off they would be. The contract was certainly an admirable one for one of the contracting parties,—the steamer proprietors; but so far as the Colony was concerned, he could not imagine he might say a more extravagant one. The remaining paragraphs of His Excellency's Speech dealt with the financial condition of the Colony, and no one could fail to appreciate the kindly terms in which His Excellency referred to the prudence, economy, and other virtues which had been exercised in the control of public expenditure by the late Administration. But what did the figures presented by His Excellency disclose? It appeared that this model Administration, spoken of in such kindly terms, had in the expenditure for the past year exceeded the amount voted for them by the Legislature by over £5,000. If that was exercising economy, he should be sorry to see it practised in other directions. No doubt it was very kind on the part of His Excellency to speak in such flattering terms of the late Administration. They must all recognise and appreciate such goodness of heart on His Excellency's part. But he was afraid that, after all, they must look in another direction altogether for the causes which had led to the prosperous financial condition of the Colony, and, in doing so, they need not look beyond His Excellency's own Speech. It appeared that the revenue for the past year amounted to £250,372, being nearly £50,000 in excess of the estimated revenue. "This result," His Excellency said, "I understand, is mainly attributable to the fact that the receipts under Customs exceeded the estimate by £19,447, and under the head of Land revenue by the sum of £18,043." Here then were the causes which accounted for the prosperous state of the Treasury Chest; and, instead of having cause to be grateful to the late Administration for their prudence and economy, what we had really to be thankful for was the satisfactory increase shown under the heads of the Customs and Land revenue. So far as the prudence of the late Administration was concerned, he believed it would be found, when hon. members met at the ensuing Session, and came to

consider the minutes of the Finance Committee, it would be found that, not many months after the passing of the Audit Act, Governor Robinson committed a very gross breach of that Act, by paying away money without any authority whatever; so that he did not think the House or the country owed any great debt of gratitude to the late Administration, for the "remarkable" degree of prudence and economy "which they exercised in the control of" expenditure."

THE COLONIAL SECRETARY (Hon. M. Fraser) said he rose to formally move that a Select Committee be appointed to prepare an Address in Reply to be presented to His Excellency for his Speech, but he thought it would be as well that he should also offer a few remarks in reply to what had fallen from the hon. member for Murray and the hon. member for Perth. It was stated by the hon. member for Murray and Williams that His Excellency the Governor had changed his front—had taken a new departure—since he first summoned the Council, for the present Session. The hon. member was right in that; and he might at once state that the main reason for this change of front was the fact, that from the replies received to the circulars forwarded to hon. members calling them together, it became apparent there would be only a small attendance, and His Excellency considered that, out of respect to the Council as a body, it would be better to abandon the original intention of dealing with the question for consideration in its more comprehensive and subtle form, and to content ourselves by providing for the more immediate difficulty. Consequently, a Bill was brought in dealing only with one phase of the question, while the more comprehensive measure, defining with greater legal accuracy the powers of a Resident Magistrate, and making other provisions sketched out in His Excellency's despatch to Lord Derby, was postponed. So that if there had been a change of front, that change of front had taken place out of respect to that Council, and in view of the small number of members who could make it convenient to attend; the larger question being left to be dealt with at the ordinary Session, to be held probably in

the course of a month or so. As to what had been said with reference to the transport of mails, following upon the wreck of the *Macedon*, and the consequent derangement of the coastal service,—what was the position in which the contractors found themselves? By the act of God they had lost one steamer—

MR. S. H. PARKER: How does the hon. gentleman say they lost it?

THE COLONIAL SECRETARY (Hon. M. Fraser) said he believed they lost it by what in nautical circles was known as the "act of God"—at any rate, the steamer was wrecked, and its services were unexpectedly lost to the Colony. Another of the company's steamers had gone to Melbourne to undergo the annual overhaul, permitted under the terms of the contract; while the third vessel, as hon. members were aware, had been despatched on a very important service, which would have brooked no delay, without entailing much loss upon the Colony. In view of the importance attached to the surveys in the Kimberley District, and the exigencies of the situation, it appeared to the Executive Government, after most careful consideration, that the best use we could make of the *Rob Roy* was to despatch her northward, thus affording an immediate opportunity for conveying the survey party, already equipped, to the North-West. This arrangement, no doubt, entailed some inconvenience on the residents of this part of the Colony, but everything that could be done to minimise the inconvenience was done, by means of subsidising other steamers, and by affording increased accommodation overland, at the cost of the contractors. As to the contractors deriving any great pecuniary advantage from the present arrangements, if hon. members would look at the amount paid them for the Northern service as compared with the Southern service, and bear in mind the expense entailed upon them in providing the extra services overland, it would be seen that, so far as the contractors were concerned, they were actually at a loss, if anything, by the present arrangement. He might add that they were making most strenuous efforts to have the *Macedon* replaced by an entirely new steamer; the *Otway* would be back in the

course of another fortnight, and no time would be lost in restoring the regular services. He was quite sure it would be admitted that the Executive Government in acting as they had done in this matter had been animated by no other feeling than a desire to serve the best interests of the Colony, under the circumstances. With regard to the public finances, and the part played by the late Administration in bringing about the present satisfactory state of affairs, he himself thought a great deal of credit was due to the late Administration, notwithstanding all that had been said to the contrary; and, if they did exceed the estimated expenditure by the enormous sum of £5,000, he thought hon. members would find matter for congratulation if there was no larger overdraft this year. It must be admitted—and he was glad to hear it admitted—that the late Administration did their level best to economise the public funds: and he was pleased to bear testimony to the fact that this House had cordially co-operated with them in that direction. He could only express a hope that the same cordial relations would exist between the Legislature and the present Administration, and also with all future Administrations. He would say no more, but would now formally move that a Select Committee be formed to prepare an Address in Reply to His Excellency's Speech, such Committee to consist of Mr. Shenton, Mr. Randell, Sir T. C. Campbell, Mr. S. H. Parker, and the mover.

This was agreed to, and the Committee having retired to prepare the Address, returned in a few minutes, and

Mr. SHENTON brought up the Address, and moved that it be read; which was agreed to.

The Address was then read at the Table by the Clerk, as follows:—

*"To His Excellency Henry Thomas Wrenfordale, Esquire, Administering the Government in and over the territory of Western Australia and its Dependencies, &c., &c., &c."*

"MAY IT PLEASE YOUR EXCELLENCY,—

"We, the members of the Legislative Council of Western Australia, desire to express to Your Excellency our thanks for the Speech with which you have been pleased to open the present Session

"of this Honorable Council, and to assure you of our earnest desire to co-operate with you in effecting the purpose for which we have been summoned.

"The Bill to be placed before us shall receive our most thoughtful consideration, and we trust that the important matter now entrusted to our charge will have a satisfactory conclusion.

"In consequence of the stranding of the 'Macedon,' we regret that the departure of the Survey parties for the Kimberley District was somewhat delayed, but it is satisfactory to know that, with only a brief delay and at trifling loss to the Colony, they have again sailed in the 'Rob Roy,' and we are glad to be informed that the Government Resident, with a Police Force, has been despatched in the ship 'Amur,' and with Your Excellency we trust that both expeditions will prove successful.

"It is a subject of congratulation, and with pleasure we have heard you state figures showing the present satisfactory condition and sound financial position of this Colony. Under good management we cannot but feel confidence in its permanent progress.

"We thank Your Excellency for the various papers which have been laid on the Table for our information."

THE COLONIAL SECRETARY (Hon. M. Fraser) moved that the Address be adopted.

Agreed to, *nem. con.*

On the motion of the COLONIAL SECRETARY, it was resolved that the Address be presented to His Excellency the Administrator by Mr. Speaker and other members of the House on Tuesday, April 17th.

#### NATIVE CONVICTIONS VALIDITY BILL.

THE COLONIAL SECRETARY (Hon. M. Fraser) then moved the second reading of the Bill to give validity to certain summary convictions of aboriginal natives of the Colony—the Bill referred to in His Excellency's Speech. The hon. gentleman said he need not say many words in support of the motion, as the principle of the Bill had already been fully discussed, in the course of the

debate on the Address, and he would leave his hon. and learned colleague, the Acting Attorney General, to deal with the legal aspect of the question. The Bill was what he might term a provisional measure, framed to meet a pressing necessity, and not intended to go beyond the immediate object of its introduction. It consisted of one clause only, which carried its meaning on the face of it,—in short, it affirmed the convictions made by Mr. Foss, at the Gascoyne. He was not aware that it was necessary he should revert to the causes which had rendered the Bill expedient; nor did he see the utility of dealing with the question of who was responsible for the mistake which had necessitated its introduction. After what had fallen from those hon. members who had referred to the Bill in the course of the evening, he did not apprehend that any violent opposition would be offered to it, and consequently there was no necessity for him to trespass further on the time of the House in moving that it be now read a second time.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake), in seconding the motion, said the Council had really been called together not for any *ex post facto* legislation, not to deal with any heroic measure, but to cure a slip of the pen, in the appointment of a magistrate. There were in reality two local Acts which particularly applied to the conviction of natives; one was 12th Vic., No. 18, which empowered magistrates to give a native six months; and the other, the 23rd Vic., No. 10, which extended that period to three years. The first of these enactments provided that for the purposes of a conviction there shall be two magistrates, one of whom shall be a guardian or sub-guardian of natives—a title which had long been discontinued—or the Resident Magistrate of the district; and the power directed to be exercised by two magistrates had, by the 27th Vic., No. 17, been directed to be exercised by a Resident Magistrate or a Government Resident. Afterwards the title of Police Magistrate was created. There was another enactment, 14th Vic., No. 5, which he thought controlled the Ordinances referred to, and which provided that if there was only one Justice of the Peace at hand, and no other

magistrate living within twenty miles of him, the justice to whom the complaint was made could adjudicate thereon, as fully and effectually as if he was assisted by another judicial luminary. It could hardly be considered that the mistake in the appointment of Mr. Foss, whose convictions alone were sought to be cured by the present Bill, arose from anything but a slip of the pen. Instead of being designated a Resident Magistrate, he had been called by the generic title of Itinerant Stipendiary Magistrate, and the object of the Bill now before the House was, not to legalise in the form of *ex post facto* legislation, but merely to cure what he had already designated a slip of the pen, so that, in the event of the Bill becoming law, these poor natives will be in the same position as if Mr. Foss had been originally gazetted a Resident Magistrate, a Police Magistrate, or a Government Resident. It had not been thought expedient to invite the House, in its present limited state, as to numbers, to discuss what will be the status of these natives, supposing this Bill to pass; but, merely, in common justice to the natives themselves, and in common fairness to the public, to place these aboriginal offenders in the same position as they would have been in, had Mr. Foss, in the first instance, been dubbed a Resident Magistrate, instead of being called by the title which, after much cogitation, was created for him. The motives of the Bill had been so thoroughly expressed by the Administrator in his Speech and in his despatch, that it would be simply waste of time for him to occupy the attention of the House any longer.

MR. BURT thought it was due to the House that they should obtain from the Attorney General some explanation as to the discrepancy between his statement now and his minute on the same subject, published with the papers before the House. In the advice which the hon. and learned gentleman tendered to the Administrator—and he (Mr. Burt) in no way quarrelled with that opinion, on the contrary he thoroughly agreed with the advice given,—the Attorney General said: "It is plain therefore that to warrant this punishment of three years being inflicted on a native, one of the convicting magistrates"—thereby

implying that there must be two magistrates—"must be a guardian or sub-guardian of natives or a Resident Magistrate of the district." He deduced from that, that the Government were advised by their law officer that these sentences were illegal, and that even if Mr. Foss had been a Resident Magistrate, they would still be illegal. Under these circumstances, he thought the House was entitled to some explanation as to why the Bill was not so drafted as to make the convictions good and legal convictions. The Bill, instead of that, merely rectified them so far as to give them the validity of a Resident Magistrate's sentences, which, according to the Attorney General himself, was no validity at all, for if Mr. Foss had originally been appointed a Resident Magistrate he could not have given these men more than six months; and it was a question upon which legal opinions might differ whether he could even have given them that. He thought he should be wrong if he hesitated to point out that in his opinion these convictions to which they were asked to extend the provisions of this special piece of legislation will be of no more value after the Bill is passed than they are at present. But he did not know that he was called upon, as an elected representative, as a private member, to oppose a measure which the Government considered as the only instalment of legislation now necessary, or which they dared to propose for the acceptance of the House. He might be going too far if he opposed it on the ground that it did not go far enough, but he certainly should have preferred to have seen a measure in the shape of the poor little bantling that was so unceremoniously massacred, not by the House, but by the Governor, last year. He alluded to Mr. Brown's little Bill. Had they passed a Bill of that character, which, by repealing the words "one of such justices being in every case a guardian or sub-guardian of natives," or the Resident Magistrate of the "district," in the Ordinance providing for the summary trial and punishment of aboriginal native offenders (12th Vic. No. 18), they would not have been landed in their present difficulty. His idea was that the Government should introduce a Bill of this character, and then, following

the example of the South Australian Parliament (referred to in His Excellency's Speech), enact that all convictions already made should be deemed to be valid and effectual as if the same had been made after the passing of the Act. They would then cure the whole evil, at one stroke, instead of by degrees as was now proposed. He was, however, afraid the matter had gone so far that it was almost too late to ask the Government now to withdraw their Bill—the only one of the Session. It would be cruel to ask them to consent to the massacre of their only offspring—poor little innocent. But if they were not too proud to take a little friendly advice he thought it would be better if they were to frame their measure on the lines of the Bill of last Session, and to follow the precedent established by the South Australian Government when they found themselves in a similar dilemma. For his own part he protested against the legislation embodied in the Bill now before the House, but he was not prepared to reject it altogether.

After a pause,

MR. S. H. PARKER said he was expecting the Government would have offered some explanation after the pointed manner in which the hon. member for the Murray and Williams had applied for information from the hon. and learned gentleman opposite. But as no such information appeared to be forthcoming, he presumed there was none to offer. When he first looked at this Bill it struck him as very strange that the Government should only ask them to pass a measure giving these convictions the same validity as if they had been made by a Resident Magistrate—in reality they were not legalising them; but after further consideration he thought His Excellency the Administrator was taking a very proper view of the situation, for it never was intended by Governor Robinson or the late Administration to give Mr. Foss any greater powers than are vested in any other Resident Magistrate. It was never contemplated that he should have the powers conferred by local Ordinance upon a specially constituted tribunal consisting of a Resident Magistrate and another justice, and to sentence these natives to three years. Under these circumstances, it appeared to him it was only right and

proper that the Government should only ask the House to give Mr. Foss's convictions the same validity as if he had been a Resident Magistrate,—which was all the power they intended vesting in him. That being the case, he thought it would have been inconsistent on their part to have invited the House to have gone beyond that, and to legalise convictions which they never contemplated empowering Mr. Foss to make. He said again he thought they had acted very wisely and properly in this respect, and he congratulated His Excellency the Administrator on his astuteness and discernment. For years past these Resident Magistrates, although they had no power whatever to do so, had been passing sentences of three years all over the Colony, and His Excellency might fairly say that, in the same way as he kept in confinement other native prisoners illegally sentenced to three years by other Resident Magistrates, so he might with equal show of reason, if not of legal right, detain those sentenced by Mr. Foss, leaving it to some philanthropic person to move the Supreme Court to release them,—not only those sent down from the Gascoyne, but also all others illegally sentenced, in various parts of the Colony.

The motion for the second reading was then agreed to, and the Bill committed.

#### IN COMMITTEE.

Clause 1—Mr. Foss's convictions confirmed, as if they had been made by a Resident Magistrate duly appointed in that behalf.

Agreed to *sub silentio*.

Preamble: "Whereas by divers Acts of Council a Resident Magistrate is empowered to convict and sentence certain offenders being aboriginal natives of the Colony of Western Australia," etc.

MR. BURT: Under what Act?

THE ATTORNEY GENERAL (Hon. G. W. Leake): I apprehend merely the 27th Vict. No. 17, which gives a Resident the power of two Magistrates. Of course I do not propose to argue the matter now as if we were arguing it upon a writ of *habeas corpus* to release the natives.

Preamble agreed to.

Title: "An Act to give validity to certain summary convictions of aboriginal natives of the Colony:"

MR. S. H. PARKER suggested that a more appropriate title would be "An Act to ante-date the appointment of Mr. Charles Denroache Vaughan Foss as Resident Magistrate."

THE ATTORNEY GENERAL (Hon. G. W. Leake) hoped the hon. member would not press his amendment. It would only mar the symmetry of the Bill. The title was then agreed to, and the Bill reported.

The House adjourned at nine o'clock, p.m.

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### LEGISLATIVE COUNCIL,

Tuesday, 17th April, 1883.

Presentation of the Address in Reply to His Excellency the Administrator—Adjournment.

THE SPEAKER took the Chair at noon.

#### PRAYERS.

#### PRESENTATION OF THE ADDRESS IN REPLY.

At a quarter past 12 o'clock, the Council adjourned, during leisure, in order to present the Address in Reply to His Excellency's Speech, for which purpose Mr. Speaker and hon. members proceeded to Government House. On re-assembling,

THE SPEAKER announced to the Council that the Address to His Excellency the Administrator had been presented in accordance with the Resolution of the House, and that His Excellency had thanked the Members for the same, and said he would instruct the Colonial Secretary to afford to the Council every information that it was in the power of the Government to give.

The House adjourned at half-past twelve o'clock, p.m.

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