

LEGISLATIVE COUNCIL,

Friday, 19th October, 1888.

Cost of running the 7 a.m. Train from Perth to Fremantle, and Free Use of Telegraph Line—Sunday Excursion train to Northam—Delay in Printing Progress Reports of Agricultural Commission—Petition of Messrs. Harper & Hackett, and the Chief Justice—Constitution Bill: first reading—Aborigines Bill: first reading—Adjournment.

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

PRAYERS.

COST OF RUNNING THE 7 A.M. TRAIN FROM PERTH TO FREMANTLE.

MR. HORGAN, in accordance with notice, asked the Colonial Secretary—

1. What was the cost of running the 7 a.m. week-day train from Perth to Fremantle, from the time it first ran until its recent discontinuance?

2. How much did its receipts for passenger or other traffic amount to during that period?

3. Whether the Traffic Manager, Mr. Roberts, did not recommend its discontinuance many months ago, on the grounds of loss to the revenue?

4. Whether the *West Australian* newspaper got the free use of the telegraph line between Geraldton and Perth on the occasion of reporting the speeches at a lunch at the "Club" Hotel, Geraldton, at which the Governor was present, in November last?

THE COLONIAL SECRETARY (Hon. Sir M. Fraser) said: For replies to the first three of these questions, I must ask the forbearance of the hon. member until the return of the Honorable the Commissioner of Railways. In reply to the fourth, the *West Australian* and *Daily News* newspapers were not charged for telegraphing the Governor's speeches during his visit to Geraldton last year. It has been the practice to grant this, when it has been requested by the Press, and when it has been considered advantageous to the public.

MR. HENSMAN: Sir, without notice, I ask when the Director of Public Works or Commissioner of Railways is expected to return; he has gone away apparently

at the commencement of the session; and I wish to ask when he is likely to come back.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser): Perhaps the hon. member will be good enough to give notice. I am unable to answer his question at present.

SUNDAY EXCURSION TRAIN TO NORTHAM.

MR. H. BROCKMAN asked the Colonial Secretary to inform the House by whose order an excursion train was to be run to Northam on Sunday next?

THE COLONIAL SECRETARY (Hon. Sir M. Fraser) said it appeared that the excursion train in question was not formally authorised. His Excellency the Governor had directed the discontinuance of the train in future.

DELAY IN PRINTING THE PROGRESS REPORTS OF AGRICULTURAL COMMISSION.

MR. RICHARDSON, in accordance with notice, asked the Colonial Secretary—

1st. For the reason why further progress reports of the Agricultural Commission had not been printed.

2nd. Whether he could inform the House what important printing work had necessitated the postponement of the printing of these reports.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser) replied—

1st. Press of urgent work in the Government Printing Office.

2nd. Votes and Proceedings and Papers of two Sessions of the Legislative Council; volume of Railway Regulations; New Rules of the Supreme Court, and other matters.

It is doubtful whether the Agricultural Commission's papers can possibly be completed this year.

MESSRS. HARPER AND HACKETT'S PETITION AND THE CHIEF JUSTICE.

MR. PARKER: Sir—I rise for the purpose of moving the resolution which stands in my name—"That an Humble Address be presented to His Excellency the Governor, enclosing a copy of the Petition of Messrs. Harper & Hackett to the Legislative Council, in which the

Petitioners pray for the appointment of a third Judge of the Supreme Court, or for the repeal of a portion of the Act 44 Victoria, No. 10, and respectfully requesting His Excellency to be pleased to forward the same to His Honor the Chief Justice for his remarks thereon." I observe, sir, that later down on the Notice Paper there is a notice of motion to this effect: "That the petition of Charles Harper and John Winthrop Hackett, praying the House to address the Governor and ask him to appoint a third Judge, be ordered to be withdrawn, and that all copies thereof be cancelled on the grounds that the said petition contains gross and offensive imputations upon the Chief Justice of the Colony, and upon the administration of justice in the Supreme Court, and defamatory statements about members of this House, and that it is an abuse of the right of Her Majesty's subjects in the colony to petition this House, and of the forms and practice relating thereto, and on other grounds." Before proceeding, sir, with the motion of which I have given notice I think it is well, in view of the other motion which I have just read, that I should ask your Honor's ruling, whether this petition, which I presented on Monday evening, is, as set forth in the motion referred to, "an abuse of the right of Her Majesty's subjects in the colony to petition this House, and of the forms and practice relating thereto." I should be sorry to proceed with this petition, or to move any further in the matter, if it is really an abuse of the forms and practice of the House, or if it is an abuse of the right of Her Majesty's subjects in the colony to petition this House. I was under the impression that every subject of Her Majesty had a right to petition not only the Governor but also the Legislature of the colony, on every subject or matter of grievance; but, if this petition is in any way an infringement of any of the rules of this House, or is not in order, as I have said, I have not the slightest desire to proceed with it at all. Therefore, sir, before proceeding any further I desire that your Honor will give your opinion as to whether the petition is in any way improper or out of order.

MR. HENSMAN: Sir, I rise to order. I submit that the hon. member himself is out of order in referring to a notice of

motion which is not before the House, and that he must confine himself to the motion now before us. He must not seek to evade discussion on the matter by trying to get your ruling, sir, before you have heard and had the benefit of the arguments which may be brought forward. If this is an attempt to evade discussion, I shall resist it most strenuously. The hon. member has a motion before the House, and I submit he must proceed with it, or take whatever course he deems fit, and that it is not in order for him to call upon you, sir, to rule upon a motion which is lower down on the Notice Paper, without hearing any argument whatever.

THE SPEAKER: I do not think the hon. member is out of order in asking for my ruling as to whether there is any irregularity in this petition. In my opinion there is no irregularity,—

MR. HENSMAN: Then, before you say that, I hope you will hear something I have to say, as a lawyer, upon this subject.

THE SPEAKER: The hon. member will sit down. In my opinion there is nothing in that petition that is irregular or in contravention of the standing orders of this House, nor—so far as they are applicable to this House—of the standing orders regulating the presentation of petitions in the Imperial Parliament. The custom in the Imperial Parliament is that all petitions presented to the House are referred to a select committee, appointed every session, and that committee reports to the House if there is any irregularity in a petition. Of course we have not got that committee here, and I apprehend it is my duty to call attention to any irregularity that may appear in any petition presented to this House. With regard to any further action in the matter of this petition, I am happy to say that I am relieved from any responsibility in the matter, as it is a question entirely for the House itself to decide. This is the ruling of the Speaker of the House of Commons on the subject: "It is for the House and not for me to judge or determine whether the petition now under the consideration of the House should lie upon the table, and thus become one of the permanent records of the House. The House has always maintained the undoubted constitutional rights of the people to complain

"of grievances and to pray for their redress, but that right may be abused, and the question for the consideration of the House now is, whether the petitioners have not abused their right." It is for the House, therefore, to say, and not for me, whether this petition shall be proceeded with; but, as for there being any irregularity in the preliminary presentation of the petition, there is no irregularity about it; the standing orders have been complied with, and there is no occasion for my intervention in the matter.

MR. PARKER: Then, sir, I shall proceed with my motion. This petition having been received by the House, and having been printed, and having also, as I observe, gone forth to the world in the public press of the colony, I think it is a duty we owe to the Chief Justice of the colony to give him an opportunity of replying, or of making any remarks he may think proper upon this petition. I myself, sir, deprecate any discussion on the merits of the petition at this stage; I think it would be wrong for us to even form any opinion upon the facts, upon the substance, of the petition until His Honor has had full opportunity of giving his views upon it, and to reply to all the charges that have been made against him by the petitioners. We pride ourselves, as Englishmen, upon a love of fair play; and it seems to me, sir, that fair play demands that a copy of this petition should be sent to His Honor the Chief Justice for his remarks upon it. To try to burke it at this time would not be giving that fair play to His Honor which the case demands. Does anyone imagine for a moment it would be doing His Honor a kindness to try to suppress this petition at the present time, when it has gone forth to the world, without giving him an opportunity of refuting these charges? Does anyone mean to say, even his best friend, that he should not have an opportunity of replying? Would not his best friend say, if charged in this way, "Do not burke it, do not form any opinion upon it until you see what he has to say on the question." That is the reason, sir, why I ask that this petition should be forwarded to the Chief Justice for his remarks. It is not competent for this House to send the petition, directly, to His Honor, and it

appears to me the only way we could do so is to approach His Honor through the Governor of the colony. Therefore it is that I have moved this address, respectfully requesting His Excellency to be pleased to forward a copy of the petition to His Honor for any remarks he may think proper to make upon it. We here cannot ask the Chief Justice to make any remarks upon it. His Honor may think proper to make none, but I imagine myself he will think proper to make a good many remarks; and I ask hon. members to defer forming any opinion upon the merits of the petition until we have heard the Chief Justice in reply. Without any further remarks I now move the adoption of this address.

MR. SHOLL seconded the motion.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser): Sir, I think it is well that I should rise at this moment to state the position which the members of the Government in the House will take with regard to this question. Firstly, I may observe that the Government are of opinion that this petition is one which this House could not refuse to receive. It should be clearly understood, sir, that the Government regard the petition at present as a mere *ex parte* statement, and do not accept the statements in it in any way whatever; on the contrary, it is to be presumed, sir, that the statements derogatory to His Honor the Chief Justice which are contained in it will prove to be totally unfounded. When this has been shown, the Government will be ready, if necessary, to propose to this House a motion condemnatory of the petition. But the Government feel bound to regard the petition as an *ex parte* statement of so grave a nature that, true or untrue, sir, it must be inquired into and disposed of. Neither this House nor the public at large can have any proper and effective means of judging of the petition until placed in possession of the remarks of His Honor the Chief Justice, or of the decision of the Secretary of State after considering those remarks as well as the petition. Messrs. Harper and Hackett have addressed to the Right Hon. the Secretary of State what amounts to a duplicate of their petition to this House, and this duplicate petition has already been forwarded by His Excellency the Governor to His Honor the Chief Jus-

tice, for any remarks which he may desire to make on it. The Government must support the motion of the hon. member for the Vasse, but, looking at what I have just stated, the House will understand that it must be left entirely to His Honor the Chief Justice to decide whether his remarks on the statements contained in the petition shall be presented to the House now, or whether they shall be reserved until the Secretary of State shall have considered and decided upon the matter. I should further state, sir, that in the event of a mutual agreement being arrived at between the hon. member who has brought forward this motion and the hon. member for the Greenough, who has another motion on the order paper—should a mutual agreement be arrived at to withdraw both of these motions, the Government bench will support that proposition.

Mr. HENSMAN: Sir, I think I am stating what no member of this House will venture to deny when I say that the reading of this petition on Monday night last took all, or at all events the greater part, of the members of the House by surprise; and, sir, it happened—no doubt it was a coincidence—that I, and other members were not present that evening. But I submit that this petition was improperly brought forward, in the way in which it was put before the House. I take it that no one can dispute that where our own standing orders do not provide a particular course of procedure, the rules, forms, and usages of the House of Commons shall prevail; and one of the rules of the House of Commons is this: that every petition shall be written (upon parchment or paper), and that a printed or lithographed petition will not be received. I am not speaking here without book; and it will be obvious what the reason is: there is such a thing as privilege and there is such a thing as libel; and if a petition, which might become privileged if it was presented simply in writing and seen only by those who had signed it, should be first printed and should be seen by a number of persons,—that is a publication; and if it is a libellous communication—and I venture to say, sir, that the petition we are now considering, which (if I am rightly informed) was

put upon the table in print, contains gross and abominable libels, unless the allegations can be shown to be true—then there is the publication of a libel. There is therefore good reason, as I have said, for that rule of the House of Commons; and as we have no rule to that effect here, or touching this matter, that rule, according to our own standing orders, prevails. Now I turn to our own standing orders. Rule 53 says: "That every member presenting a petition to the Council . . . do confine himself to a statement of the parties from whom it comes," etc.; "and the first question which shall be entertained by the Council, on the presentation of any petition, shall be 'That it be received.'" So far, all this may be done without a motion. The rule goes on to say: "And, upon motion being made, and duly seconded, the petition shall be read." That is, still without previous notice. I turn now to the rules relating to motions. After a petition is received and read, no further action can be taken with regard to it, except upon motion after previous notice. The 43rd rule of our own standing orders makes provision for that. It says that it shall be in order on the presentation of any document except a petition—mark the exception—to move, without notice, that it be printed, and to appoint a day for its consideration. If I am rightly informed, the House on Monday, without any notice of motion, ordered this petition to be read and printed—that means, to be again printed, for it was already in print. I say that was informal, and contrary to the standing orders. Therefore I submit to this House that this petition was irregularly treated. It was received, read, and ordered to be printed, without any notice being given—rushed through, so to speak, in an unfair and improper manner. If I am wrong, I shall be glad if any member will produce some other standing order, or rule of the House of Commons relating to this matter, which overrule those to which I have referred. I can see a very good reason for this rule: it is to prevent the House ordering that which may be an abuse of the right of petition being printed, before members have had an opportunity of perusing the original. Therefore I submit that the preliminary action taken with regard to

this petition was contrary to the forms of the House, and that consequently the petition has been improperly put into the state in which it now is. I admit fully the right of the subject, the right of everyone, of the meanest person, to petition this House for the redress of abuses; but I will not admit that a petition should be made a cloak for spite and ill-feeling. What is the meaning of the saying that every subject has the right of petition? It is this: that a subject has a right to bring before Parliament anything which is germane, or to the point, in the matter prayed for. The prayer of the petition must correspond with the facts that are brought forward. I shall show in a minute that the facts in this case, if they are proved, require not the appointment of a third Judge, but the removal of the Chief Justice at the earliest possible moment. They require his dismissal with disgrace from the roll of English Judges. This petition does not pray for that. This petition only prays for the appointment of a third Judge, or a repeal of a section of the Act which gives the Chief Judge two votes, in the event of a difference of opinion. And I say this: this petition is merely a cloak for an attack upon the Chief Justice. If it were a *bonâ fide* petition it ought to have prayed this House to address Her Majesty to remove His Honor from the seat of justice, because if a Judge is corrupt, and if a Judge is all that this petition says, is it to the point to say that the remedy is to appoint a third Judge, and have one corrupt and two honest Judges? Not so. Therefore I submit in this case that this petition has violated the laws which regulate the presentation of petitions to the House of Commons, and it ought to be rejected with contempt. The hon. member who brought forward this motion and who presented the petition says he does not want to burke discussion—I rather thought from the way he talked of this at first that he did—but he says the time is not ripe for discussing the matter; he says he would wish the Chief Justice to answer it. Sir, I should be sorry to see the day when a Judge of an English Court, one of Her Majesty's Judges, will descend to answer the petition of two disappointed and punished litigants. (Manifestation of applause in the strangers' gallery.)

INTERRUPTIONS IN THE STRANGERS' GALLERY.

MR. SHOLL: Sir, I call attention to the fact of there being strangers in the House.

THE SPEAKER: Strangers must withdraw.

MR. HENSMAN: The Press, too?

THE SPEAKER: Yes, all strangers must withdraw.

CAPT. FAWCETT: Some of them may have been invited by me.

MR. HENSMAN: Sir, I wish to take the opinion of the House on this point. If I am in order, I move that strangers be not ordered to withdraw.

MR. A. FORREST: I second that.

THE SPEAKER: The question cannot be put. If a member calls attention to the presence of strangers in the House they must withdraw. I may say that it is the fault entirely of strangers themselves,—these manifestations of feeling coming from the gallery.

MR. HENSMAN: Then I say if strangers are to be turned out because one or two persons make a little noise with their feet, it is time we all withdrew.

THE SPEAKER: The hon. member must not discuss the question.

MR. HENSMAN: Then I move, sir, that the House do now adjourn.

MR. HORGAN: I second it.

MR. MARMION: I think your Honor may exercise the privilege which you possess, on this occasion, and allow strangers to remain. Of course we very well know that people who come here on an occasion of this kind, when public feeling is disturbed, are not unlikely to allow their feelings to overcome them occasionally; and I think that possibly those who are in attendance to-night regret very much now that they have allowed their feelings to overcome them. I would therefore ask your Honor to exercise the privilege which no doubt you possess of allowing strangers to remain, with a note of warning to them that it must not occur again. It must be borne in mind by those who come to this House that hon. members here are not delegates of any constituency or any particular section of the people; they have come here prepared to do their duty to the country, and they are not for one moment going to have their minds or

their utterances influenced by any expression of feeling from the gallery. For myself, so far as I am concerned, I care that much (a snap of the finger) for anything that comes from the gallery. Those people who come here to listen to the debates, and who think probably they may influence members by a show of feeling, one way or the other, are mistaken if they think that members, most of them, are going to be influenced by it. I care little or nothing myself for the gallery, but possibly there may be others who are less indifferent to applause. There may be members who are moved by a show of feeling on the part of those who come here from outside; but I am not. At the same time it must be borne in mind that it is the duty of these strangers, when admitted, to restrain their feelings, and to listen calmly and dispassionately. They have no right to show their sympathy one way or the other, their approbation or disapprobation. I remember, some years ago, on one occasion when I was addressing the House, the attention of the Speaker was called to the presence of strangers, and the galleries were cleared. It is not my wish that it should be the case on this occasion, for I think this is an occasion on which the public of the colony have a right to express an opinion—in the proper place for doing so and at the proper time; and they have a right to hear what is said on both sides. Therefore I hope His Honor the Speaker will on this occasion exercise his privilege, and not turn strangers out of the House, unless there is further interruption.

MR. SHOLL: I may say that my reason for calling attention to the fact of strangers being in the House was that on more than one occasion I have noticed that the hon. member, when he has been speaking on a subject about which there was some little feeling outside, is continually in the habit of speaking to the gallery, and for the sake of the gallery.

MR. HENSMAN: Is this in order, sir?

THE SPEAKER: I did not understand he alluded to you.

MR. HENSMAN: He spoke of me. Am I to have these remarks made because certain persons happen to make a noise in the gallery?

MR. SHOLL: Well I won't say "the" hon. member but "an" hon. member.

MR. HENSMAN: But you have done so.

MR. SHOLL: Well, I will put it in this way—some hon. members are in the habit of speaking, and looking for applause from the gallery.

Cries of "Order."

MR. HENSMAN: I rise to order. Is it Parliamentary for the hon. member to continue in this strain?

THE SPEAKER: The hon. member should not make imputations upon other members. It is not Parliamentary to do that.

CAPT. FAWCETT: Then he must apologise.

THE SPEAKER: Let the hon. member sit down, please, until the hon. member for the Gascoyne finishes what he has to say.

MR. SHOLL: I have no wish to press this matter; but I think it is time the public should know that when they come to this House they must come to listen and not to applaud, and they must restrain their feelings. I don't wish to press the motion now, but on any future occasion that I hear the same sort of thing, I shall certainly draw the Speaker's attention to the fact.

THE SPEAKER: An hon. member has made an appeal to me, but, in reality, I am powerless in the matter. All I can do is to carry out the rules, and one of them is that if attention is called to the presence of strangers they must withdraw. I should be very sorry indeed that strangers should be forced to withdraw, as I think it is very right and proper they should be here to listen to the debates; and, probably, after what has been said to-night, we shall not have any further manifestation of these feelings. Surely it is easy enough for strangers to listen to what is said without exhibiting their feelings in the matter.

The subject then dropped, strangers being allowed to remain.

DEBATE RESUMED.

MR. HENSMAN, continuing, said: Sir, so far as I am concerned I shall say what appears to me to be right whatever may be the effect it may produce in the gallery or elsewhere; and if the gallery were filled with individuals who were allowed to hoot, or to express any mani-

festation of disapprobation, I should still do the same. I will now go on with the remarks I was about to make, with reference to this petition. It is a very important point in this matter, and I must again remind the House, that this petition is not that of persons who have lately sustained some grievance, or of those who have received any sympathy from those before whom they had previously laid their complaint; it is the petition of two persons who have been convicted by a special jury of their fellow-countrymen—a tribunal which, as the House well knows, they chose themselves, in preference to a common jury. They are persons who have been convicted of a gross libel, and who have had exemplary damages awarded against them.

THE ATTORNEY GENERAL (Hon. C. N. Warton): Not convicted at all.

MR. HENSMAN: If the hon. and learned gentleman has anything to say, I hope he will say it on his legs.

THE ATTORNEY GENERAL (Hon. C. N. Warton): I said the petitioners were not convicted at all, and the hon. and learned member must know that. It was a civil proceeding, and not a criminal proceeding, as he must be well aware.

MR. HENSMAN: I am perfectly aware it was not a criminal proceeding.

THE ATTORNEY GENERAL (Hon. C. N. Warton): Then they were not convicted.

MR. HENSMAN: If the learned Attorney General thinks that by saying it was not a criminal conviction he is making any point, I will give him the benefit of it. I say the petitioners have raised unprecedented charges against the Chief Justice of the colony. If they had come before us as persons laboring under a grievance which had enlisted any sympathy for them from those before whom they had previously brought their case, it would be different; but they come before us as two defendants in an action in which a jury of their own fellow-citizens gave exemplary damages against them, for what they believed to be gross libels. I trust this House will not import any feeling into this matter, either personal to myself, or personal to the Chief Justice, or personal to the petitioners; but will look at it, if possible, as a grave and important matter, of great public interest, which is

to be judged not merely in this colony, and it may be with warm feelings at the moment, but throughout the length and breadth of Australia, and perhaps in England. Let me, very shortly, touch upon the main points of this petition, in support of what I have stated. The petitioners, having just had a verdict given against them by a jury, seek to make this House a court of appeal from that verdict. If they had any grievance against the Judge, if there had been any misdirection in law, or misreception of evidence, or anything of that kind, they had their remedy before them, by taking their appeal to Her Majesty's Privy Council. I say, and believe, it cannot be found that there is any case of a petition of this kind by a defeated litigant seeking to reopen his case before the Legislative Assembly of the country. Now I shall not weary the House, but at the same time this is a very important matter, and I must touch upon several points in the petition, and draw the attention of the House to several of the statements in it. The petitioners say, in the first place, they are without redress, and in proof of this they bring forward four cases, in three of which they were the defendants, tried before the Supreme Court. They begin, in paragraph 2, by saying that "in every action against the *West Australian*, which has gone to trial, the Chief Justice has insisted on "sitting on the Bench, and in all instances your petitioners believe that he "had persuaded himself prior to the "hearing that the defendant journal was "in the wrong, and had afterwards used "every effort to induce the jury to share "his views." I submit to this House that, as Chief Justice, he ought to sit in all important cases. I can remember the time—and I cannot be contradicted on that point—when the Chief Justices of the three Common Law Courts in England always sat to try special jury cases; but the multitude of actions and the increase of Judges has induced that rule to be departed from lately. And let me ask this House what was the main reason that Mr. Justice Stone was appointed? Was it not brought forward as an argument in this House in favor of the appointment of a puisne judge that he should be mainly engaged in going on circuit, to try cases on the spot? Was there any-

thing in this appointment which would induce the Chief Justice not to look upon himself as the Judge who was bound to try the special jury and more important cases in this colony? Now, we go on to the first case that the petitioners have brought forward in support of the "persecution"—for that is the word they use—which they say they have been subjected to. They first refer to a case that happened as long ago as 1883; but, here, let me ask should we have heard anything of this petition but for the action tried a few weeks ago? They now seek to rake up an old case, that of *Davies v. Randell*, which took place five years since. I am not going into the merits of this case; it is enough to say that it was tried by the Chief Justice, without a jury. It is always within the power of a litigant to have a jury if he wishes, but in this case the Chief Justice was allowed to sit, himself, and he found for the plaintiff. The result of that was that the *West Australian* newspaper—I know not who writes the articles, nor care—published some strong comments against the Chief Justice. I have it on the best authority that both the petitioners, in this case, expressed their regret to the Chief Justice at the tone of the attacks that were made upon him; and that one of the petitioners, Mr. Harper, thanked the Chief Justice for not pressing the matter against them. In order to show the violence with which they attacked the Chief Justice on that occasion, I may be allowed to quote from their own petition some of the words they made use of. Referring to the remarks of the learned Judge they say: "The 'wild and whirling words which were 'poured out with the same careless ease 'with which a boy trundles a hoop. It 'is best to leave them to be forgotten.' That is said of the Chief Justice of the colony, as if he were a boy trundling a hoop. Sir, it is our duty, the duty of every man, I take it, to endeavour to support the dignity of the Supreme Court of the colony; but they speak of him as one thoroughly reckless, who cared no more what he was about than a boy in the street trundling his hoop; and yet these persons complain that the Chief Justice spoke severe words of them. I pass on from that case to the next one—and these are the cases which are said to support their

petition—the case of *Fienberg and Rogers* against the *West Australian*, for libel. The petition says: "The action of the Chief Justice was so conspicuously hostile and one-sided that they"—that is, the petitioners—"felt themselves justified 'in thus describing the Judge's attitude. . . . After acquitting of blame the 'jury—who, in spite of the strenuous 'and determined charge of the Chief Justice, could only be induced to bring 'in a farthing damages"—and so on. I stop there. I was counsel in that case—I have not the reports before me—but I say distinctly and deliberately that it was not "in spite" of the strenuous charge of the Chief Justice that they gave a farthing damages, but "because of" the charge of the Chief Justice. The libel was clear, but—I am not going to mention names; I think it's a sad thing these cases should be raked up—but one of the plaintiffs, it transpired, had come to the colony under a false name, or something of that kind; and I felt that the damages were slipping away under the charge of the Chief Justice, who put it thus: although there's a libel, yet what is the character of the plaintiff, and what is sufficient to recompense him? There was therefore a verdict of a farthing damages—not in spite of the address of the Chief Justice, but in consequence of the tone of that address. They also complain because the Chief Justice ordered them to pay the costs of the case. It is not for me to know what was in the mind of the Chief Justice—he exercised his discretion; but I can inform the House that in the course of the evidence it came out, or there was some evidence that tended to show, that the libel was penned because the plaintiffs, who were a firm of auctioneers, did not advertise in the *West Australian* newspaper; and it may be—it is not for me to say—it may be that that influenced the Judge, and that he may have taken this view: 'You the plaintiff deserve but little sympathy, because of your character and antecedents; on the other hand, you the defendants have libelled him from a mean motive; therefore, in the exercise of my discretion, I award him costs.' I ask, why is this case raked up at the end of all these years? But what passed then is very important. An attack was made upon the Judge in the *West Aus-*

tralian. They spoke of him thus: "A rush of feeling seemed to take possession of the faculties of the Chief Justice, and apparently swept away, in an impetuous current, all power of passive reasoning and impartial deliberation." They say "a paroxysm of advocacy had developed itself," and the Chief Justice is further charged with a "unique incapacity to look at two aspects of a question." After that attack upon the Chief Justice, they are constrained to say that Mr. Justice Stone deprecated such language, and censured them from the Bench. Throughout this petition an attempt is made to lead the House to believe that the Chief Justice is the one who so to speak has sat upon them, or done or said that which was injurious or unpleasant to them. But it is not so. Mr. Justice Stone, too, came forward and censured the proprietors of the paper for their violent attacks upon the Chief Justice. Then they go on to say, in spite of that censure—they determined not to take it, as they ought to have taken it, coming from a Judge of the Supreme Court—they go on retorting upon the Puisne Judge, and telling him that, in their opinion, "complete silence on the part of the Supreme Court would have been advisable,"—the paragraph is set forth in the petition. And now we come to the next case, that is, the case of Gribble against the same paper, for libel—it is attempted to be made a great point of—that the Chief Justice had sympathised with Mr. Gribble as a missionary in this colony, and that he had been on friendly terms with him. I am yet to be told that because a man is a Chief Justice he is not to have friends; or that because a man is a Chief Justice he is not to sympathise with a missionary, even supposing that missionary may be obnoxious to other persons. Mr. Gribble came, and, it appears from this petition, was on terms of some friendly acquaintance with the Chief Justice. We read that when Mr. Gribble was coming down by steamer—we all remember the circumstances—it was said that he was assaulted on board, and threatened by certain persons, and he endeavoured to bring these persons before the Police Court at Fremantle. Now see the way in which this petition—a carefully and craftily worded petition—see the way in

which it puts this case. Referring to some letters from the Chief Justice, which they publish, they say, the first of these letters alluded to a statement of Mr. Gribble that the Government in the interest of some settlers were doing their utmost to prevent him prosecuting an action he had brought. It was not an action. The Attorney General is technical—will he tell me that a police court case on a summons or warrant is an action? The inference is that he had commenced an action in the Supreme Court, whereas it was nothing of the kind, but a police court summons, which could not possibly in the ordinary course of things ever come before the Chief Justice. They set forth these six letters in full, and four of them were written before any action was commenced by Mr. Gribble against the *West Australian*. I ask hon. members, and I ask them candidly, if they have read these letters, whether they think there is anything wrong in them? Mind, they were written before Mr. Gribble had brought the action, and, in fact, before the matter arose which induced him to bring his action, in the Supreme Court. They are letters sympathising with him in his position, as a missionary, and, so far as I know, they seem to suggest he had received considerable opposition in bringing certain parties, who were said to have assaulted him, within the jurisdiction of the Police Court; and that is the extent to which they go. I affirm most strongly that there is nothing improper in these letters, which any Chief Justice or Judge might not have written to a clergyman or missionary. The last of the letters to which I now refer is dated August 17th, 1886. Then the matter was brought before this Council, in a motion by the petitioner Harper. This was on August 31st, and, on September 2nd, the Chief Justice writes again to Mr. Gribble, who was then in Melbourne, reminding him that he had not given him liberty to make these letters public but to show them if he liked to certain persons—the Bishop and the Church authorities. It appeared from some statements in the Melbourne papers that Mr. Gribble had mentioned these letters, or stated that he had some letters from the Chief Justice of the colony expressing sympathy with him in

his position. The Chief Justice writes to him: "I think you will remember that I told you you were at liberty to show my letters to the Bishop, the Church and Mission authorities, or to use them privately, but that I did not wish to have them made public. I fear no good will be done by your publishing them, and much less by giving extracts from them, as you are aware it is not possible, nor would it be right of me, to judge of the truth of all your statements." What, I ask, could be fairer, or more frank and judicial than that. These statements were not connected with the action of Gribble against the *West Australian*; these statements were made by Mr. Gribble as to the opposition he had met with in his missionary efforts; and the Chief Justice is so careful that he says it would not be right of him to express an opinion even upon them. On August 24th the *West Australian*, it appeared, called Mr. Gribble a "lying, canting, humbug," and on the 1st September a writ was served upon them at his suit, for libel. Just observe again the judicial calmness and discretion with which the Chief Justice writes to Mr. Gribble, who had then just returned to the colony. On October 16th the Chief Justice writes—the action having then been commenced—

"My dear Mr. Gribble,—Of course I can well understand the reasons which induced you to think it better not to call upon me at present, and indeed I had imagined before receiving your letter what those reasons were.

"I am very glad to hear that you can give a good account of yourself, and hope to see you again, sooner or later.

"With our united kind regards,

"I remain, yours very truly,

"A. C. ONSLOW."

Does not that letter show that the moment the action was commenced the Chief Justice was determined to have Mr. Gribble, so to speak, at arm's length—not, necessarily, unfriendly, but reserving his judgment, and not seeing him in the meantime, until that action was disposed of. Then comes another letter, which the petitioners publish; and really I am sorry, I almost blush, to think that people can be so malicious as to put

forward a letter of this kind as against a Judge, and—

MR. PARKER: I rise to order. One of the petitioners is a member of this House, and to use the word "malicious" of an hon. member of this House is, I submit, out of order. He can cast no imputations upon the petitioners, one of whom is a member of this House.

THE SPEAKER: The hon. member is not in order in making imputations against a member of this House in any way.

MR. HENSMAN: I shall not dispute your ruling on that point. The facts, sir, are sufficient for me, without using unnecessarily strong language. Mr. Gribble, as we all know, had a large family, and it appears he was in distress, and the Chief Justice wrote to him this letter, which is one of those which the petitioners rely upon as showing animus towards them on the part of the Chief Justice, who, just at this time, was going away to the other colonies for a holiday:—

"St. George's Terrace, Perth,

"Dec. 23, 1886.

"DEAR MR. GRIBBLE,—I am extremely sorry to hear that you are in such trouble at home with a sick family.

"Do not think me obtrusive. I enclose a cheque for £2, which I feel sure you will accept and make use of in the same spirit with which I send it. I wish it could have been for more.

"I remain,

"Yours truly,

"ALEX. C. ONSLOW.

"The Rev. J. B. Gribble."

That letter is actually relied upon by these people as a communication which justifies them in casting the grossest imputations upon the judicial honor of the Chief Justice. Sir, comment upon such a proceeding as that is unnecessary. I have nearly got through this petition; but there is another case I have yet to refer to—the case of myself against the *West Australian*. But, before I pass away from the Gribble case let me say this: this case is treated at great length in the petition, it is elaborated and I suppose it is considered a strong part of their case against the Judge. But let me point this out: if the Chief Justice was previously a friend of the plaintiff in this action, if he wished him success in

his missionary efforts, and if in spite of that feeling he was so constrained, in his judicial conscience, by the weight of evidence, to bring in a verdict against him, what stronger proof can you have of the honor and impartiality of that Judge? Although the Chief Justice is a man subject to the feelings of humanity, which will enable him to sympathise, it may be, with missionary effort, and to give money out of his not very large salary and his own demands upon it, to a poor man whose wife and family were in distress, yet, in spite of all that, we see him constrained by his conscience to give a verdict against that man—can we have any stronger evidence of the judicial impartiality of that Judge? Now, sir, we come to the last case that is brought forward by these petitioners in support of their charges against the Chief Justice. I shall touch very lightly upon it. So far as I am personally concerned, I am indifferent to the statements of these individuals. It is true this petition contains libels upon myself, but I pass that over. In the first place, paragraph 25 of the petition, referring to my own case against them for libel, states what is utterly untrue—that by my recklessness and indiscretion I was at last left without my Attorney-Generalship and deprived of my position in the Colonial service. But they go on, in paragraph 26, to republish the whole of the libels for which I brought the action against them. It is unnecessary for me to say a word about this, further than that when I find I am pursued with persistent animosity and vindictiveness, if I think it for my own benefit and that of the public it should be stopped, I shall take what course I think fit; but, whatever I do, I shall meet those who may libel me, openly before a jury. I desire to say nothing more about the merits of that case, which was recently tried by a tribunal of the defendants' own selection. But I must refer to some of the passages in the petition, connected with this case, which relate to the Chief Justice. It is here stated that "according to custom the Judges of the Supreme Court take heavy cases turn about." I challenge that statement. I say there is no rule of the Supreme Court by which the Judges take heavy cases turn about; but, on the contrary, it is the duty of the Chief Jus-

tice, as I submit, to take all the more important, and particularly special jury cases. It is said then that: "To take the case of *Hensman v. the West Australian* fell properly therefore to Mr. Justice Stone, and it was generally stated he would hear it. We have indeed the best grounds for asserting that Mr. Stone, understanding that he would have to take it in the usual course, had made his arrangements accordingly. But, before the day of trial, he was suddenly informed by the Chief Justice that the latter intended to hear the case himself." I give it on good authority that that is absolutely untrue, and that Mr. Justice Stone had never directly or indirectly expressed a desire to try the case, or given any intimation that he expected to try it. I come now to another stage in my action against the *West Australian*. I pass over the conduct of the case. Possibly some hon. members may have seen a letter published by one of the jurymen who tried the case. It is possible they may hear more upon that point. But I should think that that special jury when they were empanelled in the box as a jury called together by the defendants, could hardly have expected they would be subjected to attack and insinuation afterwards. Sir, if juries of one's own choosing are to be subject to insinuation and attack afterwards by disappointed litigants, I fear that not only the position of Judge but also the position of juries will become an exceedingly dangerous and unpleasant one in this colony. The petitioners go on to say—after a jury of their own selection gave a verdict against them, with £800 damages—that when they applied for another trial "the Chief Justice would only allow a *rule nisi* to go on the ground of excessive damages, and, in the argument for making the rule absolute, when Mr. Justice Stone commented adversely on the fact that Mr. Hensman had not gone into the box, the Chief Justice hotly dissented from him. The motion was refused." Who refused it? Was it refused by the Chief Justice, by himself? Certainly not. It was refused by the Full Court, and Mr. Justice Stone said not one single word to show that he dissented from the judgment of the Chief Justice. And, as I have already said, if they thought

there was anything wrong, why not have appealed to the Privy Council? Why make this the reason—for it is obviously the reason: these persons are smarting under a sense that they have been punished by a jury of their fellow-countrymen for a series of libels which they published in their paper—why make this the reason of their attack upon the Chief Justice? If they think they have not had redress, why did they not take the proper course? Why did they make this House a sort of Court of Appeal, or, rather, why did they seek to bring the matter before this House under the garb of a petition, whereby they were raking up all their alleged grievances and pitting themselves against the Chief Justice? There is another point. The petition ends with paragraph 29, in which they say that “the baser kind of journalist and public speaker” now assails them with impunity. I don’t know what they mean by the “baser kind” of journalist, or by the “baser kind” of public speaker, but this I do know: I believe that where a public man in this colony—no matter though he may not be popular with certain persons—is libelled, and where an attempt is made to attack him, month after month, and year after year, apparently determined to drive him out of the colony—I believe we may depend upon it that if the place is worth living in it, there will be many speakers—whether base or not is a matter of opinion—who will support that person, and who will approve of the verdict given by twelve of his countrymen upon their oaths and conscience. The petition ends by appealing to this House to aid them in ending a state of things which they say is “a scandal to the Bench, a menace to the welfare of the colony, and a dishonor to the Crown.” If it is so, it is one of the worst cases that ever was brought forward. If the Chief Justice has so misconducted himself out of personal spite and ill-feeling against the proprietors of this paper as to have done all he could to persecute them, as to do all he could to assail them and punish them—with the assistance of the jury I suppose—if that is the case it certainly is a “scandal to the Bench” and a “dishonor to the Crown.” Then why does not this petition end with a prayer for the removal of that Judge? Why

does it seek to bring forward all these grave and terrible charges—and I do ask the members of this House to remember that the Chief Justice has his character and position at stake; and I ask them to fancy themselves in his position, subjected to these grave and terrible charges, under the cloak of the privilege of petition; yet these people dare not challenge him. They say “We will not petition for your removal off the Bench, we will simply petition for the appointment of a third Judge.” I have now gone through this petition, sir, as briefly as I could; I may have spoken with some degree of warmth, but I cannot myself forget that I am a member of the Bar, that I am a lawyer, and that I have been brought up all my life to respect the dignity of the Bench. One of the first remarks I ever made in this colony, in public, was that whatever happened in this colony I trusted the people would always uphold the dignity of the Bench, and make them independent of the Executive. That was before I had ever seen the Chief Justice, for he was away in the other colonies at the time. Therefore it shocks me, sir, to think that a Judge is to have mud thrown at him in this way, and by whom? By disappointed litigants. I have one word more to say on this point. On the bench opposite are sitting three members of the Executive Council, and we have before us to-night an assault made in the strongest and most violent manner upon Her Majesty’s Chief Justice in the colony. I am sure that Her Majesty’s Chief Justice will receive from many members—I trust from all—full justice; but, who ought to be the first to come forward and resent anything like such an attack as this, not founded on sufficient facts? I submit it should be those who serve Her Majesty here, in the Executive Council, who are not responsible to the Governor but responsible directly to Her Majesty. I trust that the members of that Council—although I fear, after what I have heard this evening it will not be so—will be the first to come forward and resent such an attack upon the Chief Justice of the colony. I had hoped they would have joined me, or that I should have joined with them, in opposing this motion, and in saying that it is unworthy of this House to receive a petition contain-

ing such grave imputations, on such an occasion, for such a reason. Be that as it may, sir, I will say this: the time will come when those members will have to account to Her Majesty for their conduct in this case, and their consciences will then have to answer for the course they take to-night, or on any other occasions when this case may come before them. The Colonial Secretary has told the House to this effect, that the Government assume this petition is untrue. Then why should they allow it to go forth? Why should they not say at once,—This is an abuse of the right of petition? If the Government can see that this petition for a third Judge is but a cloak for attacks upon the Chief Justice, and that the attacks are not followed up by the proper petition, why should not the Government, assuming as they say they do that these statements are untrue, have boldly said so and joined me and other members on this side of the House in rejecting this scandalous petition? Sir, I have said, and endeavored to show, that this petition was irregularly introduced, and run through its first stages contrary to the rules of this House; and I will now finish what I have to say by reading from one or two authorities upon this matter. In the first place it is laid down in May's "Parliamentary Practice" that "the language of a petition should be "respectful and temperate, and free from "disrespectful language to the Queen or "offensive imputations upon the character or conduct of Parliament, or the "Courts of Justice, or other tribunal or "constituted authority;" and I find cases quoted in May where the course that I have suggested here has been adopted. Thus it is recorded (p. 565) that "on the 8th of June, 1874, notice "being taken that a petition contained "imputations upon the conduct of certain "Judges, and statements affecting the "social and legal position of individuals, "it was ordered to be withdrawn and the "printed copies to be cancelled." Again, "on the 12th April, 1875, the Public "Petitions Committee reported that a "petition from Prittlewell contained offensive imputations upon the Lord "Chief Justice and two of the Judges "of the Queen's Bench, and reflected "in an unbecoming manner upon the

"Speaker and on the proceedings of the "House, and on the 15th April the order "for the petition to lie upon the table "was, after discussion, read and discharged." I have taken the opportunity of looking into the debates that occurred on these occasions, and I find the rule to be this: that you may petition Parliament against a Judge, clearly enough; you may show that he is corrupt, but you must be prepared in your petition to go the full length of asking for that relief which the seriousness or grossness of your charges ought to provide; that is to say, you must not bring gross charges against a Judge, charges which render him unfit to occupy a seat on the judicial bench, and then simply ask for the appointment of a third Judge, as is done here. The prayer of your petition must be such as to correspond with the gravity of your allegations. You must, and you ought, and it is only common fairness that you should press it to its legitimate conclusion. I now turn to Todd on "Parliamentary Government in England," under the head of "Royal Prerogative,"—and we must remember that Judges exercise the Royal prerogative of administering justice. I say it advisedly, a Judge exercises more of the Royal prerogative than a Governor. A Governor is the agent of the Crown with a limited authority; a Judge is the agent of Her Majesty with full power to administer the law, without any limitations in his commission whatever. He sits there—as formerly the Sovereign sat, centuries ago—as the delegate of the Sovereign to administer justice, and he is not to be, lightly, attacked; and this House, which represents the people, ought to see that he is not attacked. Therefore, sir, as to this petition on the table, I submit it would be an insult to the Chief Justice for this House to send it to him, asking him to answer it. I know not what the Judge will do if it is sent to him—I know what I should do; but I say this House should be careful not to insult the Judge, and not to allow this petition to lie on the table containing these foul charges, as they really are, against a Judge, unless they are satisfied that the petition is *bonâ fide*, or they think it contains matter which goes to the removal of a Judge, when its prayer is for something

else. When they find it is the petition of two litigants who have lately been punished by a special jury for libel, what guarantee have they that the words of this petition are true? The Government, we are told, assume that the allegations are untrue; if so, are we to allow them to remain on the table any longer. I hope this House will put aside all personal feeling. I say on my honor that I have no personal views in this matter, whatever the hon. member for Fremantle may mean by his smile—for I observe his smile. Whoever the Judge was I would take the same line; and I do trust that this House will pause before it allows such an insult to the Judge as to send this abominable petition to him; for I am sure that hereafter, if this petition is not rejected by this House, it will be regarded as a stain and a disgrace to Western Australia.

CAPT. FAWCETT: I rise with feelings which I can hardly express to say how thoroughly disgusted I have been on reading this paper that has been presented to the House. I shall not detain the House many moments on the subject, but simply state I entirely object to the way it was rushed forward without any notice the other evening, or without any intimation to members coming from the country, as I happened to do that morning. Now it seems to me the defendants, or the complainants whatever they are, are asking us to support them, not to do away with a corrupt Judge but to let us have two honest Judges and one bad one. What right have these people to complain? They have been libelling right and left, and at last they have been punished. Supposing I had committed murder, and in the first instance I got off, because it was not proved against me; and I committed murder again and called the man I murdered a "lying, canting scoundrel," and I managed to get off this time with a sentence of 20 years; and supposing I committed a third murder and didn't get off but was going to be hanged—why should I turn round and say 'The Judge who tried me is corrupt, and if we can only get rid of him, we can go on murdering and murdering away?' That is what these people want. I maintain—and I believe I have the privilege of saying so—that a libel has been

committed, and committed continually by this paper, and they want to get out of it, and they want to be allowed to defame with impunity, and to take away the character of an honest man. Speaking here I am speaking the words of my constituents of Murray and Williams—I am not speaking to the gallery, whether they hoot me or not—and I say, sir, I object entirely to this petition. I think it's a most scandalous, outrageous, villainous, and dastardly attack upon the second highest gentleman in the colony, the one next to the Governor himself. I have only to add that I shall do my utmost to have it withdrawn. I am opposed entirely to the motion that Mr. Parker has brought forward. They say we want a third Judge. Last year, sir, when we asked for a third Judge, the Governor refused it; but now, sir, I believe he wants to have a third Judge, just as he is going away, simply that he may give a nice little billet to some gentleman.

MR. A. FORREST: Sir, as no other member seems inclined to speak at the present moment, I should like to say a few words, but I shall only detain the House a very short time. I am sure all members on Monday night must have been grieved, it was a source of pain and insult to them, when the petition of Messrs. Harper and Hackett was allowed to be presented and ordered to be printed. It is also a source of regret that the hon. gentleman representing the Government in this House should rise in his place to-night and make the speech which he did. The Government—I feel sure that hon. members will agree with me in this—ought to do all they can to support our Judges. It is the place and the business of the Government to protect the Bench. If this House and the country find that the Government will not support their Chief Justice, how can they expect us, the representatives of the people in this House, to respect these officers. His Honor the Chief Justice is a man of the highest integrity, and these petitioners know it. I have had placed in my hands to-night a remark which was made not long ago by one of the petitioners in this very case to a member of this House, and if I am in order I shall read it. It was before the trial of *Hensman v. the West Australian* came on, and one of the defendants said

this: that he had the highest respect for the Chief Justice, that he was the soul of honor, and that he hoped he would try the case, as he preferred the Chief Justice to preside rather than Justice Stone. He further several times said that the Chief Justice was incapable of doing wrong. This, of course, was before the case was tried on its merits. I think all people will agree with me that when we bring a case into Court we all expect to win, but we must also know, before we go into Court, that both sides can't win.

MR. HARPER: Will the hon. member please inform the House the name of the petitioner who said that?

MR. A. FORREST: Yes, if you ask me. The name of the defendant was Mr. J. W. Hackett. He said that to a member of this House.

MR. S. H. PARKER: Who was the member?

MR. A. FORREST: The Hon. the Commissioner of Crown Lands. This petition blames the Chief Justice for that case. It will be in the recollection of members that this case was tried before a special jury, and I think there is no one here who will say that the jury on that occasion did not comprise men of the utmost integrity, men in whom I myself and I believe others have the utmost confidence, men whom we would trust in the ordinary affairs of life. When that jury was empanelled, I recollect myself very well saying, "Well, in any case, they will receive a fair trial." The result of that trial the petitioners wish to make out was owing to the summing up of the Judge. Surely a Judge has a right to take some view of a case, and if a Judge sees a strong point in a case I fail myself to see why he shouldn't tell the jury so. The libels were gross libels—there was no getting over that. They told my hon. friend on the left (Mr. Hensman) that he got himself put outside the pale of the service, and lost all chance of promotion, all through his own fault. Surely that was a gross libel. My hon. friend is not a young man, in a position to fight his way in the world against younger men; he is a man getting up in years, and it was hardly fair for this paper to make the remarks which it did. It was not the first time this paper had libelled the hon. member for the Greenough. I hope members will act independently in

this matter, and not try to ruin the Chief Justice, which seems to me is what the petitioners want, though they don't say so. If they had asked at the end of their petition that the Chief Justice should be removed off the bench there might have been some sense in it. There's no sense in it now. They want to keep a corrupt Judge, and appoint a third one. If the Chief Justice is a corrupt man he has no right to sit on that bench at all, and, if I thought so, I should be one of the first to petition to put him out. The hon. member for Sussex asks that this petition should be sent to the Governor, to be forwarded to the Chief Justice. I am sure the hon. member is fully aware that a copy of the petition has already been sent by the defendants to the Governor, and that the Governor has sent it to the Chief Justice for his remarks; and I believe myself the Chief Justice will defend himself, and the petition will go home to the Secretary of State, which is the proper course to take. If the petitioners had been content to take that course, or simply brought a petition here asking for the appointment of a third Judge, they would, I believe, have received the support of every member. But they have taken this unusual course of scattering their mud broadcast. They have made this place a hot-bed, almost unbearable to live in. We were a quiet people before; we did not want this firebrand thrown amongst us. We don't want this perpetual quarrelling in a small community. I believe that for some time past everything has been quiet, and we have a lot of work before us, important work which we ought to take up. This is not a proper spirit to introduce into this House, for members to abuse each other, and go against each other. As the hon. member for Greenough has said, the petition is an abuse of the right to petition. I think it would be hard for anyone to get up and defend it. They would know, if they did so, that they were saying what was unfair and unjust about a gentleman who has the confidence of every man in the colony. I hope he has the confidence of every member of this House; and I shall do all in my power to have this petition buried in oblivion.

MR. BURT: Sir, I believe that the motion now before the House is that

introduced by the hon. member for Sussex—I arrived rather late in the House, and after the motion was made, but I believe I am right in saying that the only motion now before us is that of the hon. member I have referred to. If so, it has struck me that subsequent speakers have travelled very far beyond that motion,—that is, whether or not this petition should be sent to His Honor the Chief Justice, with the view of enabling him to make his remarks upon it. The hon. and learned member for Greenough appeared to take the leading part in this matter, speaking of the facts at great length, and apparently—in fact, as we all know—having a knowledge, and perhaps a perfect knowledge, of the subject treated of in this petition. But there are many members of this House who have not an intimate knowledge of those circumstances put forward in the petition. A great number of members, and particularly members from the country, have possibly heard of them now for the first time. Therefore, as portions of the allegations made have been traversed and commented on, of course it is competent also for me, and it is even my privilege, to follow those remarks, and to make an observation or two upon them. I certainly think it would have been better—and I think that ebullition of feeling we were greeted with a few minutes after I arrived in the House would not have taken place—if some other member than the hon. member for Greenough had taken the part he has taken to-night, because we cannot shut our eyes to the fact that his name is mentioned very prominently in this petition; but the question before us is whether this petition shall be sent to the Governor, to be forwarded by him to the Chief Justice for his remarks;—and, say what you will, and do what you like, observations that fall from that hon. member do not carry the same weight and effect in a matter of this description, to my mind, and other minds that I know, as if they came from other members. The hon. member for Kimberley deprecated the introduction of these matters and these quarrels into this House. I am sure I join him heartily in wishing that this matter had never been brought into the House at all. We would all very much rather not have anything to do with this volcano that ap-

pears every now and then to be breaking forth, and always slumbering apparently ready to break forth, in high quarters. Is this colony eternally to be in a state of turmoil because of quarrels between the highest officials? For my own part I wish they were all away, both officials and ex-officials who keep this unfortunate colony in a whirl of ill-feeling without ever the slightest occasion for it. Look at the turmoil we are in now. Public meetings got up and Parliament threatened—I question very much the legality of these meetings while Parliament is sitting—[Mr. MARMION: No one takes any notice of them.] I for one take notice of them. Many of us, I say, desire to keep aloof from other people's quarrels as much as possible, but we find this unhappy dispute, which commenced in the highest circles, and has gone on for years, now at last brought into the Legislative Council of the colony. Here it is, and we are confronted with it. For my part I intend to speak fairly on a question of this sort, and I am not going in my remarks to run after either the Chief Justice, or the Governor, for the hon. member for Greenough, or any other person.

Mr. HENSMAN: It is not a question of the Governor and the Chief Justice, but of the *West Australian* and the Chief Justice.

Mr. BURT (continuing): It is a very popular thing no doubt to take up the side of what is called the independence of the Bench and the purity of justice—things which have never been touched or interfered with. No doubt it's a good popular cry, and we hear a great deal of palaver about it outside, for which one is applauded. But it is a difficult thing, and not an agreeable thing, to try to hold the scales equally between the parties, and to tell people whom you respect that you think they are wrong on certain occasions. The hon. member for Greenough, of course, took his opportunity here at once to air his pet theories on the relative positions of the Governor and the Chief Justice. But we didn't come here to be treated to anything of that sort. If we have to get through this matter let us consider it in a business-like way, and deal with it. We don't wish any quarrel between the Governor and the Chief Justice introduced,—

MR. HENSMAN: I must rise to order, sir. Did I say any word about the Governor?

THE SPEAKER: I think the hon. member compared the position of the Governor and the position of the Chief Justice.

MR. HENSMAN: In the abstract. It is not correct to say that I was comparing individuals at all. My remarks were applied to this matter as between the *West Australian* and the Judge.

MR. BURT (continuing): The hon. member said—and the House will bear me out—that the Chief Justice's position was a far more important and independent position than the Governor's. We know what is at the bottom of it; but I hope we won't have it here. We don't care who is the highest official. It is not for us to say whether the Chief Justice is a higher official than the Governor, or whether the Governor is a higher official than the Chief Justice. Why didn't the hon. member deal more with this petition? It is all very well to say it throws grave imputations, and brings gross and unfair charges against the Chief Justice; but why were they not pointed out to us, so that we could put our fingers upon them, and see if they can be answered? I am not standing up here to defend anything in this petition at the present moment, nor saying anything about the propriety of it. But when members call it a tissue of falsehood, and that it contains charges of dishonesty and corruption, I say it behoves them to put their fingers upon these charges, so that we can consider them. The hon. member for Greenough went through this petition, skipping over it very briefly—I say he skipped over the petition very briefly, but made a great number of remarks with reference to matters outside. He told us there were four cases brought forward in it, and that one occurred in 1883, and that in three of them the petitioners were themselves the defendants. We all know that. He says they are smarting under a sense of punishment. I suppose they are. That is very likely why they bring forward their petition. I think the hon. member himself smarted under a sense of what he calls injustice, and makes very serious charges against other people too. I suppose we are all liable to the feelings

of men. We are all apt to think that on different occasions and on different points we have been ill-treated, and treated with injustice, and while we are suffering feelings such as these we generally express our sense of what we feel; we complain and we remonstrate; and is it surprising that these gentlemen, who bring forward this petition, should do the same? Is it surprising to find it, because they were litigants in the Supreme Court, and that they were unsuccessful litigants? That is what we may suppose at once. If they had been successful, they would not have said anything I suppose. [MR. HENSMAN: Hear, hear.] I have no doubt, if they had succeeded on a recent occasion they would not have presented this petition, and it is because they are smarting under a sense of punishment, and what they consider unjust dealing with them on the part of the Supreme Court, that they represented the matter to this House. I have no doubt this petition does cast imputations against the Chief Justice; but are imputations not to be cast upon the Chief Justice? The question is, are they deserved, are they merited imputations? And how is this House at the present moment to deal with that question? What knowledge have we on the subject? I myself may possess, with the hon. and learned member for Greenough, a large share of knowledge of these matters, but I am sure there are many members in this House who possess little or no knowledge of them. How then can the House decide on the question that the hon. member for Greenough asks them to decide—that this petition is a disgrace to the colony. I say if men have a grievance it is their privilege to set it forth, and to come before this House, and ask for what redress they think fit. We are not now considering the wording of this petition, or the charges in it, or the propriety or otherwise of any of those charges. This House is not called upon now to consider these allegations. If it is desirable to do so, a committee of the House should do it, and call evidence. But so far as the petition has been gone into by the hon. member for Greenough, what does the hon. member say? Has he pointed to any charge of corruption or dishonesty? He said first of all, referring to the second paragraph, that the petition charged the

Chief Justice with persuading himself, in cases brought before him against the petitioners, that they were in the wrong. I am not here to protect the Chief Justice nor to defend the petitioners, but is there anything very terrible about that? Are people not at liberty to express an opinion, if they think that a Judge persuades himself, before the hearing, that they are in the wrong? The petitioners do not leave the matter with that simple assertion; they endeavor to support it with various and numerous facts which led them to that belief. We may think that their belief is well-founded or not, but surely they have a right to set it forward. Is it because a charge may turn out to be unjust or unmerited that it is not to be made the subject of a petition? I deny that *in toto*. But we are not called upon now to say whether these petitioners are right, or whether they are wrong in the deductions they have made. They speak of their belief and firm impressions and convictions, and how can we deny them their right to state their convictions and impressions? We are not here to determine whether they have good grounds for these convictions and impressions—that is not the question before us, but whether something further should not be done with this petition, or whether it should be kicked out of the House, as a disgrace. With the exception of that paragraph in it to which I have just referred, the hon. member for Greenough quoted none of it to the point. It is said that the Chief Justice always tries these cases—the petitioners say he goes out of his way to try their cases—how do we know? If they think so, why should they not say so. The hon. member himself says a great many things that are not pleasant to others, in public and in this House; and why should not these petitioners say what they think, if they honestly believe it—and are we to say they do not honestly believe it without any inquiry whatever, especially when they state what they founded their belief upon. The hon. member in referring to the case of Rogers against the *West Australian* imported a great deal of personal knowledge into this discussion—and I may remind hon. members that that was the “Bayswater case.” You have been told that

these cases are all important cases, and that it is the duty of the Chief Justice to try all important cases; but I say this was not an important case, but a trumpery case, a foolish case, and a nonsensical case; and the jury said so by awarding a farthing damages. It arose from a joking paragraph in the paper, and everyone knew it was merely a source of a little laughter. I say that was not an important case, but I do not say that the Chief Justice ought not to have tried it. Why should he not have tried it? I believe I was engaged in the case myself, and it did not astonish me that the Chief Justice should try it. But the petitioners have a perfect right to quote it, in support of their allegation, if they think there is anything in it. If they think the Chief Justice went out of his way to try it because they were in it—I should say that was a false statement myself—but if they thought so why should they not say it, and why should we condemn them, without any inquiry at all in the matter of this petition? The hon. member for Greenough, after dealing with the paragraph containing that observation, went on to say, why should the past be raked up? I don't know I'm sure; but other people rake up the past, too, when they bring a libel action. Then we go on, and we come to this paragraph—and I ask the House whether I am not justly following the hon. member's speech—about the “wild and whirling words” and the boy trundling a hoop. The hon. member asked us what we thought of a paper that charged the Chief Justice with pouring out “wild and whirling words with the same careless ease with which a boy trundles a hoop.” Why did he not explain to the House why the paper said that? It was, as the petition sets forth, in answer to these words which the Chief Justice had used from the bench—I do not know whether the hon. member for Greenough thinks they are words that would fall from many Judges in the land—but the Chief Justice the day before had called the editor of the paper (whoever he might be) “an utter quack and a charlatan,” and said they had treated the then Attorney General, now the hon. member for the Greenough—and somehow we find the hon. member for the Greenough always on the stage, in some mysterious fashion

—that they had treated him with an utter disregard of any sense of justice, honesty, and fair play. That was what a Judge on the bench of the Supreme Court had charged the paper with, and the paper in reply charged the Judge with having used wild and whirling words. We are asked to condemn the paper for saying this of the Chief Justice, and why should we not be asked to condemn the Judge for calling the editor a quack and a charlatan, and charging the paper with an utter want of justice, honesty, and fair play.

MR. HENSMAN: What about Mr. Justice Stone's censure?

MR. BURT: Why did not the hon. member tell the House what I have told the House, instead of leaving them to believe that those words were used by the paper without any provocation? I am pronouncing no opinion upon them, but why did he not set forth their provocation? If people are going to deal in these words and appeal to people in this excited feeling, of course we get into all this trouble, and it will continue; but do not let us rush into condemnation of one side merely because the person condemning on one side is respected by all of us, as I respect him—probably more, from a personal knowledge of the Chief Justice, than many of us. But I am not here to laud up the Chief Justice or deal with the personal character of anybody in this debate. A question is put to us, whether this petition should be sent to the Chief Justice, inviting any remarks, as a matter of justice, that he may think proper to make, or, on the other hand, kick it out of the House as a disgrace. I don't think we ought to kick it out; I don't think it a disgrace. I think these petitioners have a perfect right to address the House in the language they have put forward. The hon. member for Greenough proceeded to deal next with the Gribble letters. We are not to judge of the good taste of these people in publishing these letters. That is not the point at issue—is it a disgrace to publish these things in support of your case, by men who are suffering under punishment, men who say they lose every case in the Supreme Court, rightly or wrongly? Is it a disgrace they should set forth that the Chief Justice in one case in which

they appeared as defendants was on terms of close intimacy and communication with the man who was bringing an action for £10,000 damages against them? I should say myself it was very galling for the men who were the defendants in the action to find the Chief Justice who was going to try the case in correspondence with the plaintiff. I am not saying there was anything bad or improper in that correspondence, or that it puts the Chief Justice in a bad light; but there is the fact, and, being a fact, why should not the petitioners set it forth, and put it in evidence in support of their assertion that they couldn't get justice in the Supreme Court. Before we can pronounce upon the merits of that, the matter ought to be inquired into. But it is no disgrace to the Council to find these imputations in the petition, if the petitioners chose to make them. We all know that petitions of this description are,—I won't say very often, but have been made from time to time against Judges of the land, and against the highest legal authorities. I dare say many hon. members remember the great case in the House of Lords, the petition against Sir Fitzroy Kelly, charging him with having committed perjury, and presented to the House of Lords by Earl Russell himself. People who feel thus aggrieved have a right to address the House, and we must expect them to use strong language, possibly exaggerated language, but I don't think it is right for the House to throw it out, because the language is exaggerated, without inquiry. This is not the time and place to make an inquiry into this matter. I am simply endeavoring to show the House, as the hon. member for Greenough tried to show, what my views with regard to this petition are, and the course we ought to pursue. Having disposed of the Gribble letters, the hon. member referred to paragraph 25 of the petition, and he put himself forward again, and well to the front. I allude to the paragraph about his having been left without his official post as Attorney General, which he tells us is false. That is a matter we are not going to discuss in this House, for, whether he lost his official position or gave it up, or what became of his official position, has nothing to do with us. We have had quite enough of his official

position, and I am glad of the opportunity in this House of openly telling him so. The hon. member did not leave that question without telling us what he would do if anybody libelled him again, and importing a great deal of personal matter into the case. The hon. member said if anyone libelled him—he did not know what the Chief Justice would do—he would meet his opponent openly, in the Supreme Court; before a jury. I should think so. After the damages which the hon. member recently got, I should think he must find it rather a good paying speculation to go before the Supreme Court and a jury. If we could all carry on our business with the same success, I can only say it would be a payable business. But that has nothing to do with proving to the House that any portion of this petition is a gross fabrication or falsehood. I am not saying that the petition does not contain things which some of us would prefer to have seen left out; but there it is, and we must deal with it. The hon. member next went on to deal with the statement in the petition about the Chief Justice trying the case instead of Mr. Justice Stone, and he said that he had it on the best authority that Mr. Justice Stone never gave any intimation that he would have to try the case, or expressed himself as being about to try it. Now I don't want to come here and say I have authority to say this, that, or the other—I do not think it is a proper thing to do—or I might say something very positive on that point, and very much in an opposite direction from what he has said. But I do not think it is respectful to a Judge, or to any person with whom one may happen to have had a conversation, to bring it in here, especially in such a case as this, and try to make capital out of something one may have heard, incidentally, in the course of conversation, when it was never expected it would be heard of again. It may be perfectly true or perfectly untrue, but it is very inconvenient to friends, and I think not very fair, and it is not in accordance with what I endeavor to do, myself, in my intercourse with gentlemen. I say again that with the exception of the paragraph that the Chief Justice makes up his mind before hearing a case in which the petitioners are concerned, I defy anyone to point to

anything that the hon. member for Greenough has shown us in this petition that amounts to a charge of corruption or dishonesty, or anything of the sort. I have read the petition, and I have found no charge in it of corruption or dishonesty against the Chief Justice. I find imputations without number, gross and serious imputations of conduct which a Chief Justice should not be guilty of; but I say the petitioners have a perfect right to set it forth, and to say that they are liable to be "assailed with impunity," and "plundered, persecuted, and insulted by journalists of the baser sort," and litigants of the baser sort, if they honestly believe it. It is within their right, and I pray the House not to be led away by any rhetoric of the hon. member for Greenough in support of the Chief Justice. To trample upon this expression of opinion on the part of two members of the public would be doing them a grievous wrong; and the least we can do is to inquire into the matter, by select committee or a committee of the whole House, and have a report upon these allegations, before the House can express any opinion that this petition should be taken off the table and rejected. We are asked now in this motion to address the Governor, and ask him to be pleased to send the petition to the Chief Justice for his remarks. If I might be permitted to say so, I do not think that, possibly, the hon. member who penned this motion directed his attention to the exact wording of it. I think it would be better if in lieu of asking the Governor to send the petition to His Honor "for his remarks thereon"—which looks just as if he was expected to remark upon it—it should be sent to him for such remarks as he might think fit to make. I think there is a great distinction between the two expressions. To say we send it for his remarks, rather implies that it is a matter which we think the Chief Justice ought to remark upon; and I do not think that is a position which this House ought to be put in. The Chief Justice has a perfect right to send it back, if he thinks proper, without any remark; it is perfectly within his right, and perfectly within the right of the House to take any further steps it might think fit. I would therefore ask the hon. member, if he has no objection, to strike out

the words "for his remarks thereon," and put in "for any remarks he may be pleased to make thereon."

MR. PARKER said he was perfectly willing to accept that amendment, as a verbal alteration.

MR. SCOTT: I do not intend to make many remarks upon this very serious and important matter, but I feel that I cannot give my vote without speaking to the question. I quite agree with the hon. member who has just sat down (Mr. Burt) that it is a matter which requires very careful consideration, and in no heated or impassioned debate. I think, sir, it must be acknowledged by all here that there are very few of us who have any intimate knowledge of the precise form in which to introduce a motion which would lead us to what the hon. member for Greenough thinks exactly right. I believe this is the first time we have ever been called upon to deal with an important and serious matter such as that embodied in this petition, and some of us at any rate have not had much experience of the exact forms of the House on the subject. I look to my hon. and learned friend on the right (Mr. Parker), the hon. and learned Attorney General, and yourself, sir, to guide us in these matters of Parliamentary usages; and, whether the precise forms have been observed in regard to the preliminary stages of this petition or not, it is now before us, having been introduced, received, and printed, whether rightly or wrongly; and, now, I cannot help thinking that the best thing to do is for the House to do what the hon. member for Sussex proposes. I think it is only fair to His Honor the Chief Justice that he should have an opportunity—whether he chooses to exercise or make any use of that opportunity or not—to make any such remarks as he may think fit upon this petition, and that the petition may then possibly come back to the House, when we shall have a better opportunity of giving an impartial decision upon it, than we can possibly have now. With regard to what fell from the hon. member for the Greenough as to the petition not going so far as to call for the removal or dismissal of the Chief Justice, surely that can hardly be considered grounds for our throwing out the petition. If the petition does not go far

enough, I don't think that ought to be a good ground for our refusing to have anything to do with it. If it was the other way—if it went too far—there might be some grounds for throwing it out. But when the House has it within its jurisdiction to ask for the appointment of a third Judge, or that a certain section of the Act be repealed, with the view of removing certain obstructions or objections to the administration of justice, I don't think the fact of the petition not going further than it does is any reason for throwing it out. I agree with other hon. members who have spoken of the unpleasantness of these continual quarrels in high quarters. I know it has been the subject of talk among my constituents, as to why I did not come forward and state my views publicly with regard to the dispute that lately arose here between the Governor and the Chief Justice. Now, sir, I for one thought, and still think, that matter was not a matter for us to interfere with. We could not decide between these two high officials. It was not a matter, as the hon. member for the North has said, in which the independence of the Bench was impugned for one moment; it was simply a matter involving the prerogative or the positions of two civil servants.

MR. HENSMAN: I rise to order. Is the hon. member in order in referring to a question relating to the Governor and the Chief Justice, when the question before the House is that of the *West Australian* and the Chief Justice?

THE SPEAKER: I cannot say exactly that the hon. member is out of order, so far.

MR. SCOTT: I was simply alluding to this to explain why I rose on this occasion, and why I intend to vote in a certain direction. I think the public have a right to know my views, and why I hold them. I shall vote in this matter without any personal feeling whatever. I shall vote simply because I am placed in the position of having to vote,—I am forced to vote; and I think I shall be acting conscientiously and consistently in voting now, under all the circumstances, that this petition be forwarded to the Governor, in order that the Chief Justice may be enabled to make his remarks thereon.

MR. RICHARDSON: I think, sir, it is perhaps the duty of most hon. mem-

bers to give some expression of their opinions upon this matter, otherwise it may savour of moral cowardice if we shirk our duties, and refrain, from personal motives or considerations, from giving public expression to our opinions. I hope to make my remarks as free from anything of a personal nature as possible, and from anything pointed, or calculated to excite any partisan feelings. This is a very serious question indeed, and hon. members should screw themselves up to the fact that they are expected to express dispassionately some opinion on this subject, and not be carried away by any heat or warmth of feeling. I thoroughly endorse a great deal that has been said by my hon. colleague the member for the North (Mr. Burt); I deprecate any idea of attributing to this petition an intention which is not contained within its four corners. It has been previously asserted that this petition accuses the Chief Justice of corruption and dishonesty. If I thought so, if I thought any such accusation were contained in it, I might join with the hon. member for Greenough in voting that it be kicked out of the House, and never more be allowed to enter it. But having read the petition carefully, I really cannot see that it contains any such accusation as corruption and dishonesty against the Chief Justice. There are many imputations, and serious ones against a person occupying the high position of Chief Justice, but corruption and dishonesty are not among them. Such being the case, I think, sir, we may venture to speak to this motion. I was not in the House when the petition was presented, nor do I know if there was any notice given about its being printed. Whether it was rushed through the House, or whether notice should have been given, I am not prepared to say; perhaps it would have been better, and shown better judgment, if it had appeared on the Notice Paper—at all events it would have given no opportunity for cavilling on that point. The hon. member for Greenough has dwelt very largely indeed upon the expressions used in the petition with reference to the Chief Justice, but he has been remarkably silent as to the expressions used by the Chief Justice towards the *West Australian* and the petitioners. I think he has given us a very one-sided view of the

case. We may feel very much surprise at certain individuals using very severe remarks about others if we do not at the same time take any notice of what those others may have said about them; and I think we are apt in such cases to form a very imperfect judgment. I find that the Chief Justice accuses this journal of "gross contempt of Court," of being "utterly disregardful of any sense of justice, honesty, and fair play," and he charges the editor with being an "utter quack and a charlatan," and further remarks that the remarks of the paper in reference to the late Attorney General (Mr. Hensman) were "unwarranted, libellous, and unjustifiable, and he trusted we should never again have such an exhibition of so gross a want of fairness, justice, and honesty on the part of any public journal in this colony." Such remarks as these, even made by any ordinary mortal, to say nothing of their coming from the Chief Justice of the colony, were apt to call forth some retaliatory remarks in return. It is only human nature that it should be so. It may be unfortunate, but such is human nature. I think, therefore, the hon. member for Greenough did not deal impartially with the matter when he quoted one side and not the other. With reference to another allegation made use of in the petition, that the Chief Justice had always insisted upon sitting upon the bench in cases in which the *West Australian* was concerned, I am not prepared to say whether that is true or not. Nor do I think this is the proper time to do so; I do not think we are here at the present juncture as a tribunal to judge of the merits of these charges at all, but simply to discuss whether this petition should be forwarded to the Chief Justice for his remarks or not. I maintain—and I think any unprejudiced member must maintain—that what has been done cannot be wiped out, and to leave the thing at this stage now and not let it go any further, would not have the desired object. It could never have the desired result, from the point of view of either side, I should imagine, to have this petition withdrawn now, as if it had never appeared, and never been published. I do not say whether it was a good thing or a bad thing that it ever did appear, or whether the House did

right or wrong in ordering it to be printed. But, as it has been, I think it is only common justice and fair play that the Judge against whom these allegations are made should have an opportunity of refuting them, or making any remarks he may think fit. He may make remarks which will induce us to treat the petition with contempt and scorn, as the hon. member for Greenough says; or it may please him to make no remarks at all, but treat it with silent scorn. Then the House will have to decide what further steps it will take. But the present juncture is not the time nor the occasion for sitting in judgment upon the merits of this petition. We have not the evidence before us to enable us to judge of its merits in any way; and all we have to consider now is simply what steps should be taken to give the Chief Justice an opportunity of replying to the imputations contained in it. The *West Australian* has no doubt in a way insinuated and charged the Chief Justice, that in all the cases they appear in they cannot get justice, and that His Honor is prejudiced against them, and has some antipathy or aversion towards the paper, which sways his feelings, unconsciously to himself perhaps; and there is a certain amount of evidence, I think, of this in the expressions I have referred to as having been used by the Chief Justice towards that journal—I think those expressions would lead any impartial person to conclude that he had some antipathy or aversion towards the *West Australian*. Whether that antipathy and aversion causes his judicial mind to be blurred when sitting on these cases we are not called upon at this stage to say. The hon. member for Greenough made a very great point of persuading us that we must abstain from charging the Chief Justice with anything improper, or impute to him anything but the highest and noblest principles and the purest integrity. I believe, sir, and most members, I imagine, believe that in our Chief Justice we have a man of the most scrupulous integrity; but whether he has other qualities which may tend to blur his mind in dealing with cases in which certain people are concerned is a question which it is not for us at this stage to decide. But I think it is not right to say that a Judge or any other public function-

ary should not have his conduct criticised. I think the Chief Justice of any country must be open to criticism, as well as other public officials, holding inferior positions, for, after all, he is but a man; he is only human, and unfortunately all mankind are frail, and liable to influences which may or may not be unworthy. According to the authors of this petition, if it is true—and we cannot say at this stage that it is false—there is some reason for an inquiry, and I think it is our duty to inquire, whether these charges are well-founded or not; and, if they are shown to be true, then no doubt there is some cause for the appointment of a third Judge. Another great point made by the hon. member for Greenough was that the meagreness of the prayer of the petition was in strong contrast with the seriousness of the allegations contained in it. For my own part I think that, so far as the accusations contained in the petition go, the appointment of a third Judge will be quite a sufficient cure; for, as I have already said, there is no charge of corruption or dishonesty, but simply that the Chief Justice is apt to be swayed by personal feelings which perhaps to a certain extent make his judgments not quite so impartial as they ought to be; and the appointment of a third Judge, so as to constitute a final Court of Appeal, in which the voice of the Chief Justice, if opposed by the other two Judges, would not be bound to be supreme, would meet all that is required to meet the evils that are set forth in this petition. The only expression in this petition which I think is open to very grave objection—and it is one I certainly object to myself, and would rather not see it here—is that contained in the last paragraph, in which they say: "To your Honorable House we appeal to aid in ending a state of things which is a scandal to the bench, a menace to the welfare of the colony, and a dishonor to the Crown." But even there, there is no charge of corruption or dishonesty. It merely makes out that the imputations contained in the petition—which I say again do not impute judicial corruption or dishonesty—are such evils as to be "a scandal to the bench, a menace to the welfare of the colony, and a dishonor to the Crown." Perhaps these are rather strong expressions—I do not like them

myself—but I cannot see that there is even in them anything that attributes corruption or dishonesty to the Chief Justice. Sir, I shall conclude by repeating what I have said before, that if I thought this petition contained anything which charged the Chief Justice with anything so gross as that, I think it would become a very serious matter indeed for this House to decide whether it should not refuse to have anything more to say to it.

MR. KEANE: On the same ground as the hon. member who has just spoken I wish to say a few words upon the question now before the House. Like him I do not wish to let my vote go without giving my reasons; but my remarks will be very short indeed. For my own part, I think we have had very able advocacy on both sides. The hon. and learned member for the Greenough and the hon. and learned member for the North have pleaded their sides in language which I only wish I could command myself. But I think both these hon. gentlemen have gone away from the question before us to-night, which is whether this petition should be sent to the Chief Justice for his remarks. For my part I have sufficient confidence in His Honor the Chief Justice, and in his ability to answer any imputation made against him, that I think His Honor himself would consider it wiser and better on the part of this House that he should be asked to make his observations upon this petition. Simply for that reason, sir, I intend to support the motion of the hon. member for Sussex.

MR. RANDELL: Sir, in common with other members of this House I feel I should have been extremely glad if this matter had not found its way into the Legislative Council. But, inasmuch as it has done so, I think we are bound to deal with it. I think, sir, that one of the most valuable functions of the Parliament of any country is to redress grievances. The petitioners in this case have appeared before us with a long list of grievances, which they say they have sustained at the hands of the Chief Justice of the colony; and I think we should be doing an injustice, and doing what is decidedly wrong, to refuse to entertain that petition. It is just possible it may not have found its way into the

House in accordance with the rules of procedure in the House of Commons, nor perhaps in strict accordance with our own rules. But I think that is no reason why we should refuse to do justice between the petitioners and the highest functionaries in the colony. I say the highest functionaries, because it would make no difference to me whether the petitioners presented a petition with regard to the Supreme Court of the colony or with regard to the discharge of his duties by the Governor of the colony. I have no personal feelings in the matter, myself; and I am very glad to find a large number of members dealing with the subject in a temperate and judicial manner. I feel, from what I have heard, that hon. members generally speaking have not arrived at any foregone conclusion in the matter, but are prepared to deal with it in as impartial a spirit as it is possible for poor humanity to deal with things of this kind, and that they are bringing to its consideration the best judgment and best information that they possibly can, in order that they may be able to arrive at right conclusions. I have said, sir, I think it is one of the most valuable functions of Parliament to receive petitions, and to redress grievances if they are shown to exist. No doubt there is very strong language used in the petition before us, but, so far as I can gather, it transgresses no rule of the House. It is respectful to this House in every way, and it appeals to us to interfere in a matter in which they themselves (the petitioners) are powerless. Having given a long list of reasons in support of their allegations, I think those reasons should be carefully examined by members who wish to arrive at a conclusion upon all the information we may be able to elicit. Whether the Chief Justice will be disposed to make any remarks upon the petition, if it is sent to him, I don't know; nor do I know that it is a matter that concerns us very much. It is for him to decide, and he will be at liberty to do what he thinks proper in the matter. I am very desirous myself—and I think other members are—of arriving at the most perfect knowledge we can have of the subject, so that we may be able to come to a fair conclusion in the matter. I am very sorry, as I have said before, that matters

of this very grave concern should have occurred in the colony, and I agree with those hon. members who have expressed themselves to the effect that it is desirable, if possible, to put an end to such a state of things as has been existing in the colony for a considerable time past. I feel sure that the result of this petition will be to deepen and intensify, and enlarge I am afraid the range of feeling that had been manifested previously in regard to the unfortunate state of affairs that has arisen in our midst. I also feel sure in my own mind that this petition now before us is the result, more or less, of things and events that have transpired in our midst during the last two or three years—events which I think, in many of their manifestations, were most deeply to be deplored. And if we can in any way devise some means by which the highest officials in the colony can be placed in more harmonious and united relations, the better it will be for the best interests of the colony at large. I am quite sure that the example which has been set in high places of giving way to hasty and impassioned feelings, and the endeavors which have been made in some cases to fan and inflame the angry feelings and excited passions of the country at large, has been and must be fruitful of very disastrous effects upon the community. We are a little people, a small community, and what affects one of us affects others, much more individually and much more collectively, I may say, than it would in larger communities; and I do hope, sir, without dwelling any longer upon this subject, that hon. members will, if not unanimously by a large majority, adopt the motion of the hon. member for Sussex, with the amendment which has been suggested by the hon. member for the North. I think that, in doing so, we shall only be doing what is our duty as between the Chief Justice and those who feel that they have sustained a grievance and who have come to this House for redress—a course which I would here observe is open to any individual. The hon. member for the Greenough has not disputed that—indeed I think the hon. member is as firmly impressed as any of us with the right and propriety of any individual member of society having a grievance for which he cannot by any other means ob-

tain redress, coming to this House and asking it to help him to obtain that redress. It remains for the petitioners to prove their allegations—allegations of the gravest nature, I again say; but one can hardly think that they would be put forward, lightly, by gentlemen occupying the responsible positions which they hold—one a member of this honorable House, and the other a leader of public opinion, the editor of a paper, and of a paper which I take the liberty of saying is conducted with the greatest ability and with the greatest fairness. I have very good reasons for saying so, for I read the paper very carefully, and though I disagree with some of its sentiments and some of its principles, yet I must say that for clearness of expression and for fearlessness in the discharge of a duty, there is not a paper in this colony that is superior to it. Indeed, I think its principles in many respects, although not avowedly a Liberal paper, are more liberal, because more enlightened and more clearly and fairly enunciated, than those of many other papers in the colony. The Bayswater case—one of those referred to in this petition—was a case in which I think this paper did good service. It has been said that that paragraph was penned in a joke; whether it was written in joke or in all soberness, I don't care a pin, but I say they bestowed a favor upon the colony by the way they dealt with that miserable spirit of land speculation, that miserable and mischievous deception which was attempted to be practised upon misinformed or ill-informed persons in the sale of that place called Bayswater. It has also been very generally proved that they had the sympathies of a large section of country people in the action which they took in the case of the Gribble controversy. It has been proved, and the result of the trial in the Supreme Court proved, that, although they rendered themselves liable to an action they were sustained by the verdict of their fellow-countrymen, and by the expressed opinion of a large number of colonists—a very large number of colonists. In other cases, too, I have noticed that they have spoken out fearlessly and thoughtfully in the best interests of the colony. I am happy to say these things with regard to the newspaper in question, because I

differ very much from many of its remarks and many of its lines of policy. I will only add that I trust the motion proposed by the hon. member for Sussex would be adopted by the House.

MR. MARMION: It is not my intention, sir, to detain hon. members any great length of time, for what I have to say will be said in a very few words, and I hope to the point. It has been said by the hon. member for Greenough, and it has been said by many other members, and it has been said and written outside the walls of this Council that the honor and integrity of the bench should be safe from attack, and that the people of this country should have the greatest possible respect for the occupants of that bench. I will say, sir, in a few words, my own opinion on the subject, and it is this: not only is it necessary that the honor and integrity of the bench should be a matter of fact,—in my opinion it is more than all a matter of necessity that the people of the colony should think and feel that the honor and integrity of the bench should be above suspicion. It is a matter of the utmost possible consequence, in my opinion, that every man in the community should be able to point at the seat of justice, and say and feel,—‘If ever I have to appear before the tribunal of justice in this colony I am perfectly safe in securing an honest verdict.’ Now, sir, whether it be true or whether it be false, whether the opinion is worth sustaining or whether it is not, I say as one who understands public opinion in this country, that there is a feeling abroad in this community *now* that there is a danger in appearing in the courts of justice in this colony. I say it with a full sense of the responsibility that attaches to it. (Several hon. members, No, no.) I ask hon. members to listen for one moment to what I have to say. (“No.”) Some hon. members say, no. I ask them what has been the state of this colony for the last two or three years? Has it been a state of affairs that the colony can be proud of? Have we been in a position to let it go forth to the world that we are at the present time a community living in amity, friendship, and good feeling one with another? Has it been the case that people occupying exalted positions have set an example to people in lower positions in the community,

of the cultivation of friendship and good feeling? Has our position been such that the humbler classes of society have been able to look up and say, Behold the good example that is set to us by those in high places? Have they been able to say, look at the example of good-feeling and friendship set to us by those occupying the highest positions in the country, the Governor of the colony and the Chief Justice of the colony; see how our superiors are dwelling together in amity and good-feeling and harmony, and what an example they show us who move in humbler spheres of life? I say no! I say that is not the state of things in this colony at the present time, nor is it the state of things that has existed here for the last two or three years; and I will go further and say that it is a state of things that must be put an end to, and I hope the action taken to-night will do so. If it does, all I can say is we shall have some good reason to congratulate ourselves. I say again, sir, it is the duty of those in high places, occupying exalted positions in the community, to set a good example to those in humbler positions—an example of moderation, of courtesy, of toleration, and mutual good feeling. That, sir, I am sorry to say has not been the case in this unhappy colony—for it is an unhappy colony where the existing state of things prevail—for a long time past. One would think, one would expect, that if there is any one man in the colony, or any position in the colony the occupant of which should set an example to the rest of the community, it is the man who holds the highest position in the country. I say, sir, that in this country that has not been the case. The Chief Justice of the colony has not set an example which should be followed by those in humbler positions of life. I care not who hears me; there are others who hold high positions, and who ought to set an example, but who have not done so. It is all very well for members to come here and air their grievances, and to abuse those whom they cannot forgive nor forget. We have been told to love those who persecute and calumniate us. There is something also said, that, if you are smitten on the right side, turn the left also to your smiter. I don’t know that I should do it myself, but I am

quite sure there are members in this House who do not do it. [SEVERAL HON. MEMBERS: Name them.] I will, if necessary. What has been said by the *West Australian* and by other newspapers of the colony I fully endorse,—that the state of things now existing is unbearable, and the sooner an end to it is put the better. I would myself subscribe a few pounds—they are very scarce these times—to send some of these gentlemen who are creating these disturbances out of the colony. I believe it would be a good thing for all of us. For many years we lived here in a state of friendliness and mutual good feeling, but of late the whole place has been kept in a state of bitter turmoil; the camp is divided into two hostile factions I may call them, at a time when the country requires the united and cordial efforts of everyone in it. Instead of that we are asked to go to the right and to the left, to follow this man and follow that man, when we should have but one leader and one aim and one object, and one desire, the general welfare of the country at this important and critical juncture in its history. I say, sir, this is a deplorable state of affairs, and a state of affairs—I care not who thinks whether I am speaking too strongly—that must be put a stop to, if the colony is to be a place fit to live in. I care not who it offends, I say so openly in this House, and I made up my mind to speak out on this subject the first opportunity that occurred. I care not who it is, but one of those who caused all this ill-feeling and disturbance must go, one or the other of them must leave; I say that distinctly. In saying this it must not be thought for one moment I am taking one side or the other. I have the greatest possible respect for the gentleman whose case is in dispute to-night, and—

MR. HENSMAN: It is not that I wish to interrupt the hon. member, but I ask is this the proper place and time to discuss the merits of any dispute between the Governor and the Chief Justice. That is not the question before us, and I submit the hon. member is travelling altogether from the question before the House, which is that of the *West Australian* and the Chief Justice, and not of the Governor and the Chief Justice.

MR. MARMION: I don't know that I have referred to the Chief Justice yet?

MR. HENSMAN: If he is alluding to anything, he is alluding to a quarrel between two high officials—we know who he means; and I say that is not before the House, but the petition of the *West Australian* against the Judge.

MR. MARMION: I am coming to that presently. With reference to that, my view is this: that every man in this community has a right to air his grievances, in this Chamber. It may come to any of our own turn some day, and I say the *West Australian* has a perfect right to appear here before us with a statement of its grievances; and, until such time as this statement is proved to be wrong, so far as I am concerned, I am in favor of its going to the fountain head, and receiving from the Chief Justice an answer to it. It may be said that the charges are weighty charges, grave charges—so they are. If they hadn't been they would not have been brought into this Council. If these petitioners had not been suffering from an intolerable grievance, to them, I don't suppose they would have adopted this extreme course. It is not for us at this stage to say whether they are right or wrong; but, surely they have a right to express their opinion and to state their case, and this House has a right to listen to it. Surely the hon. and learned member for the Greenough himself—who as we all know is an ornament to a profession whose duty it is sometimes, when paid for it, to take up sides, whether right or wrong—surely the hon. member himself will not object to this matter being heard on both sides, and tried at the fountain head of justice. I take it that we here are sitting as a medium between the people and the Crown, and I maintain that every man in the community has a right to be listened to at the bar of this House; and, so far as I am concerned, my vote will be given in favor of the *West Australian* being listened to in this case. It is known to most of us that the hon. member himself has a grievance, and he never hesitates to air it too, and to let us understand that he has a grievance, a long-cherished grievance which he is never tired of trotting out in season and out of season. We have heard of it on many, many occasions; but, although

he likes to air his grievance, and considers he has a perfect right to do so, it seems he won't allow other people to air theirs. Some time ago the hon. gentleman occupied a position on the Executive bench in this House, and if he still occupied it we know perfectly well we should have heard him air his grievances in a very different manner to-night. But, as it happens—fortunately for the country—we find him occupying the position of a representative of the people; but he has never lost his opportunity—and, as he said the other evening, he never would lose the opportunity of having a flying shot at his favorite cockshy—that is, the Governor of the colony. The hon. member never loses a chance of damaging *him* on every possible occasion, and in every possible way; yet this is the hon. gentleman who objects and complains if other people seek to air their grievances. He has aired his, both in private and in public, continuously; and he has done so, I think, to the disgust of most people in the country, until they are sick of it entirely. The hon. member will pardon me for saying so, though I heartily wish that he and his grievance would depart out of this country as soon as possible. It is amusing to hear the hon. gentleman speaking so strongly about these petitioners and their grievance: is there anybody in the colony who has paraded his grievance with such vindictiveness as the hon. member himself? The other night the hon. member accused me of a want of consistency. There are various forms of consistency, and there is one form I do object to, and that is the consistency of malice, a consistency of hatred, a consistency of vindictiveness.

MR. HENSMAN: Is he referring to me?

MR. MARMION: If the hon. gentleman thinks the cap fits him, he is perfectly welcome to wear it.

MR. HENSMAN: Sir, I am not going to allow him, nor anyone, by innuendo, to charge me with malice and vindictiveness.

THE SPEAKER: I did not understand the hon. member to mention any name, or to refer to you.

MR. HENSMAN: Then I have no objection.

MR. MARMION: I was saying, sir, that one of those forms of consistency I

object to is a consistency in malice, consistency in vindictiveness, consistency in hatred, the consistency that follows the man upon whom you have set your mark with malice and hatred—that is a consistency, sir, I am happy to say I do not possess, whatever other members of this House may possess.

MR. HENSMAN: Is he not referring to me?

THE SPEAKER: I cannot say that he is referring to any particular member.

MR. MARMION: I was saying, sir, that this was one form of consistency that I have never yet been accused of. The hon. member for Greenough alluded I think to the consciences of members. Of course we have heard a great deal about consciences, and no doubt the consciences of some hon. members are very elastic. According to these, it is right and proper to attack those for whom we lack much respect, but a heinous offence to attack those with whom we happen to be on friendly terms. For these we must have nothing but a good word to say, but for others nothing but what is bad. I call that a very elastic sort of conscience, but it is the sort of conscience possessed by many members. Sir, it had not been my intention to have spoken so warmly on this subject, when I rose; but I felt it was necessary to say something, and what it amounts to is this: that the existing state of affairs, at all events, cannot be allowed to continue, when we have at the head of the State and at the head of the judicial Bench of the colony two gentlemen who are on open terms of animosity. Besides that, we have one of the brightest ornaments of the Bar in the colony—one who some time ago was an ornament to the Executive of the colony—upon terms of the bitterest hostility with the head of that Executive, the Governor of the country, and of hostility with those who support the Governor of the country; and I say, sir, this is not a state of things that ought to be allowed to continue. Sir, as to this petition, I think not only is it necessary that the Chief Justice of the Supreme Court should be the soul of honor, I think it is also necessary that the public should feel that he is so. That is the main point; and, when there exists in the public mind or public feeling any idea that any man who goes before the seat of justice in the colony is

liable—I say *liable*—to be dealt with in any way but a judicial and impartial manner, and have justice dealt out to him in any but an even scale—that is a state of feeling which cannot fail to be a detriment and an injury to the welfare of the colony; and an injury that must be wiped out, and that, too, before many months are over. And if the debate on this petition this evening has the result of bringing those who occupy high positions in the colony into more friendly relation than at present exists between them, I think we shall have some cause for congratulating ourselves. So far as I am myself concerned, in this matter, I care not in my position here as a representative of a constituency what my constituents, or any section of them, say; when a case of this kind comes before us I shall exercise my own independence of judgment and my right to say what I have to say, and I shall not be moved in the slightest degree by the breath of public opinion outside.

MR. CONGDON: Sir, I really must say it seems to me there is no cause for all this warmth of feeling to which expression has been given to-night. We are not asked to pronounce an opinion upon the merits of this petition, but simply—shall a copy of it be sent to His Honor the Chief Justice, for any remarks he may wish to make upon it? I certainly think the motion of the hon. member for Sussex deserves the cordial support of the House, as well out of a spirit of fairness to the Chief Justice as to the petitioners. It appears to me that the sooner the better the Chief Justice has an opportunity of replying to the charges made in this petition. I quite concur with what has fallen in the course of the debate this evening; it certainly seems to me lamentable, and disastrous to the best interests of the country, that such a state of feeling as at present exists in this colony between the highest officials in the land should continue. I shall certainly support the resolution.

MR. MORRISON: I think in a case like this, the least said the soonest mended. We are discussing now a motion which will have the effect, I think, of placing the Chief Justice in the proper position that he ought to be placed in when a petition of this sort has been laid on the table of this House, and printed

—a petition setting forth certain complaints about his judicial conduct. This is not the time, in my opinion, to express any views upon that petition whatever. I think from the expressions that have been made use of to-night in the course of this discussion we are simply doing what the petitioners complain of the Chief Justice doing—that is, giving our opinion on one side, or making up our minds on one side before we hear the other. Whether the Chief Justice likes to make any remarks upon the petition or not, I think we have no right to consider it, for or against, until we have both sides before us. At present we have a motion having that object in view, which appears to me a most reasonable motion, and I shall vote for it.

MR. E. R. BROCKMAN: I rise simply to say that I shall vote for the motion of the hon. member for Sussex, and that I shall have much pleasure in adding a small sum to the subscription that is going to be raised by the hon. member for Fremantle.

MR. SHOLL: I think, sir, this debate has been travelling rather irregularly, and beyond the bounds of the particular motion before the House. Hon. members, headed by the hon. and learned member for Greenough, have been travelling altogether outside that motion. The question we have to deal with is simply whether it is advisable this petition should be forwarded to the Chief Justice, but many hon. members have been going into the merits of the case, before the Chief Justice has an opportunity of making any answer, or of offering any remarks. The motion, I think, is a very proper one, and, for my part, I intend to support it. When the matter comes before us hereafter, if it does so, I shall very likely express my opinion very strongly on the matters dealt with in this petition. I think everyone will agree that the Chief Justice—uninfluenced—is actuated by honest motives, and that he is an upright and an honorable man; but that he at times, under certain influences I think, takes wrong views. [MR. A. FORREST: Question.] Of course, it is questionable. But with regard to the motion before the House—that this petition should be referred to His Honor, I shall say nothing further at present, until we receive

the Judge's remarks, or, at all events, until the petition is returned to this House, with the remarks of the Chief Justice or otherwise. In the meantime, I think we are adopting the proper course in sending it to the Chief Justice.

MR. SHENTON: I think, sir, it is the duty of members to endeavor to discuss this matter calmly and dispassionately. It is a very important question that is before the House,—that is, the question of the privilege of any member of the community who may think he has a grievance, to bring his grievance before this House. That is the simple question before us now, but I think some hon. members have rather gone beyond our province at this stage when they went into the whole matter of this petition. I do not think it is for this House to decide upon the merits of that petition; no doubt it will be dealt with by some higher tribunal than this. In a serious and important matter of this kind, justice must be done to the gentleman against whom these charges are made; therefore, I support the motion, because it gives His Honor the Chief Justice an opportunity of making any remarks he may think fit upon the subject. But hon. members, I think, have travelled outside the limits of the motion, and I very much regret that remarks have been made in the heat of discussion which hon. members probably would never have made if they were discussing the matter in their calmer moments. I think all of us agree that the Chief Justice, being human, like ourselves, is liable to err, and, most likely when he has been badgered by counsel, he may indulge in remarks at the moment which he would regret in his calmer moments, and which when looked at afterwards, when the feeling of irritation has passed away, might appear too strong. By adopting the course now proposed, it gives His Honor the Chief Justice an opportunity of refuting these serious charges made against him in the petition. For that reason I intend to support the motion now before the House.

MR. PEARSE: I have listened with some attention to the debate this evening upon this very important matter, and I must confess no one regrets more than I do that this petition was ever brought before the House. But, having come

before us, I think it is only fair and just to His Honor the Chief Justice that he should have an opportunity of making a statement when he is attacked; and therefore I shall support the motion.

MR. PARKER: I only propose, sir, to say a few words in reply, for I feel that the question is practically disposed of already. The hon. and learned member for the Greenough objected to the petition on the ground, in the first instance, that it was in print; and he read an extract from "May" to show us that so far as the House of Commons is concerned, all petitions, to be received, ought to be written on paper or parchment. I would remind that hon. gentleman and the House that we are not bound by the rules of the House of Commons but our own standing orders; and our standing orders provide that in all cases which they do not apply to, "resort shall be had to the rules, forms, and usages of Parliament." Parliament, as I have no doubt the hon. and learned member is aware, consists of two Houses,—the House of Commons and the House of Lords; and one can well see that if there is any divergence with regard to the respective practice or rules of the two Houses we cannot do better than follow the rules of the House of Lords, and I find that the House of Lords receives petitions in print. Therefore I submit there is nothing inconsistent with our own rule—which is silent on the subject—that we receive a printed petition. Further, we have numbers of precedents for receiving petitions in print. Even during last session a number of petitions, especially those relating to the Bayswater railway, were received and were in print. So that if we are guided by precedent and by the usage of Parliament—that is, the House of Lords, I submit there has been nothing improper or irregular in the course adopted with regard to this petition. Then the hon. member says that the prayer of the petition is not correct, that it is inconsistent with the charges made, and that it ought to have been for the removal of the Judge. I question whether it would be right and proper for any person to petition this House for the removal of a Judge; I think, myself, the House itself might petition the Governor, or recommend that a Judge be removed, or the

House might petition the Secretary of State or Her Majesty the Queen for the removal of a Judge. But I don't think it would be right for any individual subject to petition this House for the removal of a Supreme Court Judge; and the proper course for any aggrieved person is to bring his grievance before the House, leaving it to the House to deal with it as it thinks proper. I cannot but think, myself, it would have been very good cause for rejecting this petition if it had wound up with a prayer for the removal of the Chief Justice. The hon. member also says it was a curious coincidence that the petition was presented when he was away; that it was mentioned in the newspaper that he had an engagement elsewhere that evening, and others too, I think, he said. The hon. member may lay the flattering unction to his soul, if he chooses, that I took advantage of his absence to present the petition; but I really assure the hon. gentleman I have so little consideration for him that I never took the slightest heed whether he was here or not. I should have expected him to be here, for, on that night, there were three or four Government bills set down for their second reading, and we all know the hon. member takes particular interest in all bills brought in by the Government. One of those bills was thrown out without the hon. member's assistance; but surely it was to be expected that with all these red rags to attack, the hon. member would have been sure to have been present. But it appears he was not. I assure him I never for a moment took it into consideration whether he was in the House or not, nor did I read the papers, or think of him for one moment. A petition, as hon. members are aware, must be presented before we proceed with the motions, and I know the hon. and learned member seldom arrives early in the evening; but I did not know whether he might have arrived during the reading of the petition, which occupied some considerable time. Had I known he was absent, or thought of the matter at all, I might have waited, and presented the petition when the hon. member was here. Another reason he has given why the petition should be rejected is that it was printed without notice of motion to that effect. He may or may not be right

on that point, though I know we have had petitions printed without previous notice; but the rule which the hon. member refers to ought to have been enforced at the time. If any member had taken exception to the motion being made without notice in this instance, and called the attention of the Speaker to the rule, no doubt the Speaker would have directed notice to be given, and the petition might not have been printed until next day or the day after. But no one took any notice of the matter at the time, and the motion was put and passed; and no one ever heard of a proposal to reject a motion that had been duly passed, on the ground that it was irregular. These, apparently, are the only technical objections taken by the hon. member to this petition, which he calls an abuse of the rights and privileges of petition and an abuse of the rules of the House. I don't think hon. members will take much heed of his objections. I feel sure that members will agree with what I have already said, in moving this motion, that having advanced to this stage, it is our duty to the Chief Justice that this petition should be sent to His Honor for his remarks, before we take any further action in the matter. On this subject I would refer the House to a passage in Todd's work on Parliamentary practice. It is here stated: "It is moreover one of the 'principal duties and functions of Parliament to be observant of the Courts of Justice, and to take due care that 'none of them from the lowest to the 'highest shall pursue new courses unknown to the laws and constitution of 'this Kingdom or to equity, sound, legal 'policy, or substantial justice.'" So that hon. members will observe it is laid down in this work, which has been quoted by the hon. member for Greenough, that it is part of the duties of Parliament, as well one of its functions, to exercise jurisdiction over courts of law and courts of justice. In pursuance of this right, numbers of petitions have been presented to the Houses of Parliament, from time to time, against Judges; and the ordinary course that has been adopted, so far as I can see, is, that, immediately after a petition is presented to the House, a copy is ordered to be sent to the Judge. In some cases a special select committee is

appointed to inquire into the matter, and the Judge attends, by his counsel or otherwise, and witnesses are examined before the committee. All that is asked here is that a copy of the petition be sent to the Judge. I don't see that we have the power to summon the Judge before us—I don't know that he would come if he were summoned; but I think it is our bounden duty to send him a copy of the petition. The hon. member for Greenough says we ought always to uphold the dignity of the Bench, in every circumstance. According to his view a Judge may commit any act or be guilty of any conduct, and it is our bounden duty to uphold the "dignity of the Bench." However gross the charges, and whether they are true or false we are not to inquire; all we have to do is to uphold the "dignity of the Bench." I don't think the hon. member himself has been so desirous to uphold the dignity of persons higher in authority. No; it is only the Bench whose dignity the hon. member thinks ought to be upheld. The hon. member says he expects the Government to uphold the dignity of the Bench, and he resents any attack upon the Chief Justice, but you may attack the Government and you may attack the Governor as much as you like. But the Government must resent any attack upon the Chief Justice. Surely he must give credit to the Government for the possession of most Christian-like virtues, and of returning good for evil in a most remarkable manner. I don't think anyone could say that the hon. member himself of late has ever upheld the dignity of either the Government or the Governor in any way, or that the gentleman mentioned in this petition ever did anything to uphold the dignity of the Governor or the Government. I do not want to go into the merits of this case; but I cannot help thinking that the course adopted by the *West Australian* in this petition is a more manly course and a more straightforward course than printing a pamphlet, say, in the neighboring colonies, and not allowing those who were chiefly interested and the object of the attack to have an opportunity of seeing it. The petitioners, at any rate, have the courage of their convictions, and publish what they have to say, here, and the object

of this motion is to allow the gentleman whom it chiefly concerns an opportunity of replying to it. They have not sent it abroad for publication to the world, carefully guarding against the person principally interested having a sight of it; and I cannot help thinking that the course they have taken is a more manly course, a more upright and honest course to pursue, and the one which we hope every person that has a grievance which he cannot otherwise have redressed will follow in the future; and I trust it will never be said that the Legislature of this colony rejected a petition because it was pointed at a man high in authority.

MR. HENSMAN: I propose, sir, to move an amendment.

THE SPEAKER: The hon. member cannot move an amendment, now; he has already spoken on the main question.

Motion put (with the verbal alteration suggested by Mr. Burt), as follows: "That an Humble Address be presented to His Excellency the Governor, enclosing a copy of the petition of Messrs. Harper & Hackett to the Legislative Council, in which the Petitioners pray for the appointment of a third Judge of the Supreme Court, or for the repeal of portion of the Act 44th Victoria, No. 10, and respectfully requesting His Excellency to be pleased to forward the same to His Honor the Chief Justice for any remarks he may be pleased or think fit to make thereon."

A division being called for by Mr. Hensman, the numbers were—

Ayes 19

Noes 4

Majority for ... 15

AYES.		NOES.	
Mr. H. Brockman		Captain Fawcett	
Mr. E. B. Brockman		Mr. A. Forrest	
Mr. Burt		Mr. Horgan	
Sir T. C. Campbell, Bart.		Mr. Hensman (Teller).	
Mr. Congdon			
Hon. J. Forrest			
Hon. Sir M. Fraser, K.C.M.G.			
Mr. Harper			
Mr. Keane			
Mr. Marmion			
Mr. Morrison			
Mr. Pearce			
Mr. Randall			
Mr. Richardson			
Mr. Scott			
Mr. Shenton			
Mr. Sholl			
Hon. C. N. Warton			
Mr. Parker (Teller).			

The motion was therefore adopted.

CONSTITUTION BILL.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser), in accordance with notice, moved the first reading of a Bill to confer a Constitution on Western Australia.

Motion agreed to.

Bill read a first time.

ABORIGINES BILL.

Read a first time.

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

LEGISLATIVE COUNCIL,

Monday, 22nd October, 1888.

Provision for performance of duties of Chief Justice during His Honor's suspension—Supplementary Estimates, 1888—Bank Holidays Act Amendment Bill: first reading—Poor Houses Discipline Act Amendment Bill: first reading—Inquests on Infants Bill: first reading—Quarantine Bill: first reading—Gold Declaration Bill: in committee—Adjournment.

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

PRAYERS.

PERFORMANCE OF DUTIES OF CHIEF JUSTICE DURING HIS HONOR'S SUSPENSION.

MR. HENSMAN, in accordance with notice, asked the Colonial Secretary, Whether any agreement or understanding existed between the Governor and the Police Magistrate of Perth, and any of the other gentlemen who performed extra duties consequent upon the suspension of the Chief Justice, that they should only receive extra salary for the performance of their extra duties in the event of that suspension being confirmed.

2. Whether the Police Magistrate of Perth, and the other gentlemen before-named, or any of them, received any extra salary during that suspension; and, if so, whether they, or any of them, have been called upon by the Governor to refund the amount of such extra salary; and, if so, whether they, or any of them, have done so.

3. Whether the Police Magistrate of Perth was called upon to refund extra salary, and, if so, did he decline, and did a correspondence pass upon the subject between him and the Government; and did the Police Magistrate allege that no such agreement or understanding, as is referred to in the first of these questions, was arrived at.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser) said that £298 12s. 3d. was paid to officers doing extra duty in consequence of the suspension of His Honor the Chief Justice. Of this sum, £200 10s. 4d. had been refunded, and £98 1s. 11d. was in course of being refunded, pending the vote of the House. The officers concerned were satisfied at what had been done, and were content to leave their claim to the decision of the House. The hon. gentleman also referred to a practice which, he said, had grown up of asking questions which necessitated the preparation of returns, and he pointed out that by a resolution of the House it had been agreed that such questions should only be put in the form of a motion, after due notice of motion had been given. He hoped that hon. members would remember this and that, in the future, all such questions would be submitted to the decision of the House as to whether such returns should be prepared.

MR. HENSMAN: I desire to say that I did not call for returns, nor have I received any answer whatever as to whether any agreement or understanding existed between the Governor and the Police Magistrate, or whether the Police Magistrate declined to refund his extra salary, or whether any correspondence had taken place upon the subject between him and the Government. I have received no answer whatever to the greater part of these questions.

THE SPEAKER: You cannot compel a Minister to answer a question, if he does not desire.