

LEGISLATIVE COUNCIL,

Tuesday, 16th April, 1889.

Concessions to W. A. Timber Co. (Message No. 15)—
Petition of Messrs. Harper & Hackett—Extension
of Geraldton Jetty—Adjournment.

THE SPEAKER took the Chair at noon.

PRAYERS.

CONCESSIONS TO W. A. TIMBER CO.
(MESSAGE No. 15.)

On the order of the day for the consideration of His Excellency's Message, forwarding Mr. Gordon's proposals for a modification of the conditions of the agreement with the W. A. Timber Co.:

MR. PARKER moved that the Message be referred to a select committee. He said: Members will bear in mind that this Message was accompanied by a draft agreement which it is proposed shall be entered into between the Government and certain gentlemen residing in the other colonies, who are represented here by Mr. Gordon, who recently came over to complete the negotiations. This draft agreement is the outcome of an agreement entered into several years ago between the Government and a company known as the W. A. Timber Company. By virtue of that agreement the company had the right to select 30 acres of land on the sea coast for the purpose of erecting wharves, jetties, saw-mills, and the necessary workshops for carrying on a timber trade and also the right to construct a railway running 25 miles from the sea coast into the jarrah forest. In consideration of the construction of this railway the company were to get 2,000 acres of land per mile; and the agreement further provided that the company should be granted what were called remission certificates, which would be available in the purchase of land in consideration of the line of railway constructed. These remission certificates authorised the company to select and take up as freehold lands 2,000 acres in any part of the colony, for each mile of railway,—in other words, land to the value of £1,000 for every mile or portion of a mile of railway. The agreement also contained

one other provision, which I cannot help regarding as a rather extraordinary provision. The company was to be allowed to take up mineral lands in its selections, but in blocks of not less than 320 acres; their other blocks, whether town or suburban lands, were not to be of less than 2,000 acres. When I first saw this agreement it struck me as an extraordinary agreement to make: not only did this company have power to run their railway into the jarrah forest, 25 miles, but, as soon as they got into that jarrah forest they were granted a block of land extending from the termination of their line 20 miles farther, and 10 miles in width.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): No.

MR. PARKER: I will read the agreement. I am sorry to say it is not very easily understood. Paragraph 8 says: "The area mentioned in Paragraph 1 of this agreement may be selected by the company and granted in fee simple for the erection of Saw-Mills, and the said line may be continued for twenty-five miles from the said Saw-Mills, the said company to have the exclusive right to cut indigenous timber to the extent of five miles on each side of such line until the whole of such land shall be denuded of timber or until the land be sold or otherwise demised (by tillage or lease)." According to that, the company was to have the right to continue their railway 25 miles from the site of their saw-mills on the sea coast, and to have the exclusive right of the timber on either side of the line for a distance of five miles. Then we come to paragraph 12, which says: "On such completion"—that is, the completion of the 25 miles of railway already mentioned—"the Government of the said colony shall grant to the said Company the exclusive right to cut timber for the space of five miles over the land on each side of the said line of railway calculating the width of such line of railway at two chains, as also a similar right over a further block of twenty (20) miles by ten (10) miles wide to be continued in advance from the end of the said railway in such direction as the said company may elect." It appears from those two paragraphs, that the company could first run their line 25 miles from the coast, and afterwards

run it over a further block of 20 miles "to be continued in advance from the end of the said railway in such direction as the said Company may elect."

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): That refers to the jarrah forest, not to an extension of the railway. The hon. member must not mislead the House.

THE SPEAKER: That is an improper observation to have made.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): I withdraw it.

MR. PARKER: I am simply giving my view of the agreement.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): I think I know as much about this subject as he does. The words are perfectly clear to my mind.

MR. PARKER: The hon. gentleman will have an opportunity of giving his version afterwards; but I object to his saying that I am misleading the House; I am reading the document itself. By Clause 8 the Government grant the company the right to cut timber on each side of their railway, a distance of 25 miles from their saw-mills; and by Clause 12, on the completion of that line of railway, a similar right over a further block of 20 miles. That is the view I take of the agreement; I don't say it is the right view, for the agreement is open to various constructions. So far as I can see, the company might have gone on building a railway a hundred miles in length, and claimed their 2,000 acres on their remission certificates in respect of every mile constructed. Clause 13 says: "The said Company shall have full and free liberty, license, and authority, at its discretion, to continue the construction of the said railway through any portion of the said Twenty (20) mile block, and for every mile or portion of a mile of railway when constructed, the said Government shall grant to the said Company the fee simple of the said line of railway to the extent of two chains wide and such further land as may be reasonably required for timber depôts not exceeding fifty acres for each timber depôt along the said line, and shall issue and give to the said Company remission certificates authorising the said Company to select and take up as

"freehold land, after the rate of two thousand acres of land within the said colony, or the value of One thousand pounds of remission certificates available in the purchase of land for each and every mile of or portion of mile of railway." The next clause goes on to deal with mineral selections, and says that the blocks of mineral land shall not be of less than 320 acres—a most extraordinary provision. The Government of the day were anxious, apparently, that this Company should, among their other selections, take up mineral lands, and take them up in large blocks. We should consider 320 acres of mineral land rather a large block in these days; but here the Government would not allow this Company to take blocks of less than 320 acres, which they were at liberty to select in any part of the colony. The next clause provides that in case the Company ceased operations for a whole year, their right to cut timber on each side of the railway ceased. Strangely enough, that was the only forfeiture clause in the agreement. It did not provide that, in default, the agreement should come to an end, but that they should lose their exclusive right to cut timber on each side of the line. So far as the agreement itself was concerned they might have ceased operations for twenty years and then resumed operations so far as the work of railway construction went, and they might have gone on building away, and claiming their 2,000 acres for every mile constructed up to the present day. I cannot help thinking that when Mr. Barlee entered into this agreement with Mr. Simpson, the Government were in a very liberal mood; and, what is more, they exceeded their powers; for the next clause says that no export duty was to be chargeable on any timber shipped by this company, and in case such a duty should happen to be charged in mistake, the Government was bound to refund it. I cannot help thinking that that condition of the contract was *ultra vires*; I don't think Mr. Barlee had any power on behalf of the Government to remit any Customs duty without the consent of the Legislature. I am not aware whether this agreement was confirmed by the Legislature.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser): It was, and also a special

land regulation to meet the circumstances of the case.

MR. PARKER: Another clause provides that no person shall be permitted to cut timber on the company's reserves, or enter into any business or trade thereon that may be reasonably deemed prejudicial to the company's interests. I cannot help thinking that that was a very unwise clause also. Clause 20 says that "all matters not herein specifically provided for shall be regulated by the terms of this agreement, with a due regard to the interests of the company and of Her Majesty's subjects." That certainly is a most extraordinary provision. How matters that are not provided for in the agreement are to be regulated by the terms of the agreement is certainly beyond my comprehension. At any rate this is the agreement under which this company has been working, and I cannot help thinking that the colony may congratulate itself that no more mischief has been done under it than there has. I do not know how many miles of railway the company has constructed up to the present time, or how many acres of land the Company have had in various parts of the colony; but I can see this, that the sooner an end is put to such an agreement the better for the colony. I believe many persons have embarked a good deal of capital in the concern at one time or the other, and that most of them have lost their money, notwithstanding the favorable nature of the concessions; and the result has been that the company had to cease operations, and an opportunity is now offered to have this agreement cancelled and operations commenced on a more extensive—and, I hope, so far as the colony is concerned, more favorable—scale. So far as the Southern districts are concerned, the Sussex, Wellington, and the Nelson districts, I believe this timber industry is the life-blood of those districts.

MR. VENN: No such thing.

MR. PARKER: The hon. member says no such thing. I will quote presently from a memorial addressed to the Government by the inhabitants of the hon. member's own district, which bears me out. There is no doubt that when these timber stations were in full swing they caused a large amount of money to circulate, and they provided work for a

considerable number of men and employment for a great many teams; and I believe the timber industry is regarded as having been conducive to the prosperity of these districts. Now, when the industry is at a standstill, and the mills have ceased operations, the inhabitants feel it very much, apparently, and are very anxious that something should be done to give a fresh impetus to the industry. According to this memorial, which I shall presently quote, these districts seem to be in a deplorable state in consequence of the cessation of the timber industry and the closing of this station. Produce cannot be sold, and work cannot be obtained. In consequence of the very heavy freight rates and the absence of railway communication, the farmers of these districts cannot send their produce to market, and compete with the more favored Eastern districts; and I assure members I have had many representations made to me from the Sussex district, that unless these timber stations can be induced to resume operations there is nothing but financial ruin before many people in the district. Those are the representations that have been made to me, and I must say they are borne out by the memorial that was recently addressed to the Government by the inhabitants of these districts. That memorial was signed by nearly all the settlers of the Wellington, Sussex, and Nelson districts, and it prayed the Government to grant the transfer of the old company's concessions as is now proposed. For the information of the House I will read the memorial, which as will be seen, is signed by all the leading people among the hon. member for Wellington's constituency. [The hon. member then read the memorial.]

MR. VENN: What is the date of that memorial?

MR. PARKER: It is not dated. It was sent up and presented to the Governor, I believe, about three or four months ago. The Government did not deem it right to agree to transfer these concessions without referring the matter to the House; and I cannot but think that the Government acted very wisely in the matter, while at the same time they informed the memorialists that they recognised the necessity of taking some action

in the matter of getting rid of this old agreement. The Governor and the Government were most anxious, I believe, to do all they could to carry out the wishes of the memorialists, and they have been in correspondence with this new syndicate that proposes to take over the concessions on different terms. These gentlemen, I understand, have purchased the company's railway and works and all belonging to it, and are ready to resume operations, provided they can come to terms with the Government. A draft agreement has been prepared, as members are aware, and sent down to the House by the Governor; and what I propose now is to have this draft agreement referred to a select committee to report upon it, and to advise this House whether it would be wise on the part of the Government to enter into this fresh arrangement with this syndicate, who, I believe, are quite capable of carrying out what they propose to do. I am told that the gentlemen who belong to it are all wealthy people, and that they have business connections not only in England but also with India and other countries with which a large timber trade may probably be opened up, and that already they have some very extensive orders; and that their intention is to put this railway in thorough working order and to commence operations on a large scale, if they can come to terms with the Government. Speaking in the interest of my own district, I can hardly imagine anything that would more promote the welfare and prosperity of that part of the colony than the development of this timber trade. Members will bear in mind, I hope, that I have nothing whatever to do with these people who propose to take over these concessions; I am simply acting in this matter in the interests of my constituents.

MR. VENN: And of the colony?

MR. PARKER: Certainly, it would benefit the whole colony. Anything that benefits one part of the colony benefits the whole, indirectly. If one portion of the colony becomes wealthy and prosperous, and money circulates freely, it means a larger consumption of dutiable articles, and a corresponding increase of the public revenue. It will be observed that it is proposed to entirely cancel the present ambiguous and obscure agreement, and, as I think, dangerous agreement,

and to enter into a fresh agreement, under which the syndicate propose to run their line to Bridgetown, over 45 miles—which, I understand, will take the line within about five miles of Bridgetown. I do not know that they have any particular wish themselves to take it that distance, but it has been suggested to them that it would be a good thing in the interests of the colony. All they care for is the timber trade. They have no particular object in going to Bridgetown, and connecting it with the Vasse; but I should imagine it would be a very good thing for the colony. I think no one would deny that it would be a good thing for the Government if it could get rid of this old agreement, and have something less ambiguous and less dangerous to go upon; and I am certain it would be a good thing for the districts more immediately concerned to have the timber industry resuscitated, and carried on on an extensive scale. I think we must all admit that the terms offered by this new company are far more favorable, so far as the colony is concerned, than the terms of the old contract, under which the company could select their lands anywhere—at Yilgarn, if they liked, or at Kimberley—instead of being restricted, as they will be under this new agreement to 40 miles on either side of their line. They also undertake not to select their land within any declared or supposed goldfield, or within any agricultural area unless subject to all the conditions applicable to land within such areas under the Land Regulations. I trust that in considering this matter members will bear in mind that a great deal has been done by this Council in the interests of some other portions of the colony, the Eastern districts for instance, in giving them railway and other facilities, in giving them not only a main line but also branch lines to Northam and Toodyay; and how little we have really done for these Southern districts. We certainly did give them a short line of railway, but it was never open for traffic. I think the least we can do is to try and give some stimulus to their most important local industry. They do not ask us for a vote of money; all they ask is that we will allow this company to build this line for them, and pay for it with their own lands, the land in their own

district. I hope members will be inclined to look at this proposal in the same light as I do, and as the inhabitants of the Southern districts do,—a proposal that is calculated to do that part of the colony a great deal of benefit, and at the same time indirectly confer a material benefit upon the whole colony, to say nothing of getting rid of what appears to me a very dangerous agreement, fraught with the possibilities of a very costly law suit. All I ask now is that the proposal be referred to a select committee.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser): I rise to second the proposition of the hon. member for Sussex. As His Excellency states in his Message: "The introduction of new capital and enterprise into the Vasse district would be a very great and much-needed boon to that part of the colony, and it is this which has led the Governor to bring Mr. Gordon's proposals forward during this special session. At the same time, the concessions asked are considerable and far-reaching, and the whole arrangement, if entered into, will require very careful settlement." The Government, as hon. members have been told, have received a memorial from the residents of the districts concerned most deeply in this project, and it is very influentially signed. Since this Message has been sent down, forwarding the draft agreement, the Governor has been further addressed on the subject by another section of the inhabitants of the Southern districts, who appear to regard the proposal as it stands with some amount of jealousy, I am afraid. For the information of members I had better read a telegraphic despatch which has been forwarded to His Excellency; it is signed by a gentleman named "H. E. Reading, honorary secretary of the Wellington District Political Association." It is a copy of a resolution passed at a special meeting of that body, and is in these terms: "That this meeting, having considered His Excellency's Message Number 15, presented to the Legislative Council on the 10th inst., respecting the Hon. J. H. Gordon's proposal for a revision of the terms of the concession to the W. A. Timber Company, is of opinion that the proposal to construct a railway from Vasse to Bridgetown is a speculation of a purely commercial

"nature, and foreign to the objects of the said Company, and ought not to be entertained by the Government; but that on the other hand, the development of the Company's business, and general facilities for shipping timber would be afforded by the construction of a branch line by the Company, to join the Boyanup junction; and that, in any event, any railway to Bridge-town should be constructed in connection with the present Bunbury line, in anticipation of the continuation to Bayswater direct." The Governor has also received a communication from the Mayor of Busselton, expressing the gratitude of the corporation for bringing forward this scheme at the present session and pointing out its beneficial influence upon the district, if carried out. Opinions apparently vary in different parts of the districts concerned; but I think we may take it that there is a strong feeling in favor of something being done in the way of stimulating an industry that has been languishing for some time past. At any rate, I see no objection whatever to the proposal being referred, as is now proposed, to a select committee to report upon it, and to advise the House, for, as His Excellency says, the concessions asked are considerable and far-reaching, and will require very careful settlement.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): I merely rise, not to discuss the proposal now, because we shall have another opportunity of considering it upon the report of the select committee; I merely rise at this stage to refer to one or two remarks that fell from the hon. member for Sussex. I am afraid I spoke rather abruptly to the hon. member when I said he was misleading the House. I did not mean that he intentionally misled the House, but that he appeared to me to be placing a wrong construction, and the very worse construction he could, upon the existing agreement. I think I can explain that part of the agreement which the hon. member was dealing with. The 5th Clause of the agreement provided that the company was to build a line of railway in the first instance to a spot in the jarrah forest, about eleven miles from the landing. That was the first thing they had to do. When they built that eleven miles they were entitled to certain

lands, 2,000 acres per mile, which they received. They received nothing until that eleven miles was completed. Then Clause 8 says that "the said line may be continued for 25 miles from the said saw-mills." That is a pretty positive statement, I think; and I know that in the opinion of certain law officers that is the limit. Clause 11 says that when this line is completed—that is, the first eleven miles—the company shall notify such completion to the Governor; and Clause 12 says "on such completion the Government shall grant to the Company the exclusive right to cut timber for the space of five miles over the land on each side of the said line," and also "a similar right over a similar block of 20 miles by 10 miles wide to be continued in advance from the end of the said railway in such direction as the company may elect." That is, a right to cut timber over so much forest. That is the construction I put upon it and not the construction put on it by the hon. member for Sussex, a construction that the company themselves never thought of putting on the agreement. The right to the 20 mile by 10 has always been looked at in the Lands Office as a right to commence from the terminus of the first eleven mile section to the jarrah forest. I mention this because the hon. member for Sussex, in my opinion, did not take a correct view of this old agreement. At the same time I think the hon. member made a very good speech in support of this new proposal, which I think must have commended it to the House.

MR. RICHARDSON: As possibly some of us may not be here when the committee make their report, perhaps it would be as well that we should say what we have to say before they commence their labors. It appears to me that this old agreement, bad as it is and loosely worded, and, to a certain extent, a dangerous one to have hanging over us, still contains one or two saving clauses, which seem to me to be sufficient to preserve the colony from being "dropped" too much in the matter. One is the 8th Clause, which says that "the area mentioned in paragraph 1 of this agreement"—that is the paragraph which required the company to select a site for their landing or depôt—"may be selected and granted

in fee simple for the erection of saw-mills, and the said line may be continued for 25 miles from the said saw-mills, the said Company to have the exclusive right to cut indigenous timber to the extent of five miles on each side of such line, until the whole of such land shall be denuded of timber, or"—this is what I wish to refer to—"until the land be sold or otherwise demised, by tillage lease." According to that if anybody purchased this land, the company would be out of it, their timber rights would be gone.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): That is so.

MR. RICHARDSON: That is rather an awkward proviso for the company. Furthermore, we must not forget that at the end of 20 years from the date of the agreement—two years hence, July, 1891,—the Government would have the right to take over the whole concern at a valuation, and be done with it; and if there are any good things within these rights, and it would be worth while for the Government to obtain possession of them, they had the chance of doing so. So much for the old agreement. With reference to these new proposals we must keep this in mind, that the development or rather the revival of the timber trade is of the greatest importance to the whole colony. I don't know that it matters very materially which particular port shall be the port of shipment; timber is a very heavy article, and it is useless to talk about its being shipped from any port that is not in close proximity to the forest where it is got—the nearer the better; and it is proximity that must determine that point. This view of the matter, which is of importance as affecting the development of the trade, should not be lost sight of. It appears to me that another great point is this: if we are going to continue our policy of land grant railway construction, if we are going to have railways built for other purposes than the timber trade, if we are going to have them built for the development of agriculture, we must seriously consider which is the best direction for these lines of the future to start from and to terminate. When we talk about this line going to Bridgetown or to the neighborhood of the tin mines, we must consider this question—is that the most desirable route or direc-

tion, or terminus for this railway to have, in view of future developments? Is it more desirable to connect these tin mines with the Vasse, or to open up the agricultural lands of the Blackwood? I presume this House has it in contemplation to connect the Southern districts with the capital some day, whether that day be far or near; and it would be well, in considering this proposal, to bear that in mind. It is an element that the committee should not lose sight of. There is another point; if it should be decided by the select committee that this is not the best terminus for a railway from the Blackwood, it might be possible to make an alternate proposal to the syndicate, and have the terminus somewhere else. We are told that they are not very particular as to going to Bridgetown, and they might agree, if necessary, to take their line in another direction. As to the proposals generally, they seem very moderate in their demands. Heretofore we have been giving at the rate of 12,000 acres a mile for our land grant railways, and this company propose to do it for 2,000 acres. That is a very wide difference. Of course it may be said that the quality of the land is different; and I admit that there may be something in that. But whether the land is better or worse, I know this, it will take a large amount to clear it, probably about £20 an acre. That is a very serious item. There is another thing I would remind the House of: in granting this syndicate the concessions they ask, and offering them land in payment for the construction of a railway through a timber country, we must not lose sight of the fact that we negatived the proposals of another company, the Jarrahdale Company, when they offered to extend their line to the Albany road, and connect it with the Williams agricultural district. Those proposals received a direct negative from this House, and the question is whether we are acting fairly by rejecting the offer of one timber company and agreeing to the proposals of a rival company. I am almost inclined to think that the Jarrahdale Company would be prepared at this moment to renew their offer to extend their line, and connect the rich agricultural districts of the Williams, Murradong, and Wandering, with Perth, on this very basis of 2,000 acres per mile. Of course I do not speak with any authority

but it is just possible that they may be prepared to do so. I need hardly say that such a proposal would be infinitely more important and beneficial to the colony than a little blind line leading from the timber country into the Vasse. I think we might find out, if we hurriedly accepted these proposals, that we had done injustice to another company, who might be prepared to carry out a scheme of very much more importance to the country than this particular scheme now before us. I hope the select committee will look this matter up, and see what those proposals of the Jarrahdale Company were, and how far they are prepared to adhere to them, and whether it would not be immensely more advantageous to the colony to have that scheme carried out than this. I see this syndicate require the exclusive right to cut timber for 50 years. That seems a very long period; and I think it might be reduced to one-half that time. There is another point; I see no provision for working this line; and it must be borne in mind that if the Government have to take over the line they will be expected to work it. It is to be hoped it may not turn out another Boyanup line. It is a very serious question whether the country through which it will pass will provide sufficient traffic to keep it going, and pay for the working of it.

MR. LOTON: I do not know whether it is the intention of the House to offer any special opposition to this scheme at the present stage, or to refer it to a select committee. If it is to be referred to a committee I do not see that there is much to be gained by debating it now. At the same time I should just like to say a few words. Considerable stress has been laid on the fact that the agreement which already exists is so very ambiguous as to be a source of danger to the Government, and that the Government would be glad of an opportunity of withdrawing from it. These concessions are evidently regarded by the Government as of considerable value, and if the construction put upon the agreement by the hon. member for the Vasse is correct, no doubt this company has a very good thing in this agreement, and the Government appear to have got the worst of it. But I can hardly think that the construction put upon the agreement by the hon.

member is a right construction; I rather think the view taken of it by the Commissioner of Crown Lands is the more valid one. As I read the agreement, it seems to me that when the company reached a site, said to be about eleven miles from their saw-mills, in the forest, and completed their line that far, they were to report to the Government; and when they were able to report that they had completed their line that distance, they were to be at liberty to extend their line to a distance of another 20 miles, which would make it about 31 miles; and that they had no right to go any further. I can hardly conceive that it was ever intended that they were to be at liberty to go on extending their line where they liked, and to select their 2,000 acres per mile in any part of the colony. I do not know at all what value is now placed on these concessions, but I do know that they were recently put in the market and that they fetched a very low price,—something less than £10,000; and if the Government had had their eyes open, as they ought to have had, and were so anxious to get rid of this old agreement, they might have done so.

THE COMMISSIONER OF RAILWAYS (Hon. J. A. Wright): The Government could not have done that. They could not have spent £10,000 without coming to this House.

MR. LOTON: I think, in a case like that, and if they were so anxious to get out of the foolish bargain made some years ago, they would have been justified in making the purchase, and coming to this House to ratify it afterwards, as the English Government did with the Suez canal business.

THE COLONIAL SECRETARY (Hon. Sir M. Fraser): No, no.

MR. LOTON: If I had been a member of the Government I would have entered into the bargain at once, when I got a chance, and have taken the responsibility too. But that opportunity is gone, and it is no use talking about it now. With regard to the present proposals, my view of the matter is this: is it desirable to enter into an agreement to construct a railway from Bridgetown to the Vasse? That is pretty well what it amounts to. Although these people undertake to extend the present line by a branch line to the Vasse,

it appears that this branch line would, for eight or ten miles, run alongside the line already made, and for which the colony had paid at the rate of 2,000 acres of land selected in any part of the colony; and we are now asked to pay another 2,000 acres per mile to have a line running alongside. That is what is proposed in the third paragraph of this draft agreement. This is what I want to point out to the committee: this is not merely a question of building a line from the present terminus, about 18 miles to Bridgetown; it is also a question of building a branch line from Lockeville to the Vasse, alongside with the present line mostly; and paying the same for the two lines. There is another question I would ask: what benefit is this railway going to be in the way of opening up settlement and the cultivation of the land? I see nothing about it here.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest): That is for the select committee to look after.

MR. LOTON: I only wish to draw the attention of the select committee to these points; every member won't be on this select committee—I don't suppose I shall. It appears from what the promoters themselves say that the timber is all they care for; and we are asked to give 2,000 acres per mile to enable them to construct a line of railway for their own purpose, to denude our forest of its timber. I do think the time has arrived—it arrived some time since—when the Government of this colony should place some value upon its timber forests, and do something in the direction of conserving as well as despoiling them. Our forests have been regarded of little or no value by the Government in the past; but the time has arrived when the Government of the colony should begin to realise that our timber is of some value. Another point I should like to point out: these concessions have been in existence about eighteen years, and why in the world have they not worked them? We are told they are most valuable concessions for any company to hold; why don't they work them? Instead of that we are asked to give more concessions, and even greater advantages, than the present ones.

MR. PARKER: No, no.

MR. LOTON: I say, yes, yes. The

concessions which they hold at present enable them to build a railway ten or twelve miles farther than they have yet gone, and nobody is to prevent them from going on with it if they like, and if they have capital at their back, as we are told they have. We are always told that; but the capital is a long time making its appearance; and for my part I do not want to see any more of these concessions given at the expense of the colony. I think we have had enough to do with land syndicates. This is an age that stinks with syndicates; and I think we have had quite enough of them in Western Australia, for all the good they have done us.

The motion to refer the proposal to a select committee was then put and passed; such committee to consist of the Hon. J. Forrest, the Hon. J. A. Wright, Mr. Randell, Mr. Venn, and the Mover.

PETITION OF MESSRS. HARPER AND HACKETT: (MESSAGE No. 14).

MR. RICHARDSON: Sir,—before putting the resolution standing in my name I desire to draw attention to one or two little errors in the printed notice, and, by leave of the House, I wish to correct them. In the second paragraph, instead of “and not approving in all instances,” it ought to read “and not in all instances approving”—merely transposing the words. In sub-section (a) I wish to strike out the word “to,” after the word “becoming.” Sub-section (c) reads: “the simple fact that the libel arose out of Mr. Hensman’s loyal and devoted defence of the Chief Justice.” It has been pointed out, and I think with some force, that this may give rise to a certain amount of debate and controversy, and, instead of the words “loyal and devoted defence,” I wish to insert “untiring” defence. I merely introduce this verbal amendment to avoid what may be considered unnecessary matters of discussion in the course of this debate. Sir, in rising to bring this resolution before the House, I desire to offer some little explanation of the position I take up in this matter. I may say that other resolutions dealing with this matter have been mooted, some of which have come under my notice, but owing to what appeared to me to be a certain ambig-

uousness or want of fulness about them I could not subscribe to them, and for this reason: they appeared to be an effort to condense into one paragraph what I may call a comprehensive resolution dealing with this matter, summing up in a few words that this House simply desired something to be done, and leaving too much to be implied or understood, and, by its very ambiguousness, being capable of an interpretation that might have the result of inflicting an injury upon the Chief Justice which many of us had no desire or wish to do. That was my objection to them—that they might lead the Secretary of State to think that this House had no sort of opinion about the Chief Justice; all they stated was that some remedy was wanted—perhaps some drastic remedy, and not indicating in any way what that remedy was which they desired, but leaving it open to the Secretary of State to suppose that this House considered the Chief Justice a very dangerous sort of man to have in the colony at all. I for my part was not prepared to subscribe to anything of the sort. My desire is not to do the Chief Justice any unnecessary injury in moving in this matter, and it was rather in his interest that I declined to support the resolutions I have referred to. They might perhaps not have had the effect which I apprehended—there may not have been that danger about them; but they appeared to me to be open to that danger; and I think it is better to state openly, honestly, and plainly, some of the points or particulars in regard to which we differ from the Chief Justice’s decision and from his conduct in certain cases. In framing this resolution I was anxious to abstain from anything needlessly offensive, or in my opinion unjust, towards the Chief Justice. I simply took the evidence at the Inquiry, and the papers before us, and carefully observed the cases which gave rise to them; and I came to certain conclusions in my own mind. I considered that we were placed in this position now, that, *volens volens*, whether we liked it or not, we were expected to express an opinion. There is no member amongst us who would not rather prefer to have nothing more to do with this matter, and not to touch it, not to express any opinion one way or the other. But, it appears to me, we are placed in that

position by the Secretary of State. He has pointed out to us that we are the tribunal to express some opinion on the subject, and if we simply say "we won't," we are simply shirking the duties imposed upon us,—we are running away from the position that we are supposed to occupy as guardians of the people's constitutional rights in the matter of the administration of justice. I may say, sir, that in moving this resolution, I do not stand here in any private capacity at all; I do not stand here as a private gentleman or a private individual, expressing any private opinion, or having any personal animosity in the matter. I desire not to know, and I believe I do not know, either friends or foes in this matter. It may be supposed that I am guided by a feeling of personal friendship towards one side or enmity towards the other; but I may state honestly and conscientiously, sir, that in looking through these papers I have tried to come to a fair and level decision. I desire, as I have said, not to know—neither do I acknowledge—friend or foe in the matter. I stand here as a member of the Legislative Council, and it appears to me that all of us have been called upon, whether we like it or not, in the position we are in—and that we are bound to—to express some opinion upon the allegations or charges contained in the petition of Messrs. Harper and Hackett. Furthermore, sir, in dealing with this matter, I wish it to be clearly understood—and I hope all other members will be of the same opinion—that we have nothing to do with Mr. Onslow as Mr. Onslow in this matter. Mr. Onslow is a private gentleman for whom we have the greatest respect,—almost reverence; we have the highest opinion of his social qualities and of the generous qualities of his mind. Mr. Onslow we know not in this case; we are dealing with the Chief Justice of the colony as the chief administrator of justice in the colony; and I hope hon. members will not allow any private feelings they may entertain for or against Mr. Onslow as a private gentleman to influence them in this matter. Members, in either speaking or voting on this question, or in having anything to do with it, are well aware—or I am well aware, at any rate—that in bringing forward and discussing such a resolution we are taking

a line of action which we can quite expect will be most unpopular with many portions of the community. We do not expect to gain any popularity, but possibly a great deal of unpopularity by it, and a great deal of opprobrium in some quarters. Probably it would have earned us a great deal more popularity and applause and approbation from certain sections of the community if we were to adopt an opposite course. But I consider, sir, that we are called upon in this instance to give up all considerations of popularity in this matter; we are called upon to perform a very disagreeable and serious duty, and I consider all we can do is to perform it conscientiously and according to our lights. If we are wrong, we must only comfort ourselves with the thought that we did what we considered was right, and to express our regret that we were mistaken, if so. It may be said—I have heard the opinion expressed outside, and I have heard it expressed privately—that this House has no right to be called upon to express an opinion or decide this matter, that it was referred to the Secretary of State, who referred it to the Executive Council, who declined to interfere in the matter when they ought to have come to some decision upon it, and that this House therefore would be perfectly justified in refusing to have anything more to do with it. My view of the position is totally opposite. I consider that we are bound—that we cannot refuse—to express an opinion, and to pass some judgment in this matter. I consider we are placed in that position now,—that we are called upon by the Secretary of State, as the Legislature of the colony, to sit upon and decide upon certain questions. The petitioners have made certain complaints, certain allegations, to this House; they have presented a petition to this House alleging that they are suffering under certain disabilities and certain wrongs, and they have come to this House for redress. And I consider we are no more justified—it is no more in our power, to refuse to deal with these complaints or to endeavor to do justice, than it is for the Chief Justice himself to refuse to hear the complaint of any applicant in his Court, or to sit in judgment upon any matter brought before him, however painful it may be to him. Whether rightly or wrongly,

whether a competent or incompetent tribunal, we are here as a tribunal called upon, in spite of any personal feelings, to arrive at some decision, some conclusion, and to form that conclusion fearlessly, whether we like it or not. I consider that no member here—except the official members of the Government who are perhaps in an entirely different position from ourselves in regard to this matter—has any right to say that he refuses to assert boldly and confidently what he thinks in the matter. If he does refuse, he stands in the position of a Judge who, because a case is a disagreeable one, or because some of his personal friends are mixed up in it, declines to sit upon the bench and do justice, and says: "This is a very disagreeable case, I must shirk it if I can; and leave the complainant and the defendant to settle the matter in the best way they can." I consider it would be simply shirking our duties, and running away from our position, deserting our colors, and doing what was tantamount to an admission that, rather than do a disagreeable duty cast upon us, we would break through all those unwritten or unspoken obligations that are thrown upon us, as the guardians of the public rights, regardless of our duties as members of the Legislature of the colony. We are supposed to be guardians or the safeguards of the constitutional rights and privileges of the public, one of which is the due administration of justice to all parties; and we have heard that justice has, to a certain extent, miscarried, and that the Chief Fountain of justice in this case has, perhaps, to a certain extent, failed in fulfilling the duty that it should fulfil; and we are asked and called upon to express some judgment upon it. I, for my part, like most members, would gladly have declined to have anything to do with it, if I were to consult my own feelings, as I presume most of us would. But, as I said, I consider we should be shirking our duty, and doing what would be unworthy of any independent member of this House. I will not prolong my remarks any further on this subject; I will just go shortly through the various paragraphs of this resolution, and ask members whether there is anything in them which is not feasible, or which is contrary to the evidence taken at the In-

quiry. We say, in the first place, "that the language used by the Chief Justice, from the Bench, against the editor of the *West Australian* in the case of *Davies v. Randell* was highly intemperate, and not in keeping with that calm dignity becoming the high position occupied by the Chief Justice, and its severity appears out of proportion to the gravity of the offence." As to that, I will shortly say this: let any impartial individual, who is not prejudiced by friendship, calmly read the words that fell from the Chief Justice on that occasion, and say whether they were not "intemperate," or whether they were not "out of proportion to the gravity of the offence." I think it is beyond argument that they were. In the next place we say this: "That, in the case of *Gribble v. West Australian*, His Honor betrayed throughout the case a decided sympathy with and leaning towards Mr. Gribble; and there appears strong evidence that the final judgment, as agreed to by both Judges, was in many points at variance with the summing up of the Chief Justice." Here, again, I say, let anybody with an unprejudiced mind read that case carefully, weigh the evidence, and read the summing up of the Judge, and say whether he would have expected the verdict to be what it was, or whether he was not struck by the disparity or want of agreement between the summing up and the verdict. If not, all I can say is he looks upon it with a very different mind from what I did when I first read it. I remember distinctly, when reading the report in the newspaper, and before coming to the verdict, that I concluded in my own mind that the case of the *West Australian* was gone, and that Mr. Gribble was to come off victorious. Furthermore, we say in this resolution: "That in view of all the surroundings of the case of *Hensman v. Harper & Hackett*, the simple fact that the libel arose out of Mr. Hensman's untiring defence of the Chief Justice in the matter of his interdiction, and that, at that time, the *West Australian* and the Chief Justice were at open and undisguised enmity with each other, it would have given more assurance of even justice had the case been left to Mr. Justice Stone; and this Council further considers that the evidence brought out at the Inquiry before the Executive Council was insufficient to

prove that Mr. Justice Stone ever objected to take the case alone." In that paragraph we confine ourselves to the statement that the libel arose out of the simple fact stated, and we further state the simple fact that the Chief Justice and the *West Australian* were at open and undisguised enmity. It is notorious and incontrovertible that they were. From the simple fact that Mr. Hensman had been most conspicuous in defending the Chief Justice in that interdiction case, and that the libel arose out of that, it would be naturally supposed that any Judge wishing to see that libel case decided without any personal feeling, or without giving any occasion for the slightest suspicion of want of fair play and justice, would have declined to have taken that case, when there was another Judge there that could have taken it, and, so far as we know, ready to take it. It is alleged, with a certain amount of confidence, that Mr. Justice Stone refused or declined to take the case. I have read Mr. Justice Stone's evidence on that point, and he almost denies that he ever refused; he says that he remembers nothing that occurred between him and the Chief Justice that would have led the Chief Justice to think so. And I cannot help thinking it would have been better in the interests of all parties, and for the sake of peace and quietness, if the Chief Justice had left Mr. Justice Stone to take that case. I will say no more. I will say nothing about the verdict, or about the damages being severe. We simply confine ourselves to that simple fact—that it would have given more assurance of justice if His Honor had refrained from taking that case himself. Then we come to the paragraph of the resolution marked (d.) which says this: "That this Council sees no reason to impugn His Honor's integrity of purpose, but considers his conduct and language are more the outcome of a warm, impulsive temperament, which leads to a hasty and unconsidered condemnation." So far as I am concerned—and I hope all hon. members will look upon it in the same light—we do not express that belief as a mere empty compliment to the Chief Justice, merely to soothe over, or apparently to soothe over, wounds that we have wilfully inflicted previously. When we make use of those expressions we mean them. I can speak

for myself—I mean them; and I hope other hon. members do the same. We honestly mean that there is no reason to impugn the Chief Justice's integrity of purpose, and we honestly mean what we say when we state that we consider his conduct and language are more the outcome of a warm heart and an impulsive temperament, "which leads to a hasty and unconsidered condemnation." In fact they lead him out of himself; they carry him away, and, for the time being, I very much doubt whether he is responsible for his words. We say all that, and we mean it, I hope. Nevertheless, it is a dangerous disposition to manifest on the part of anyone sitting on that high tribunal occupied by the Chief Justice of the colony. I come now to the last paragraph of this resolution: "The Council cannot disguise the fact that, owing to the action of the Chief Justice in connection with his conduct (as presiding Judge) of the cases referred to in the papers, the community is divided into hostile camps, and is of opinion that peace and harmony cannot be hoped for so long as Mr. Onslow continues to occupy his present position as Chief Justice of the colony." I do not think I am altogether wedded to the wording of that paragraph. It was drawn up rather hastily; it was not in the notice I had originally framed; it was drawn out under a certain amount of pressure the other evening, when the House was getting impatient and wanted to know what we were doing; and perhaps it might be worded in a different manner; and, if any hon. member suggests a better form of wording it, I do not know that I would be disposed to stick to it very closely. It says that "owing to the action of the Chief Justice in connection with, and his conduct (as presiding Judge) of, the cases referred to in the papers, the community is divided into hostile camps." I think that is perhaps quite enough, without going any further. We cannot get over the fact that the community is divided into hostile camps. There it exists, rightly or wrongly. There is a great deal of feeling manifested, and bitter feeling, between people that ought to be friends; and a community that might exist in peace and harmony is, owing to these unhappy divisions, these unhappy suspicions as to the adminis-

tration of justice, split up into hostile camps; and there are no other reasons in the world why they should not be the firmest of friends, instead of taking up hostile sides, and creating a great deal of animus. This is a state of things that we must all lament. The paragraph goes on to say that the Council is of opinion "that peace and harmony cannot be hoped for so long as Mr. Onslow continues to occupy his present position as Chief Justice of the colony." I don't know but that might be worded in a different way, so as perhaps to be less offensive. But the resolution, on the whole, is one that I am prepared to abide by, as it stands, if no amendment which appears to me to be an improvement upon those concluding words is suggested. I now move: "That an Humble Address be presented to His Excellency the Governor, informing him that the Council has considered His Excellency's Message No. 14 and the accompanying telegraphic correspondence with the Right Honorable the Secretary of State, respecting the Address No. 7 of this House and the Petition of Messrs. Harper and Hackett concerning His Honor the Chief Justice."

2. The Council, while declining to endorse all the allegations against Chief Justice Onslow, as contained in the Petition of Messrs. Harper & Hackett, and not in all instances approving the terms used towards His Honor, are nevertheless of opinion—

(a.) That the language used by the Chief Justice from the Bench against the Editor of the *West Australian* in the case of *Davies v. Randell* was highly intemperate, and not in keeping with that calm dignity becoming the high position occupied by the Chief Justice, and its severity appears out of proportion to the gravity of the offence.

(b.) That in the case *Gribble v. West Australian* His Honor betrayed throughout the case a decided sympathy with and leaning towards Mr. Gribble; and there appears strong evidence that the final judgment, as agreed to by both Judges, was in many points at variance with the summing up of the Chief Justice.

(c.) That in view of all the surroundings of the case of *Hensman v.*

Harper and Hackett, the simple fact that the libel arose out of Mr. Hensman's untiring defence of the Chief Justice in the matter of his interdiction, and that at that time the *West Australian* and the Chief Justice were at open and undisguised enmity with each other, it would have given more assurance of even justice had the case been left to Mr. Justice Stone; and this Council further considers that the evidence brought out at the Inquiry before the Executive Council was insufficient to prove that Mr. Justice Stone ever objected to take the case alone.

(d.) That this Council sees no reason to impugn His Honor's integrity of purpose but considers his conduct and language are more the outcome of a warm, impulsive temperament, which leads to a hasty and unconsidered condemnation.

The Council cannot disguise the fact that, owing to the action of the Chief Justice in connection with, and his conduct (as presiding Judge) of, the cases referred to in the papers, the community is divided into hostile camps; and is of opinion that peace and harmony cannot be hoped for, so long as Mr. Onslow continues to occupy his present position as Chief Justice of the Colony."

MR. SHOLL seconded.

MR. DE HAMEL: Sir, it is necessary in considering this question to go somewhat back into its history, so to speak. It is not my intention to trouble this House with any remarks upon this voluminous evidence that has been put before us, but it is my intention to put, as I hope, before this House what I believe is the only course open to us in dealing with this matter—the only course of two, on one of which I shall be prepared to move an amendment directly. On reference to the Governor's message No. 14, which we are now considering, I find these words: "The Secretary of State having been informed of the resolution of your Honorable House that His Lordship should determine the action needed on this petition, replies, it will be seen, that 'the action needed is 'some decision in the colony which may 'be referred to the Privy Council,' adding that 'if neither the Governor, the Executive Council, nor the Legislative Council 'can come to a conclusion on the mat-

'ter, the charges naturally fall to the 'ground.' Then, sir, the first thing for this House to consider is, whether this resolution does meet that which is required, or whether it does not. I submit, sir, that the resolution now before us is not of any moment or of any importance at all; that it does not meet the case which is required. The course that we have to adopt is clearly laid down for us in the Memorandum of the Privy Council attached to the papers presented to this House by the Governor. Paragraph 9 says: "On the other hand, when the charges against a Judge consist, not in any alleged acts of personal misconduct, but in a cumulative case of judicial perversity, tending to lower the dignity of his office, and perhaps to set the community in a flame, it is more difficult for the Local Executive to act upon its own responsibility. It is in cases of this description that petitions for the removal of Judges have been addressed to the Queen in Council by Colonial Legislatures." Now, sir, it seems to me on that—and particularly on the statement of the Governor himself in his telegram to the Secretary of State, that "the case alleged against the Chief Justice is one of cumulative judicial perversity"—it seems to me that the only way of meeting this case is either to refuse to deal with this petition *in toto*, or else to adopt a bold course—if any members can be found to adopt that course—which would be to petition the Queen in Council for the removal of His Honor the Chief Justice from his seat as a Judge in this colony. That, sir, seems to me the only course open to us, in the face of this Memorandum. The resolution which is now before the House does not, will not, can not, meet this case in any way whatever. Now, sir, let us look a little bit further into it. Why is this matter sent back to us at all? The case was first placed before the Executive Council for them to deal with it. They are the higher Court; we are the lower, for surely the Executive Council is as much higher than this House as the House of Lords at home is higher than the House of Commons. This case was sent to the Executive Council to deal with it, and what do they say? They say they cannot come to any decision upon it; they decline to decide legal and judicial ques-

tions with which they say they are not competent to deal. They cannot make up their minds whether to acquit or suspend, and in fact they decline to come to any decision in the matter. They had the advantage of having the whole of these witnesses before them—of having the only thing that enables a judge and a jury to come to a proper decision, an opportunity of observing the way in which witnesses give their evidence, and of asking those witnesses any questions they pleased. What have we? We have no such power or opportunity at all. We merely have these printed papers, this printed evidence, placed before us, and this memorandum written by the Governor addressed to the Executive Council. As to that memorandum, I submit it ought not to have been placed before us at all, if we are to give a fair and impartial consideration to this matter. The only thing required for this House to enable it to have come to a fair and impartial conclusion upon this case, and the only thing that ought to have been before it, was the evidence, without any note or comment upon it from any one-sided point of view. Yet we have this memorandum by His Excellency the Governor placed before us, and I say that when you read that memorandum addressed by the Governor to his Executive Council, you can only come to this one conclusion—that nothing more one-sided was ever written in this world. I say, sir, that having read and studied that memorandum prepared by His Excellency, we should be wrong in coming to any decision upon this case in the light sought to be placed upon it by that document. I ask whether every member of this House has even yet read the whole of this voluminous evidence? They must not come to a decision upon this or that isolated statement. Any member before he can vote, or venture to vote, on this question ought to be able to say that he has read and studied every word of this evidence that was taken before that Commission, and all these papers that were put in. I venture to say, sir, that you will not find above two or three at the outside in this House who have read and studied the whole of the evidence contained in this voluminous work. Yet we are asked by the hon. member for the North to take up just

two or three portions that he himself has culled out of this evidence, and introduced into his resolution. To go into this matter fully would occupy this House debating, not six hours, but more like six weeks; yet we are asked to come to a decision upon this very imperfect resolution. I say, sir, it is impossible for us to come to a proper decision upon this case, and more especially so having regard to the remarks of His Excellency himself, on page A6 of these papers, where he says: "I was myself very loth to preside at another investigation of the Chief Justice's conduct, and, when forwarding to the Secretary of State Messrs. Harper and Hackett's petition and the Chief Justice's first reply thereto, I suggested that a Judge should be sent here from some other colony to hold this inquiry. Lord Knutsford was, however, of opinion that any steps must be first taken by either the Legislature or the Executive. I then telegraphed that I thought an inquiry by the Executive was preferable to an inquiry by the Legislature"—[Mr. MARMION: Hear, hear]—"a view also expressed in the Privy Council Memorandum on the subject; but that, after what had occurred (meaning the Chief Justice's previous suspension from office by me) I considered it undesirable that I should bring the matter before the Executive Council unless directed to do so. I was then directed to hold this Inquiry." Therefore we find that the Secretary of State, having had everything before him, directed the Governor to hold an inquiry before the Executive Council, the House of Lords of this colony. That inquiry was held, but they could come to no conclusion upon the matter, beyond what the Governor says in his telegram of the 22nd March, where he says: "Executive Council unanimously object to being desired to advise upon and decide legal and judicial questions with which they are not competent to deal." They then sent the case to us, and this House refused, as it had a proper right to refuse, to go into it. This was reported by telegraph to the Secretary of State, and what then? The Secretary of State telegraphs back: "If the Governor does not think fit to acquit or suspend the Chief Justice, an alternative measure, namely a petition

"from the Legislative Council in favor of his removal, is pointed out in the 9th paragraph of the Privy Council Memorandum of 1870." It is merely offered to us. We are not bound to take it. We are free to adopt and adhere to our previous course of action, or not; and I submit that the right and proper thing for us to do is to adhere to our previous course of action. This is what the Secretary of State says: "If neither Governor, nor Executive, nor Legislative Council can come to conclusion on the matter, charges naturally fall to the ground." That is all. That is the utmost that can occur; that is the greatest harm that can be done by our not dealing with this matter at all. It seems to me perfectly clear. It seems to me monstrous for the Higher Court to send down to the Lower Court a case of this magnitude. We find several admissions made that the case is one for a legal or judicial tribunal to decide upon. The Governor himself admits this. He says the Executive object to decide "legal and judicial questions"; and, again, "a good deal connected with this trial can only I think be decided by a legal authority"; and again, "legal authorities ought to decide, by the light of the facts brought out in these papers"; and there are more admissions to the same effect, with which I will not weary the House. But it is evidently in the mind of His Excellency and the Executive that this is a case which ought to be decided by some competent legal authority. Yet it is sent to us, purely as laymen, and as an inferior Court, to decide upon that which a superior Court have found themselves utterly unable to deal. Therefore I say the only proper course open for this House is to refuse to deal with it, and to reject that resolution suggested by the hon. member for the North, on the ground that it both goes too far and does not go far enough. It blackens a man's character, without in any way leading to any beneficial result. The amendment I have to propose is this: That all the words after the word "him" in the third line of the resolution, be struck out, and the following words inserted in lieu thereof: "that this House is of opinion that it is not competent to decide upon the legal and judicial questions contained in the petition of Messrs.

Harper and Hackett." I think I am perfectly right in putting it in that way, because it follows the wording of His Excellency's telegram to the Secretary of State, informing him that the Executive Council objected to being desired to advise upon or decide legal and judicial questions with which they were not competent to deal. Surely if those gentlemen sitting on the Government benches found themselves incompetent to deal with these questions, we are more incompetent; for we have not got, in the first place, the benefit of the legal advice of the Attorney General to assist us, which they had, nor have we the other advantages which they had in helping them to come to a decision. I say, therefore, if the Executive Council, the higher Court, found themselves incompetent and unable to deal with this question, so, surely, ought this House, the inferior Court, to decide that it is incompetent and unable to deal with it, either.

MR. RASON: Sir, in rising to support the amendment of the hon. member for Plantagenet, I wish to protest in the strongest possible manner against the resolution that has been moved by the hon. member for the North, because it is an attempt to deal in a half-hearted, insinuating way with a question with which we are not competent to deal. What is the history of this petition? It is a petition that came to this House, and was referred by this House to the Secretary of State, and referred back by the Secretary of State to the Executive Council to deal with it. The Executive Council decline to deal with it, and now it is sent back to this House. Now, sir, I hold that there is nobody in this House that is competent to deal with this question—the House has already, in effect, said so. If there is anybody in this colony competent to deal with the question, that body would be pre-eminently the Executive Council. But what was the verdict of the Executive Council? They say the "Executive Council unanimously object to being desired to advise upon and decide legal and judicial questions with which they are not competent to deal," and they wind up by saying "that the case alleged against the Chief Justice is one of cumulative judicial perversity." If hon. members will refer to

the Memorandum of the Lord President of the Privy Council, dealing with the practice in the removal of colonial Judges, they will see that the proper tribunal for dealing with these legal and judicial questions is the Privy Council. The Lord President says: "At the same time when the misconduct charged is purely judicial"—as is the case here—"and therefore not properly amenable to the decision of the Executive authority, acting on the advice of law officers or advisers of inferior rank, it would seem that the due maintenance of the independence of Judges requires that judicial acts should only be brought into question before some tribunal of weight and wisdom enough to pronounce definitively upon them; and this function appertains with peculiar fitness to the Privy Council, which as a Court of Appeal has to review the decisions of all the colonial courts." Now, sir, the Executive Council having stated that they do not feel competent to deal with this question, who are we that we should take upon ourselves to say we are competent to deal with it? If the Executive authority, a body holding aloof from political influence, wholly independent and apart from outside pressure, and who above all other bodies are able to give an opinion without fear of the consequences—if that body declare their incompetency to come to a decision, and decline to give an opinion, surely we also may decline? The hon. member for the North, in moving this resolution, said we ought to give an opinion because we are pressed to give one by the Secretary of State for the Colonies. But, sir, the Executive Council were also pressed to give an opinion by the Secretary of State for the Colonies. The Secretary of State for the Colonies, telegraphing on the 15th March, says: "It is necessary that the Executive Council should complete the proceedings by suspending or acquitting." But the Executive Council came to no decision, either to suspend or acquit; and they had the courage—as is seen from the Governor's telegram of the 22nd March—to stand up against that telegram of the Secretary of State. Why should not we also have the courage to do so? Why should we, for the simple reason that there has been a telegram from the Secretary of State,—why should we give way, any more than the Executive,

and say that we are prepared to do dirty and disagreeable work, which other people decline to do? Sir, I protest against it. It is dirty, disagreeable work; and I say that this House is the last place in the world that that work ought to be brought into. The Governor himself fully recognises that the Executive Council was the proper body to deal with the question, for in his memorandum upon the case, he says: "I then telegraphed that I thought an inquiry by the Executive was preferable to an inquiry by the Legislature (a view also expressed in the Privy Council memorandum on the subject)." Having said that much as to the proper tribunal for dealing with this matter, I propose, sir, to deal for a few moments with the resolution of the hon. member for the North. In paragraph (a) he says that "the language used by the Chief Justice from the Bench against the editor of the *West Australian* in the case of *Davies v. Randell* was highly intemperate, and not in keeping with that calm dignity becoming to the high position occupied by the Chief Justice, and its severity appears out of proportion to the gravity of the offence." That is what we are asked to affirm by this resolution. Well, sir, what is it that one of the petitioners himself said with regard to this very case? I turn to page 97, of the Official Inquiry, and I find there a letter written by one of the petitioners to the Chief Justice on this very subject; and that letter, sir, expresses the thanks of the writer to the Chief Justice for the very lenient way in which His Honor had dealt with it. That letter says: "In this case Campbell has been most indiscreet, as he must admit;" and the writer says also: "I am deeply conscious of the very great consideration which you—that is, the Chief Justice—have shown me;" and he winds up by saying: "The only lesson which I can learn from the trouble is that one can not rely upon any person's judgment in such matters, and it shall not be my fault if the Court ever finds fault with the *West Australian* again;" also: "again expressing my regret at the pain you have been subjected to, and which you may be assured you should never have felt had I been in a position to prevent it." That is what one of the petitioners wrote to the Chief Justice a

day or two after the Chief Justice made use of those remarks that we are now, five years afterwards, asked to say were "highly intemperate," and "out of proportion with the gravity of the offence." If that was the opinion of one of the petitioners at the time he wrote that letter, in which he expresses his gratitude to the Chief Justice for dealing so leniently with the paper, what right has the hon. member for the North or any other member of this House, to put words into a resolution asking this House to express condemnation of the Chief Justice's action in that particular case? Again, clause (b) of this resolution says "that in the case of *Gribble v. the West Australian* His Honor betrayed through-out the case a decided sympathy with and leaning towards Mr. Gribble; and "there appears strong evidence that the "final judgment, as agreed to by both "Judges, was in many points at variance "with the summing up of the Chief Justice." Well, sir, that appears to me to be going a long way round to find a point to make against the Chief Justice. We can only deal with the verdict of the two Judges, and that verdict was in favor of the defendants, the petitioners in this case. If His Honor the Chief Justice had been strongly wedded to his own summing up, he could have overruled his brother Judge; and the mere fact that the verdict given was the verdict of the two Judges does away with any insinuation of this kind, that the Chief Justice had been trying to unduly influence the case. If he had been so wedded to a previously arrived at decision in his own mind, he could have overruled the decision of the Puisne Judge, and the verdict would not have been, as it was, in favor of the defendants. That appears to me to dispose of that paragraph. The next paragraph, clause (c), attributes the whole case to the unpleasantness which arose "out of Mr. Hensman's untiring defence of the "Chief Justice in the matter of his interdiction." [Mr. RICHARDSON: Nothing of the sort.] The hon. gentleman says it does nothing of the sort. Then I must confess I do not know what his resolution is. His words are: "The simple fact that the libel arose out of "Mr. Hensman's untiring defence of the "Chief Justice in the matter of his in-

"terdiction." [Mr. RICHARDSON: Read on.] Those are the words I made use of just now. [Mr. RICHARDSON: Read the sentence through.] "And that at that time the *West Australian* and the Chief Justice were at open and undisguised enmity with each other." [Mr. RICHARDSON: Read on.] The hon. gentleman says "read on." I object to read on any further; I presume I can read as far as I like. He has made his speech, and I did not attempt to interrupt him either by word or gesture, and I think he might extend the same courtesy to me. He says distinctly "that the libel arose out of Mr. Hensman's untiring defence of the Chief Justice." Well, sir, that appears to me to be putting all the blame—this resolution appears to me to be putting all the blame upon the wrong shoulders when it seeks to condemn the Chief Justice for another man's action. If there was anyone to blame it was not the Chief Justice; it was that very gentleman who (as the resolution originally ran) stood so "loyally and devotedly" in defence of the Chief Justice. Then, sir, we come to clause (d), which says "that this Council sees no reason to impugn His Honor's integrity of purpose." Well, sir, this statement that there is no reason to impugn the Chief Justice's integrity of purpose has been repeated so many times, and on all sides, that it positively becomes sickening. On every hand, everyone assures us, including the petitioners themselves, that nobody impugns His Honor's integrity of purpose,—a most honorable and upright man we are told, "most rightful Judge," a "wise and upright Judge." They are all perfectly satisfied of that. If they are so satisfied with his integrity of purpose, why all this? Why this resolution? We are told, and we are asked, to affirm that the Chief Justice is an honorable man. So are they all. I am perfectly sure of that—they are all honorable men; and I am sure that if it had rested between the Chief Justice, himself, and the petitioners, or the other gentlemen whose names have cropped up in connection with this petition, half-a-dozen words on either side would have set the matter straight, and all this unfortunate bickering and unpleasantness would

never have arisen. But it has been made a party cry; it is now not a question of the Chief Justice and the administration of justice, but a question of the Chief Justice as against another party; and that is one special reason why it should not be dealt with in this House, which is purely a political body, subject to party and political influences. Sir, the climax of this resolution is reached when it says that this House "is of opinion that peace and harmony cannot be hoped for, so long as Mr. Onslow continues to occupy his present position as Chief Justice of the colony." Now, sir, what right has any member of this House to say that? Does the hon. member who put forward this resolution say that for himself, or does he say it for his constituents? Members are very fond of saying that they do not come here as delegates. But that has been misconstrued. They do not come here as mere delegates, inasmuch as no honorable man would vote against the dictates of his own conscience, although it might be opposed to the wishes of his constituents; but the moment he finds he is not representing the views of his constituency, he no longer has any right to sit as their representative in this House. I ask, will those members who propose to support this resolution be able to place their hands upon their hearts, and say that it is the opinion of their constituents that "peace and harmony cannot be hoped for, so long as Mr. Onslow continues to occupy his present position of Chief Justice of the colony?" Are they prepared to say that this is the view of the district that they represent? Sir, I am not dealing with this question in a personal nor in a prejudiced way. I know that I lay myself open to the charge that I have taken a stand on previous occasions which has been in favor of the Chief Justice. But, sir, I have taken that stand, not out of a question of friendship for the Chief Justice; because my friend the hon. member for York, who is one of these petitioners, is as much my friend as His Honor the Chief Justice is, and there are other gentlemen sitting in this House for whom I feel quite as much friendship as I do for Mr. Onslow. I have nothing to hope for from either the Chief Justice or from anyone. I have been actuated

solely by a sense of duty. I do not say that I am right; I do not say that I may not have been mistaken. Which of us can? I only hope that no action I have taken may be looked upon as having been taken out of any feeling but a sense of duty; and I am quite prepared to look upon the action taken by the other side in the same light. Every man is entitled to have his own views, and to stand by them. I am not one of those who imagine that because a man takes a certain line of action with which others are not in accord, that man is to be classed as a fool, or a rogue, or as being actuated by prejudice. I have taken the action which I have taken in this matter, and my words to-day are dictated by a sense of what is my duty, and by a sense of justice. I am prepared to say this: although I may have thought—perhaps it has been mere ambition on my part—that there might be a political future before me, still, sir, I would far rather leave this House to-day with the certain knowledge that I should never again enter its doors than I would consent to such an act of injustice as is contemplated in the resolution of the hon. member for the North.

After a pause,

MR. BURT rose and said: If no other member is going to address the House, I must say I, too, feel that I have a duty to perform in this case, and I intend to do it, be the consequences what they may. I have been impressed for some weeks, I may say, with the consideration of this matter, this most unhappy "imbroglio" (or whatever term you may choose to apply to it), and of all the bearings of this question; and I have been forced to a decision which possibly in the minds of many members may be regarded as a most wrong and most wicked conclusion. But I feel it; and, notwithstanding any insinuation of motive that may be attributed to me, I intend to express that opinion; and I can only trust that the character I have hitherto borne and my conduct in this House may lead members to give me credit for conscientiousness in arriving at my conclusion. This matter of course is a very large question indeed, and I don't know that we could make any objection to any member who had the audacity to attempt to detain the House for some hours upon it; but, at the same time, in my humble

judgment, there is little occasion to rake up the details of the subject, because they have been dealt with at an inquiry held before the Executive. I think that to-day we are simply called upon to express some decision upon these papers which have been laid before us. I would particularly draw attention to the fact—which I shall endeavor to emphasize directly—that we ought to come to some definite decision, and not a milk-and-water resolution, which means neither this nor that. That was the nature of the resolution sent home a short time ago from this House in connection with this matter—a resolution with which I had nothing to do, as I was not in the House when it was proposed and carried. I think that both the interests of the Chief Justice and the interests of the colony, and also the interests of the petitioners in this case, require that some decision should be come to by this House. If a man makes a charge against another, if it is not met in court, if it is not met elsewhere, surely both parties have a perfect right, and it is only justice to them, that the matter should be settled some way or other. It seems to me that this matter has been knocking about between heaven and earth for the last six or seven months, or more, and now it is sent to us; and I cannot agree with the hon. member for the Swan that it is improperly before us, because it has been sent to us by the Secretary of State. What the Secretary of State really says is, if the Governor won't decide, and the Executive won't decide, and the Legislature won't decide, then the matter must be dropped. I ask, is it fair to the Chief Justice—I ask those who are most friendly to his cause, and who think he has done no wrong—is that a fair thing? I am not of course in a position to say whether the amendment I intend to introduce to this resolution, and which embodies my own opinion, will meet the views of a majority of members. I hope it will; I sincerely hope it may. I say that, in the interest even of those who are most favorably inclined towards the Chief Justice's case, and who think he has done no wrong. It seems to me that on this occasion, the last chance this House has of coming to a decision on this question, it would be disgraceful—we should be guilty of

actual cowardice—to run away from it. I wish we could run away from it, in one sense. But, as one who has sat for some time in this House, and representing the public, and being by law a constitutional guardian of public right and justice, I do not think it would be right of me to run away, or to absent myself from this debate, or from speaking upon it, and putting before the House an amendment which embodies the views I hold myself, and I believe honestly embodies the views of a majority of members also, if they speak their minds, according to their consciences—if they will express the opinions which they really hold, and have expressed outside. If hon. members will do that, then the proposition I am about to introduce will I believe meet with their acceptance: and I shall seek to show that it is an amendment which arrives at a decision in this matter, and which will enable that to be done which is contemplated, and which is in the interest of all parties—that is, an appeal to Her Majesty's Privy Council. The hon. member for the Swan says the resolution now before us is a half-hearted resolution. I am inclined to agree with him in a great measure,—I think it is a half-hearted resolution; but I cannot agree with him that we are not competent to deal with the matter. If hon. members will look at the memorandum of the Lord President of the Privy Council placed before us with these printed papers, they will see it there stated: "It is obvious that some effectual means ought to exist for the removal of colonial Judges charged with grave misconduct, and that these means ought to be less cumbrous than those existing for the removal of one of Her Majesty's judges in this country"—(that is, in England). "The mode of procedure ought to be such as to protect Judges against the party and personal feelings which sometimes sway colonial Legislatures, and to insure to the accused party a full and fair hearing before an impartial and elevated tribunal." I may here say that I am afraid, whatever we do or say in this matter it will be alleged against us that we have been swayed by "personal feelings." But I suppose we must bear it. We cannot get through life always as pleasantly as we wish or expect to do, and I anticipate there will be a great

deal said behind our backs that we would not like to hear, and a great many accusations made. But it can't be helped, and I suppose we must be prepared to suffer all that. So far as I am concerned, I must bear it; that's all. This memorandum goes on to say: "Hence it was considered in the case of Mr. Justice Boothby, that although the Legislature of South Australia had passed addresses to the Crown for his removal, that measure did not suffice, as it would have done in England; and that, although the Legislature might act as his accuser, it rested with the advisers of the Crown in England to dispose of the charges against him." Therefore, whatever we may do here, it is done with the object of allowing an appeal to that "impartial and elevated tribunal," the Privy Council—surely a far more competent authority than we are to decide in this matter. Then, again, with regard to that portion of this Memorandum which has been quoted by the hon. member for the Swan, if hon. members will look at it they will see that that also contemplates an appeal to the Privy Council, from any decision arrived at here. But it is necessary that some decision should be arrived at here, in the first place; the Secretary of State has told us so; and that is what brings the matter here now. Without some decision to appeal from, there can be no appeal, and the matter must drop; and I submit that neither in the interest of the country nor of the parties themselves is it desirable that it should drop, but that there should be some authoritative decision from the Privy Council, acting as a Court of Appeal, who will be able to dispose of those legal niceties which are said to surround this case, and to come to a conclusion upon the whole matter. The hon. member for Albany referred to another portion of this Memorandum, where it says: "but in a cumulative case "of judicial perversity, tending to lower "the dignity of his office, and perhaps to "set the community in a flame, it is "more difficult for the local Executive to "act on its own responsibility. It is in "cases of this description that petitions "for the removal of Judges have been "addressed to the Queen in Council by "colonial Legislatures." The present case seems to me, if anything, a case of "cumulative judicial perversity," which,

although not involving any alleged acts of personal misconduct against a Judge, may be said "perhaps to set the community in a flame." If it will bear that construction, then this House is the very tribunal to decide most fitly upon the matter, as set forth in this Memorandum. The Memorandum proceeds to show that there is generally some difficulty and inconvenience attending this mode of proceeding by colonial Legislatures, for the reason that no regular system of pleadings can be said to exist in such cases, and possibly there might be no data or ground work upon which the Privy Council could come to a decision. But here that objection is obviated. It will be seen that this case is peculiarly ripe for an appeal to the Privy Council, for they would not only have the notes of the investigation before the Executive, and all the evidence taken, and sifted and argued to a certain extent, they would also have the colonial Legislature's decision or pronouncement—or ought to have; we are certainly invited to come to a decision or pronouncement in the matter, from which there lies the appeal to the Privy Council, who would give an authoritative and final decision. I should be sorry myself if that final decision—if the more onerous and responsible duty of pronouncing a final decision in this case devolved upon this Council, because any reflection at all upon the conduct of a Judge, or the bringing into question the conduct of a Judge, is a serious responsibility. It has been said that this question has been made a party cry, as between the Chief Justice and another person. I do not think that this is the place to go into a question of that description, because there is nothing here within the four corners of these papers that has anything to do with the question of the Chief Justice's interdiction. That is a matter altogether outside us, and we are not called upon to express any opinion upon it. The only parties here are the petitioners themselves, who come before us and allege that they have suffered wrong, from the conduct of the Chief Justice in the Supreme Court, and that the Chief Justice is actuated by prejudice against them. I say we have nothing to do with the Chief Justice and the Governor; and I am sorry that the hon.

member for the Swan introduced it. [Mr. RASON: I did not refer to it.] I accept the hon. member's explanation; I thought he did. It undoubtedly has been made a party question, and that is the sting of the whole matter. The Chief Justice is made the centre of a political party, and we know that in a recent election, in which I bore part myself, one main cry against my candidature and the candidature of other members was these unhappy disputes between parties in high authority. Therefore I say undoubtedly it has been made a party cry; and, I ask, is that a proper position for the Chief Justice to be in? I do not say for a moment that he has rushed into it himself; I think he has been drawn into it by others, but it is notorious that the Chief Justice has unfortunately been made the centre of a political party, and that there is another party who are supposed to radiate around another centre, and that a great deal of rancorous feeling has been caused in the community. Many people come forward who know the Chief Justice merely in his social capacity—and a more pleasant person to meet I suppose it is impossible to conceive, that is my honest opinion about that; and many of these well-wishers of the Chief Justice, high-minded people as they are, absolutely know nothing about the administration of justice in the Supreme Court—many of them have never been there in their lives, and are not in a position to pronounce upon these questions. They cannot be, unless they have been in that Court, or have studied carefully what is contained in these papers. I say I think one of the worst features of this whole case—certainly the worst feature of the case—is that the Chief Justice in this matter has been made a party cry. The Chief Justice of the colony, who ought to be a person maintaining the even tenor of his way with the calmest dignity, above all parties, holding the balance evenly between all parties, without personal predilections or personal dislikes—the Chief Justice of the colony is absolutely placed at the head of one party, or, at any rate, the centre around which revolve all these satellites. [Mr. A. FORREST: Who said so?] I am arguing the case. I appeal to the hon. member's own knowledge. The hon. member, we all know,

has made up his mind what he means to do in this matter. I find no fault with him. He knows probably nothing about these things. He is guided probably by his firm friendship for the Chief Justice, and does not mean to look at the other side of the case at all. That is my judgment of the hon. member for Kimberley; and, naturally, he centred around the Chief Justice as he did on a recent occasion not so much for the purpose of vindicating the Chief Justice, when there was no occasion or cause for it, as to throw stones at the other party. There is no doubt in my mind about that: it is plain. If we could only get at those who are the wire-pullers in these matters, we should soon find out the real cause of these occasions, and what gives rise to the part which the Chief Justice is made to play in them. Things have come to this pass now: any one that disagrees with any act of the Governor ranges himself at once on the side of the Chief Justice, and his friend Mr. Hensman, and other friends, and they all work together, and live together, you may almost say. On the other side, there is another camp, and, of course, there are stones being continually thrown from one camp to the other. One makes an allegation, and the other side makes an allegation, and so it goes on. There you are; you cannot say a word on one side without giving mortal offence to the other. That is the condition this place has been in for some years past, and the outcome of all this has been that the petitioners in this case have made the allegations they have made—that they cannot get justice, that the Chief Justice is affected with a deep prejudice against them, and that the administration of justice is brought into contempt. Those are their ideas. I say therefore that the main evil of this matter is that it is made a party cry, and that the whole place is torn asunder with party feeling, and divided into hostile camps. I think that having passed through what we have, and having suffered what we have, one and another, under suspicion by friends, more hard to be borne than the hostility of enemies, and having become a divided community as we have—I think we have now arrived at a stage when some pronouncement ought to be made. I can say I am sorry that I have got this to do at all; I can say that

honestly; I am sorry that I have to pronounce anything. But I have had an opportunity, as everyone knows, of a very close acquaintance with this case, and I must say it is incumbent upon us, in my opinion, it is our bounden duty—unless we are a set of cowards—either to acquit the Chief Justice and say we have nothing against him—I agree with the hon. member for Plantagenet so far—or to pray the Secretary of State that he may be removed, so that these matters may be stopped, and the community settle down again, and, above all, so that the Secretary of State may have the ultimate decision in his hand, and that he may, if he thinks fit, clear the Chief Justice, and find that our condemnation of him—if it can be so called—was due to party feeling or personal spite—let him explain it how he may. I say the occasion calls for a decision. Of course in a matter of this sort it is not an easy thing to reconcile conflicting opinions. Far from it. Possibly it is a difficult matter so to reconcile the opinions of members in this House as to frame a resolution which can be considered in no sense harsher to the Chief Justice than the one now before us. But, as the hon. member for the Swan has said, is it not something very half-hearted? Can the Secretary of State say from this that we have come to any decision in this matter? We say that we are of opinion that “peace and harmony cannot be hoped for, so long as Mr. Onslow continues to occupy his present position”; but we do not ask the Secretary of State to take any action in the matter. It certainly is a sort of hint; but why don’t we say boldly and openly what we mean? This cannot have any meaning but one, and that is that we consider the Chief Justice ought to be removed. That really is what it amounts to. Why not say so, plainly? I am sure, speaking for myself, if it is decided hereafter that we were wrong, and if the Chief Justice should come back, I should be the last man in the colony to think anything of it, or to nurse any animosity in the world. But the case as it now stands calls for a decision, and I say this resolution is no decision at all. The amendment I propose to submit is this—“That the conduct and language of the Chief Justice on the Bench has impaired public

confidence in the administration of justice, embittered and imperilled all social and political relations, and endangered the welfare of the whole State; and this House prays the Secretary of State to see fit to remove Mr. Onslow from the Chief Justiceship of this colony." There is something definite there; something we can stand upon. I think, myself, that the members of this House, in a few months, or possibly years to come, will be glad that they took this course, if they take it. They would find it most unpleasant if the Secretary of State, on this "half-hearted" resolution, as it has been called, were to send it back to us, saying that no action whatever could be taken upon such a resolution as that, or that no inquiry at all could be made by the Privy Council into the matter, because this House would express no opinion. I have no wish to court any vote, if members have any doubt on the subject; but if they do agree with me, if they do agree that this is so—and I say there is no getting out of it, the House knows it is so—then, I repeat, say so. If you don't say so, in my opinion you will regret it hereafter. [Mr. A. FORREST: That is only your opinion.] I only express my own opinion. I know the hon. member himself has made up his mind long ago. The first proposition is, "that the conduct and language of the Chief Justice on the Bench has impaired public confidence in the administration of justice." Let anyone read these papers, and I defy anyone to say otherwise. The other day, the hon. member for Kimberley himself told us he did not propose to defend some observations made by the Chief Justice from the Bench, which an hon. member of this House complained of as affecting him. He admitted that the Chief Justice had no business to use such language, and he did not attempt to defend it. And there are many other things besides that; I believe I could produce out of this book expressions of dissent from the language of the Chief Justice on the Bench, on the part of almost every member who may possibly vote against this amendment. But I do not wish to travel beyond the four corners of this petition, because I think it would be wrong. But is it not to be seen from a consideration of these papers alone, that from time to time, when cases are

set down for hearing in the Supreme Court, a great amount of concern and anxiety exists as to which Judge is going to take a case, and what temper the Chief Justice, if he takes it, is likely to be in—and so on; and that an effort is made to keep certain features of the case on one side, or in the back ground altogether, for fear that the case may be capsized in a moment by that rush of feeling on the part of the Judge, so well described in one of these leading articles. I ask, do not hon. members know it? Is it not a fact that even in the public papers the Chief Justice has been spoken of as the Judge of the "masses," or the democracy, and Mr. Justice Stone as the Judge of the "classes?" In my opinion this is a most serious thing for the press of the colony to be holding up one Judge as the Judge of the masses and the other as the Judge of the classes; and setting up one Judge against the other. We know that the relations of the newspaper press here have not lately been of that amicable nature that they were formerly, but I say it is deplorable when we find the Judges of the Supreme Court referred to in this way, and this strong party feeling existing. This amendment goes further, and says that the language and conduct of the Chief Justice on the Bench has "embittered and imperilled all social and political relations"—I think that goes without saying—"and endangered the welfare of the whole State." I think so, too. That is the proposition which I submit. If any member thinks differently, certainly he will vote against it, and express himself so. But the amendment has this merit: it deals with the question definitely, and will allow the matter to be brought to a head. Of course it is only the decision of this House; all we can do is to express our opinion, and ask the Secretary of State to remove Mr. Onslow. The Secretary of State will then consider these papers, and, if he does not think fit to remove him, there will be no harm done. This House will have done its duty, and the Privy Council will have had an opportunity of pronouncing an authoritative judgment on the whole question; and I sincerely hope from the bottom of my heart that the matter will then be buried in oblivion, and that we shall all have a fresh start. I have purposely abstained from going

into the details of this case; I think we should never come to an end if we attempted to go into details, and it would not assist us in arriving at a better decision than we are competent to give to-day. We have seen these papers, and I hope hon. members have read them and considered them, and are prepared to deal with the matter. I ask them to do so. I ask them to say from their hearts that which their consciences will approve of,—is this amendment of mine a correct statement of the case, as we think; or will the House allow this half-hearted resolution to go forth, which may amount to nothing at all? I ask hon. members, if they hold with me, not to be afraid to vote with the amendment which I have felt it my duty to submit to the House.

MR. GRANT seconded the amendment, without comment.

MR. CONGDON: I should like to say a few words on this very serious and important matter now under consideration—so important that I am sure all of us must approach it with the greatest diffidence. I shall certainly not vote for the original resolution of the hon. member for the North, and I shall as certainly support the amendment of the hon. member for Plantagenet. I am driven to this course because I have very carefully read the Minutes of the Inquiry and the papers connected with this very grave and serious matter; I have read them with every attention, and certainly I cannot come to any other conclusion than, in the first place, that this is not the proper tribunal in which this matter should be settled. It was originally sent to the Executive Council, and I certainly think that that Council should have been prepared to decide upon it, and not send it back as they have done, to an inferior court from a superior court. It points out to me very plainly that we are not the tribunal that should be called upon to do this grave work. I would like to ask whether I am not right in supposing that the resolution of the hon. member for the North if carried would result in the dismissal of the Chief Justice from the public service? Surely I do not think that can be the intention of hon. members. [Mr. BURT: It will go to the Privy Council.] Yes; and if decided in accordance with that resolution it would

result in his dismissal from the public service. [Mr. SHOLL: So he ought, if these charges are correct.] I have not the slightest intention of supporting such a course; and, as I said, I shall support the amendment of the hon. member for Plantagenet.

MR. SCOTT: Sir, I feel with the hon. member for the North that this is certainly a very painful matter; still, at the same time, I am not going to give a silent vote upon it. I know very well that if one were to give a vote prompted by personal feelings, he would be prompted to give a vote in such a way that if we do not get the Chief Justice back to this colony, we certainly should give him an opportunity of taking that place he is entitled to. But I cannot hide from myself the fact that it has been my opinion—and I do believe it is the opinion of the majority of thinking people—that justice is impaired in this colony, that at all events a feeling of confidence in justice is impaired in this colony; and that if there be perhaps a majority of people who think that justice is not impaired there is a very large minority who think otherwise. I think we should not be afraid to do our duty in this respect—that is, to give our opinion as to the administration of justice, without regard to persons. Whatever one's feelings may be in regard to the Chief Justice, the question to my mind is not a personal one, but the question of the proper administration of justice. Can people go into the Supreme Court and believe that they get impartial justice, that they can get justice that is carefully considered and meted out from a mind that is a capable mind of giving justice in all cases? I do not think anyone who will read through this budget of papers put before us could come to a conclusion but that there is a very great deal perhaps of temper and perhaps of feeling thrown into cases, that certainly to my mind is not calculated to keep up the dignity of the Bench. I need not go into this matter that has been so fully entered into by the hon. and learned member for the North, who is capable of judging the matter from a judicial point of view. He has had great experience in the courts, and he knows how the matter stands, and can put his views forward in far better language than I can. But I do agree with him that it

has become notorious that in this colony there are now two camps, one of which feels a very warm partiality towards the Chief Justice, while the other, even if they do not have any strong feelings against the Chief Justice are not allowed by the Chief Justice's side to have any other feeling than one of animosity against the Chief Justice. In these circumstances, I do think it is our bounden duty to express our opinions, once for all, whether we consider the administration of justice is safe in the hands of His Honor Chief Justice Onslow in this colony; and I must confess, for my own part, that I do not think it is safe; and, therefore, without beating about the bush at all, I shall vote straight with the hon. and learned member for the North.

MR. MORRISON: We have had this evidence placed before us and referred to us by a higher tribunal, to give our opinion upon it. I am not afraid to give my opinion, but I must do it under protest, for this reason: this evidence having been taken in a higher court than this, if that court was not able to settle the matter it ought to go to a still higher court.

MR. PARKER: The Executive Council is not a higher court than this. This is the highest court in this colony, the Legislative Council.

MR. MORRISON (continuing): Well, a great deal has been said about the Executive as the higher court, and declining to deal with it; but I think, in justice to His Excellency and the Executive, I should say that, if they had dealt with it—considering what previous steps they had to take in connection with the Chief Justice—the probability is that everyone would have been prepared to say it was very bad taste on their part; and I think the fact of their having refused to deal with it ought really to be laid down to good taste rather than to a desire to shirk their duty. I think everyone will agree that His Honor is an impulsive gentleman; but I am not at all sure, after reading all these papers, that the criticisms of the newspaper, made in the manner they were, were not rather conducive to increase the objectionable character of the Judge's remarks. I think some of these criticisms were perhaps rather beyond the mark;

at the same time, we also have to remember this: when they are coupled with the fact that a great deal was said of His Honor that he really did not hear himself, it may be that naturally the bent of his mind might be warped in a way not intended, but which made him more carping perhaps in his remarks, when he had to give vent to his feelings. The late member for the Greenough (Mr. Hensman), when this petition was before the House last session, made what I think was a very strong remark. He said that if the allegations contained in this petition were correct, or proved, the Chief Justice ought to be instantly dismissed, with disgrace. He said that was what His Honor deserved. And, if I remember rightly, I fancy I have seen it among these printed papers that His Honor himself said something to the same effect—that, if the charges contained in this petition were correct, ignominious dismissal was what he deserved. Now, sir, I am prepared to say this: I consider that the general contents—I am not a legal practitioner, nor am I giving any legal opinion; but I have come to this conclusion, that, generally speaking, in the ordinary sense of the word, that petition is generally correct. But I am also of opinion that ignominious dismissal would be just as extravagant punishment for what has been done as many of the remarks that have been complained of. I think that would be too much punishment altogether. But I am at one with the amendment of the hon. and learned member for the North, provided it does not mean ignominious dismissal. I should like to see it amended in this way: that we consider it would be best, and that the interests of the colony would be served, if His Honor did not return to his present position, and the Secretary of State provided him with an appointment elsewhere—or words to that effect. I certainly am of opinion that there has been a great deal of harm done in this colony during the last two years, under one may say the administration of justice or the mal-administration of justice—one saying one thing, and another another—and possibly a change in the judicial formation of the Supreme Court would do good. I don't believe in these continual official unpleasantnesses; they only tend

to diminish people's faith in, and respect for, the administration of justice. I am not going to repeat what many members know as well as myself. This is purely a matter, I consider, of duty, to say whether you consider the administration of justice has been what it ought to have been. I don't think it has been what it might have been. The conclusion I came to about the petition was simply this: that it was not uncalled for, that the Chief Justice had been indiscreet in some of his words, in various cases tried by him—noticeably in those referred to in the petition; and that the prayer of the petition is reasonable, and should be acceded to—that is, the appointment of a third Judge. That is my opinion. But this amendment of the hon. member for the North goes beyond that. I should like to know whether we are going to have any more amendments. I agree to a certain extent with the amendment of the hon. member for Plantagenet; I think we are not in a position—I know I am not—to talk about legal points; I am simply taking what I call an ordinary justice's view of these matters; and, if you had that evidence in a court, I should say that was my judgment. I do not hesitate to say that is the opinion I have formed; I am not attempting to take any legal view of the affair. I think if the hon. and learned member for the North could combine with his amendment such an amendment as that of the hon. member for Plantagenet, it would be worth considering. This is a very serious thing, and I have endeavoured to give what I consider is the true view of it. I do not hesitate to say that some most injudicious remarks were made in the petitioners' newspaper about various things, and I am not at all certain they did not add fuel to the fire.

Mr. VENN: I wish to say a few words on this matter. I would rather not have said anything, because I feel this is one of those grave and important occasions when, whatever we may think or however we may view the question before the House, members will not, and cannot, confine themselves within the four corners of this book (the official papers). The hon. member for the North spoke upon this subject in a way that commended itself, I think, to the good feeling and judgment of the House. When the hon.

member spoke of the social qualities of the Chief Justice, we all felt with him I am sure in the expressions he gave vent to. So far as I am individually concerned, I may say this: I have studied carefully—not being in possession of many of the facts beforehand—the contents of this book; and, had the case of the Chief Justice and of this petition been discussed a week or a fortnight ago, I feel that then I should possibly have approached this question with rather stronger feelings than I do at the present moment. I took some anxious and active part in the framing of the resolution agreed to by this House a few days ago on this subject—a resolution which in my judgment commended itself as the proper course for the House to adopt. I thought then, and the majority of members thought, it was the correct and proper thing for the House to do—refer the case back to Lord Knutsford and the Privy Council to deal with it finally. But, with other members of the House, I regret very much indeed having had the case referred back to us, because, whatever sophistry of argument we may indulge in to try and persuade ourselves that we may shirk the opportunity, we know in ourselves that we must not shirk it, and that we are bound to give some opinion. It may be a weak opinion or it may be a strong opinion, but some expression of opinion on the part of this House is evidently required. I have read outside this Chamber one or two resolutions dealing with the question, which, in the main commended themselves to my judgment; but the wording of the hon. member for the North's resolution does not, in every way, commend itself to my judgment. I do not say it is a weak resolution; but I do not think that the reference in it to two or three only of the details of the petition was enough, unless we were prepared to go into the whole of the details of the petition. Therefore, I am at issue with the hon. member as to the desirability of embodying paragraphs (a), (b), and (c) in the resolution, because, after all, the whole substance of the matter is summed up in the last clause of the resolution. The hon. and learned member for the North has submitted an amendment, for which most members, nay all members, will have every respect as carrying with it the hon. and

learned member's own opinion, without any further words. But, having said that, I do think or I do hope there will not be a majority of the House to agree to that amendment, for this simple reason: that, if that amendment were agreed to, we would be dealing a very severe sentence indeed, in my opinion, upon the Chief Justice, inasmuch as we would take away from him all future chance of promotion, or chance of appointment in the service of Her Majesty. I do not think any member of this House wishes that result to ensue. Whatever feelings we may have outside this House in regard to the Chief Justice, I do not think that even those who entertain the worst personal feelings, would wish for a moment that such a result as that should happen to the Chief Justice through any action of this Legislature. On the other hand, I do think that such an expression of opinion—mild as it may be, weak as it may be—as is put forth in the original resolution, will carry with it a great deal of the sense or general feeling of the community—that is, the last clause of the resolution; and it is one that would commend itself to my judgment, with a few verbal alterations, which, while carrying exactly the same sense, would perhaps round it off a little better. I am in accord with the disinclination that has been shown this afternoon, on every hand, to enter into the details of the evidence placed before us; for I feel sure if that course had been resorted to some very strong feelings would have been aroused, and some very strong words and expressions uttered which would afterwards have been regretted by members of this House. I have been very pleased indeed with the general tone of the debate this afternoon. Having said that, I shall be prepared to support the original resolution, with a few verbal alterations.

After a pause,

MR. RICHARDSON rose and said: I do not intend to detain the House more than a few minutes, but I believe I have the right of reply.

THE SPEAKER: Properly speaking, the hon. member has not a right to reply. It has generally been permitted, but it is not quite right, this being an order of the day, unless it is in explanation on some material point of his speech, on which he

thinks he has been misrepresented or misunderstood.

MR. RICHARDSON: I merely wish to refer to one or two remarks made by the hon. member for the Swan (Mr. Rason). The hon. member attributes to me that I desire to place on the shoulders of the Chief Justice all the blame for the unhappy divisions that have taken place in the community of late—that I desire to attach all the blame to the Chief Justice without attaching any of it to anybody else; and he seems to gather this from a portion of the paragraph marked (c) in my resolution, which says that the libel in the case of *Hensman v. Harper and Hackett* arose out of Mr. Hensman's untiring defence of the Chief Justice in the matter of his interdiction, and that therefore I say that the Chief Justice is to blame. How the hon. member can say that I do not know. I requested him to read on, but he did not do so. Of course he had a right to read what he liked; but he has no right to attach a meaning to a mutilated portion of a clause which the whole clause does not carry with it. I think lawyers will tell you that a document must be construed as a whole, and not from isolated passages. All that paragraph means is that the libel in question arose out of Mr. Hensman's defence of the Chief Justice; and I maintain that it did. If it did not arise out of that, I ask him what it did arise from? Another remark I should like to refer to is the statement which has been made that this House is not a competent tribunal to deal with this matter, and that we have no right to meddle with it in any way, that we have no judicial capacity, that we are mere laymen or amateurs. But I would point out that it is not a final judgment that we are asked to pronounce, but simply an expression of opinion for the guidance of the Secretary of State, so that he may be in a position to submit the matter for the final decision of the Privy Council, who will then be able to say whether any opinion we may express is worth anything at all, or supported by the facts. The Secretary of State imagines, I suppose, that there are in this Legislative Council a number of reasonable, plain matter-of-fact, intelligent men, capable of forming an opinion upon the broad question, who have some idea whether the administration of justice

is fair or unfair, or whether public confidence in the administration of justice is impaired, and whether all or any of these allegations have been substantiated, or are true. The Secretary of State simply wants our opinion as sensible men dealing with the question from a practical point of view; and he or the Privy Council will decide whether that view is borne out by the evidence or not. I consider that is all we are asked to do, and I consider we are bound to do it.

MR. LOTON: At this late stage of the debate it is not my intention to say but very few words. This matter, as has already been remarked, has been knocking about for five or six months, and it has eventually found its way to this Council, and we are asked—that is what we are really asked to say, I take it—whether the conduct of the Chief Justice, in his administration of justice on the bench of the Supreme Court, has been such as to necessitate a petition from this Council for his removal, on the grounds stated in this petition of Messrs. Harper and Hackett, or, if we do not think that there has been any such grounds, that we should let the matter drop. That appears to me to be the position which we are in at the present time. It is an awkward position, an unpleasant position, and a difficult position, the case having already been before another tribunal, and they having refused to express any definite opinion upon it. Like the hon. member for the North, I can approach this subject, I think I can say, without the least prejudice on either side. I have not of course had the legal experience which the legal members of the House have, from their frequent attendance before His Honor at the Supreme Court, which places them in a much better position to be able to form an opinion upon the administration of His Honor than other members of the House are; but I have occasionally visited that Court, and I do not hesitate to say that I have myself heard expressions from His Honor the Chief Justice in his charges to the jury, on different occasions, which to my mind—I say to my mind, or in my opinion, and I have given expression to that opinion at the time—exceeded what I considered was the duty of the Chief Justice to express on such an occasion. But that would be no doubt a legal

question, and one which I submit I am not competent to decide. Now, sir, we have it in the resolution of the hon. member for the North that “the community is divided into hostile camps.” There is some truth in that assertion; there is a very great deal of truth in that assertion. And there is truth in the amendment of the hon. and learned member for the North—I have not got it before me; but the first portion of it, I think, commends itself to my mind, where it says that the language of the Chief Justice has tended to impair public confidence in the administration of justice. I think there is some truth in that; and I think possibly that the petitioners in their petition have shown that in some instances they have had fair ground for complaint. On the other hand, I am inclined to think that the petitioners themselves, in the leading articles in their newspaper and their comments upon the actions of the Chief Justice, did exceed what I consider the fair bounds of criticism or proper comment. While we should all, I think, be very careful that the Press, which is a very powerful organ at the present day, is not in any way gagged, or in any way in fear of expressing its opinions fearlessly on public matters; still, at the same time, we should also be very careful to see that the Chief Justice, not in this colony alone, but in every part of the world, and the Bench, is not unduly attacked, and that there is no attempt by writers in the public press to threaten (as it were) the administration of justice. There are one or two things in this petition which call for remark. Take the first case alluded to by the petitioners, that of *Davies v. Randell*, where they complain of the language of the Chief Justice, and where one of the petitioners, after they had been censured from the Bench, wrote and thanked the Chief Justice for the words he had used. But in the petition they complain of that language; and it will be remembered no doubt by many members who have read these papers, that in a succeeding leading article strong and rather strange language was used by the paper, even after His Honor had been written to and thanked for the way he had treated them from the Bench. It appears to me they were rather courting a little censure from

the Bench; and I think, sir, perhaps if I had been a Judge on that occasion, and the writers of these articles in a public newspaper had come to me and asked for leniency, I should have waved them off, and told them to stand at a distance. I think the Chief Justice showed a little weakness on that occasion. I shall not go into many details, but I shall refer to the amendment of the hon. and learned member for the North, and I ask myself this question: has the conduct of the Chief Justice been of such a grave nature as to warrant us in passing that amendment? I ask myself, does the evidence before the Executive and in this petition lead me to that conclusion? I have read that evidence very carefully through, and I may tell hon. members, so far as I am concerned, that I read that evidence through before I read His Excellency's memorandum upon it. I saw that His Excellency had addressed a memorandum to the Executive Council upon it, but, having read one or two clauses of it, I carefully avoided reading it through until I had read the evidence itself, in order that I might approach the consideration of the subject free from any influence, from the opinion even of the Governor. Having done so, I ask myself the question—has the conduct of the Chief Justice been such as is stated in this amendment? Is it borne out by the evidence to the extent it is stated by the hon. member in his amendment, that it is incumbent upon this Legislature to move an address to the Secretary of State for His Honor's removal? I cannot bring my mind up to that pitch. I think, myself, it would be in the interests of the Chief Justice himself, and in the interests of the community, if His Honor were transferred to some other post; but it is not within our province to recommend that. I cannot—I say it distinctly, after very mature consideration—I can not bring my mind to say that the conduct of the Chief Justice has been such as is here represented. Although I think certain charges that were made are substantiated to a certain extent, and that we have no right to expect such language from the Chief Justice, still I do not think that the conduct of the Chief Justice has been of such a grave nature that we are in a position to move an address such as the hon. member

for the North, in his amendment, proposes.

MR. PEARSE: In common with other members I desire to say a few words on the important question now before us. In the first place, I think it is the right of every person—I care not who he is, whether it be the poorest man in the colony or the proprietors of a newspaper—if they have any grievance, to bring their grievance before this House. I have read all the evidence given before the Executive in support of this petition, and all the papers connected with it, and I have been forced to the conclusion that the petitioners have not made out their case to my satisfaction; and, holding these views, I am unable to support the resolution of the hon. member for the North, nor the amendment of the hon. and learned member for the North. The amendment that commends itself to my mind is that of the hon. member for Plantagenet, and I shall support it.

MR. MARMION: I find myself placed in rather a peculiar situation in this matter. I do not hesitate to say that I have expressed opinions upon the subject of the Chief Justice, in his capacity as Chief Justice of the colony, on very many occasions outside the walls of this Council—never that I am aware of within it, up to the present time. But outside this House it has often been my duty to express opinions that were hostile to a certain extent to His Honor. I have often felt it my duty to rather warmly discuss and to criticise the acts, and words, and expressions, that have been done, uttered, or fallen from the Chief Justice on the bench; but, at the same time, I have always had a very great respect and regard for His Honor. That regard has been one that has been to a very great extent unaltered, undiminished, even by those faults or blemishes which I could not help recognising in his otherwise most admirable character. But I have more than once, as I said before, had to discuss very warmly, with very zealous admirers of His Honor, questions of more or less magnitude, as concerning possibly not so much the administration of justice in the colony, as other matters outside that, and which I looked upon as altogether unconnected with the case now before the House, for I recognise a distinction between this and matters that

have occurred in the past—to which it is unnecessary to allude,—I think the word “imbroglio” has been used in the course of this debate. I recognise a distinction between the circumstances that were connected with what was known as the “imbroglio” and the question we are now called upon to consider, namely, the question of the administration of justice by Mr. Onslow, as Chief Justice of the colony, and the allegations contained in this petition of Messrs. Harper and Hackett. Though I am inclined to agree, and to agree to a very great extent, with some of the remarks that are made—I may possibly call them allegations—in the resolution of the hon. member for the North, still, at the same time, I fully believe what has been stated by that hon. member in the course of his remarks, and by other hon. members, that at no time in the course of his official career, in the administration of justice, has the Chief Justice been actuated by any other than the most honorable and the most estimable motives; and that, if at any time he has been guilty of a fault, it has been as stated in this resolution in consequence of His Honor’s warm, fervid, and impulsive nature, which may at times, and I believe has at times—I do not hesitate to say *has*, at times—carried him possibly beyond the bounds of good judgment, and has caused him on those occasions possibly to be guilty of uttering sentiments or giving vent to expressions which perhaps had better been left unspoken. But although this has been the case, and although it has been my lot occasionally outside this House to express some hostile criticism upon the Chief Justice, still at the same time I recognise the position I am placed in here to-day—a position of responsibility, altogether different from that which a man holds outside the walls of this House, simply as an ordinary member of society, who has the right to express his private opinion without fear or favour, and without that grave responsibility which attaches to the position of a member of this Council, speaking here in his place, in his representative capacity. I hope I recognise the responsibility of the position I am placed in to-day, and the gravity and importance of the duty I am called upon to perform, namely to express an opinion as to

whether it is necessary or desirable in the interests of the colony that we should petition the Secretary of State for the Colonies for the removal of Mr. Onslow from his position as Chief Justice of the colony. I recognise the fact that I am placed in a very serious position, and one which should make me pause and make me hesitate as to whether I should commit an act which may possibly give a death-blow to the future official career of a gentleman for whom I entertain the greatest possible respect, and I may almost say regard, irrespective of those defects of a fervid temperament which I have referred to as having occasionally called from me expressions of hostile criticism in private conversation outside. I say I feel I am placed in a position to-day which calls for the exercise of a certain amount of discretion and a certain amount of judgment and circumspection; and, having thought over this matter calmly and quietly, I have not been able to bring myself to go with the hon. member for the North to the extent of his resolution. I do not feel myself able to go with him to the extent of advocating that the Secretary of State should be petitioned—for that is what it amounts to—to remove the Chief Justice from his official position in this colony. But while I say that—while not prepared to endorse that view—still at the same time I am prepared to publicly utter my opinion that it would be, I believe, for the benefit or in the interest of His Honor himself, and I believe for the benefit of the country to the extent that it would probably contribute to a better feeling in society, if His Honor’s services were transferred. I am saying nothing at all about the administration of justice; I am not prepared to do so, because I am not a lawyer, nor do I feel myself competent to be called upon at a moment’s notice to express any opinion upon this huge mass of papers that I have before me. I do not feel prepared to offer or express any opinion upon a subject which the Executive Council have had before them for weeks, if not for months, with all the advantage of the presence and assistance of the Governor on the one side and His Honor the Chief Justice on the other, and also the assistance of the hon. and learned Attorney General, and with all the witnesses and all the documentary evidence

before them. I say it took the members of the Executive weeks to consider this matter, and yet they were unable to come to any conclusion. How then can we be expected to be in a position to pronounce an opinion upon the legal points involved in this petition? Sir, it seems to me that we have been called upon unnecessarily—I make use of the word unnecessarily—to perform an unpleasant duty that other people have shirked, that other people do not care to have laid at their doors; and they have tried to shelve their responsibilities, and I say *have* shelved their responsibilities, and placed these unpleasant duties on our shoulders. In order to show that this is the case, members have only to look at the telegrams which have passed between the Governor and the Secretary of State. On the 15th March, the Governor is told by the Secretary of State that “it is necessary”—the words are clear and simple—“it is necessary that the Executive Council should complete the proceedings by suspending or acquitting.” Why did not the Executive Council do so? Why did they not proceed to suspend or acquit the Chief Justice? Instead of that they say they feel themselves incompetent to decide, and so they endeavor to shelve their responsibilities; and we are now asked to do what they ought to have done, and what they were in a much better position to do than we are—arrive at some decision upon the mass of evidence laid before them. Those hon. gentlemen are in the House, and may explain this, if they can, and if they think it desirable to do so; but, if they think it wiser to remain silent, I hope they will do so. If the Executive Council, with all the advantages and with all the time they have had to consider these papers, found themselves incapable of coming to any conclusion upon them, I say most distinctly we are not; and, that being the case, I feel that I am unable to assent to this resolution. The Executive Council have had the advantage of the wisdom and legal experience of the Attorney General to assist them in dealing with these legal and judicial questions. But what is our position? The Executive have had the advantage of the advice and assistance—I hope the hon. and learned member for the North will pardon me—the advice and

assistance of an impartial legal gentleman; and I say that, because we cannot withdraw our minds from this fact—and I am sure the hon. and learned member will pardon me again—that there exists in this Council and that there exists outside of it, a certain amount of party feeling, a strong party feeling, which has existed for some time; and that there is scarcely a member of this Council who has not given way more or less to that party feeling, either on one side or the other. I must acknowledge that I did; and I feel that possibly I would not be one of the most impartial judges in a case of this kind. I also feel, as most members must feel, the very serious responsibility that is sought to be cast upon us in this matter, and I do not feel that I am competent to pronounce an opinion upon it, one way or the other. I would also ask members to bear in mind this one fact: that, in all probability, the result of all that has taken place in connection with this unfortunate business—I hope, at any rate, that such will be the result; I do not hesitate to say so—I hope it in the interest of peace and harmony, of social intercourse, and of that kindly feeling which has hitherto existed in this community, but which I am sorry to say has been somewhat impaired of late; I hope it also in the interests of a gentleman who has filled a high and honorable position as Chief Justice of the colony—I hope that the result of what has already taken place in connection with this matter may be that His Honor may be promoted to a higher sphere elsewhere, and that it may not be his fortune to return to Western Australia. That being the case, I hope hon. members will be satisfied to leave the decision in this matter to another tribunal. Possibly, even the expressions of opinion that have been heard in this House today may have some injurious effect upon the future career of the Chief Justice; if so, I suppose it cannot be helped. The truth must be spoken, and the opinions of members should not be withheld—I have not withheld mine. At the same time, I do not see why we should be called upon to do an act which may have the effect, possibly, if we go the whole length that has been suggested to us, of damning the future career of an

honorable, upright gentleman—upright, I believe, in his heart—and one for whom I believe the majority of us entertain the highest respect, and for whose faults we have the greatest sympathy, for we know—I feel positive of this—they are not faults of intention, they are not faults of deliberation, they are what I may call constitutional faults,—faults over which the gentleman himself, at times, possibly, has no control. I do not suppose there is one amongst us who would think of impugning the integrity and the honesty of purpose of the Chief Justice; and the questions we are asked to pronounce an opinion upon are questions of a legal and judicial character, which this House, I submit with all due deference, is incompetent to deal with, and which ought to be dealt with by a higher and more competent tribunal, and that is the Privy Council. So far as this colony is concerned, I hold that the proper tribunal to deal with the matter was the Executive Government; and why should we be asked to do that which they failed or neglected to do? Why should we be asked to perform an unpleasant duty—for it is an unpleasant duty—which that body hesitated, or neglected, I may even say utterly failed, to do? I hope we shall not do it; I do not think we ought to be called upon to do it. For that reason, though not altogether prepared to support the amendment of the hon. member for Plantagenet (Mr. De Hamel)—I have been endeavoring to frame an amendment of my own, while listening to this debate, but I have not had time to do so; and, although not quite in accord with the terms of the amendment of the hon. member for Plantagenet, still, sooner than support the original resolution in its entirety, and certainly sooner than support the amendment of the hon. and learned member for the North, I shall vote for that of the hon. member for Plantagenet.

MR. A. FORREST: At this late hour, as I believe many members wish to go home, I intend to say very little. I stand here perfectly independent: I am neither influenced for the Chief Justice nor for the petitioners. The Chief Justice is a friend of mine, and the petitioners are friends of mine; and my vote in this instance will be taken from a careful perusal of all the papers laid on the table

of the House. I have read them carefully, and I consider, as has been said by the hon. member for Fremantle, that the charges are not proven. I say more than that: when this petition was first brought down to this House, the charges were of the most grave nature, and I stated then that if they could be proved, I would be myself one of the first to ask for the Chief Justice's removal, and not for the appointment of a third Judge, which was what the petitioners asked. I should like to say a few words with reference to the speech of the hon. member for the North, Mr. Burt. He and I, I believe, came into the world about the same time, and we started life together, though not in the same line; he in a profession which he has been an honor to. But he will recollect that, when he started in his profession as a lawyer, under favorable circumstances, the same people, or very nearly the same people, tried to ruin his father—one of the most upright Judges we ever had. The hon. and learned member for the North being his son, and practising before him; what did people say of him? I recollect. They said: "It's no use your going to the Supreme Court now unless you get Sep. Burt—I beg his pardon, I mean the hon. member for the North—to defend you." I say those charges were not true; but they were said, all the same; and many a disappointed litigant who had lost his case could have appealed to this House in those days, as these petitioners have now. But people had confidence in the integrity of the Chief Justice, although these things were said. The present Chief Justice, no doubt—I say it with all due deference to him—has made mistakes; I should be the last to say he has not. But I say he has not done it in the manner in which it is stated in this petition. If he has erred, he has erred in a manner that does not call for this House to ask for his dismissal. The hon. member, Mr. Morrison, says that he would support an amendment to the effect that the Secretary of State be asked to give His Honor another appointment. I think that would be a very unfair thing; for, if the Chief Justice is the man he is represented to be by these petitioners, it would not be right to ask the Secretary of State to get

him another appointment at all, because he would not deserve it. But I think that anyone, I don't care who he is, either inside the House or outside the House, who sits down quietly and calmly to read this petition and the notes of the evidence, can only come to one conclusion, and that is that the petitioners have not proven their charges. It may be said, and perhaps with some force, that His Honor has been the means of splitting up this community, and making this place not very pleasant to live in. But, I ask members to look a little further than the Chief Justice. I don't think it has been mentioned, except by one or two members; but let us go to the fountain head of all the mischief. Who is it that has been making all this noise and this mischief? Take one of the petitioners, Mr. Hackett. There's the man that has got up all this row, and made this place a place that is almost impossible to live in. I say he's the man. If you want some more, go to two or three others; but don't go to the Chief Justice. What has he ever done? I am in business here, and have had occasion to go to the Court, on several occasions, in the course of my business, and I never heard any disputes there, except amongst those gentlemen who are engaged in the law. I never heard any complaint from other people about the administration of justice in our Courts. I have heard solicitors who lose their case, saying "What could we expect," or words to that effect. Of course they were disappointed. Two sides cannot possibly win. We often have cases, and our solicitors tell us we have a good defence, but still we lose; and what can we do? Are we to petition this House, and complain that we haven't received justice? I say this, sir,—that when a person goes into Court, he should go in there clean. He must not expect to get sympathy, and to win every time, unless he has justice on his side. I will say further than this: so far as I know, there has not been any clamour in this colony about the administration of justice, until these petitioners came here with their petition; and, as was stated by the hon. member, Mr. Burt, last session, if they had gained that libel case they would never have come here. I think it is important for this House to consider who were the jury in that case.

[Several hon. members: No, no.] I will only say this: they were at any rate some of them business men, and some of them leading men, and men whom we should in any case expect justice from. And I believe, myself, they did justice in that case. I do not say that the damages were not excessive—I always said they were too high; but I consider it was a proper verdict. The paper no doubt had libelled Mr. Hensman, and, although they did not expect such heavy damages, I believe they themselves expected a verdict against them. I don't think I shall say any more, except that I shall support the amendment of the hon. member for Plantagenet.

MR. SHOLL: I rise more for the purpose of making a statement than anything else. Before doing so, I may say that this is a question which, I agree with other hon. members might very well have been dealt with by the Executive, but, inasmuch as it has been sent to this Council to express an opinion upon it, I think it is our duty, whether pleasant to our feelings or not, to express what we think. I take it that we are not trying this case at the present time; this, I take it, is the initial stage; and, if a resolution is carried expressing the opinion of the House, it will then be dealt with by a much higher tribunal, consisting of men of legal minds, the most eminent lawyers in the United Kingdom, who will deal with these charges against the Chief Justice, according to the evidence contained in these papers. Therefore, I think it is not a question for us to consider, whether it is likely to injure the Chief Justice as regards his future promotion or not. If the Chief Justice is guilty of what he has been charged with in this petition, and contained in these documents, I think, as has already been remarked, His Honor deserves anything they may choose to mete out to him. But I don't think that is a question for us to determine ourselves—whether the Chief Justice is guilty of these charges or whether he is not. If, according to the evidence laid before us, we are of opinion that these charges ought to go before the Privy Council—however unpleasant to us personally it may be—we should record our opinion. I would ask hon. members whether they think it would be just or fair to the Chief Justice

to have this matter cast on one side, without any opinion being expressed upon it, after it has been before the Executive, referred to the Secretary of State, sent back to this Council, and advertised all over the world that certain serious charges had been publicly made against the Chief Justice, and that the Chief Justice had suddenly applied for leave of absence and gone to England—I ask would it be fair to the Chief Justice himself that this matter should be cast on one side without any inquiry at all, or any decision, one way or the other? I say it is due to the Chief Justice himself to have this matter thoroughly inquired into, by this high tribunal at home, a tribunal that will do justice to all parties; and that it is better for the Chief Justice to have this done, rather than, out of good nature on the part of a majority of members in this House, it should be said that we allowed it to be cast into oblivion rather than risk the dismissal of the Chief Justice. There is no doubt that there are two opposite parties now in this community, and no doubt whatever that the Chief Justice has been at the head of one of those parties. I think it is undesirable, in a small community like this, that the Chief Justice should be so. I think the Chief Justice should be above all parties, and that he should not be placed in a position of having to try a case which a member of one party might bring against a member of the other party. I think, where such a feeling exists, there must be a sense of insecurity; and, for that reason, I think it is desirable that the Chief Justice should not return to this colony. I should be sorry to see it, in the interests of the whole community; and I believe it would not be in the interest of the administration of justice. With these few remarks, I will now proceed to make the statement which I rose to make. On reading the evidence taken before the Executive, I notice, on page 109, there is this evidence given by the hon. member for Kimberley (Mr. Alexander Forrest) with reference to a conversation he had with one of the petitioners, Mr. Hackett, about the plaintiffs in a libel case not advertising in their paper:

THE CHIEF JUSTICE: Can you shortly tell the Council the nature of that conversation?

MR. A. FORREST: Yes. Mr. Hackett told me—I think it was in the street—that the reason he ran the sale down was to affect the sale of the property, because he did not advertise in the paper. I told a gentleman afterwards that if I had been called as a witness for the plaintiffs, I would have what is called slaughtered the *West Australian*.

MR. A. FORREST: That is true, too.

MR. SHOLL: I happened to hear that conversation,—

MR. A. FORREST: You did not. I must appeal to you, Mr. Speaker. That conversation took place in front of my office, and I don't think the hon. member could have heard it.

THE SPEAKER: The hon. member has appealed to me. I do not see that there is anything calling for my interference. I understand the hon. member for the Gascoyne is reading from the evidence.

MR. A. FORREST: He did not hear that conversation; it took place opposite my office.

MR. SHOLL: I heard a similar conversation, in a private house or club.

MR. A. FORREST: I deny it.

MR. SHOLL: The conversation I heard—there may have been another one of course, but I think it is only due to the other gentleman that I should say what I heard; the conversation I heard was something to this effect: the hon. member for Kimberley came in, and remarked in a joking, laughing manner: "I say, Hackett, you were rather rough on Fienberg and Rogers to-day; I suppose you put that in the paper because they didn't advertise with you?" Mr. Hackett replied back in the same jocular strain: "Yes, of course I did; you better look out." To which the hon. member for Kimberley said: "Indeed I will; I shall see that you have my advertisements." It was all done in a joke. There were several people about the room, and took it for a joke. Mr. Hackett's answer was suggested by Mr. Forrest's question. I see in his evidence, the hon. member says the conversation occurred in the street, opposite his office. That may have been another conversation; but it is rather a strange coincidence.

MR. A. FORREST: Why didn't they call you as a witness?

MR. SHOLL: I am quite prepared to make a statutory declaration. I thought I should make this statement in the in-

terest of this other gentleman, who has not had an opportunity of explaining the matter; his evidence does not read very well, and one can quite understand his only having a very faint recollection of something that was said in a joke. It was taken as a joke by everyone in the room. Sir, with these few remarks I shall only add that I think some distinct charge should be made against the Chief Justice, or rather some distinct resolution should be passed by this House to bring this matter to some finality. While not wishing to injure (if I may say so) the Chief Justice undeservedly, I think this matter ought to be tried by men of legal mind, who will then deal with it from the evidence taken in support of the petition; and, if they come to the conclusion that the evidence is not sufficient to sustain these charges, then I think Chief Justice Onslow comes out without a stain upon his character. But if this matter is cast on one side now, there will always be a suspicion going about—more especially after the debate here to-day—that the Chief Justice has left Western Australia with a blot on his name, or a shadow surrounding him.

Question put—That the words proposed to be struck out stand part of the resolution:

The House divided, with the following result—

Ayes ... 10

Noes ... 7

Majority for ... 3

AYES.

Mr. Burt
Mr. Grant
Mr. Loton
Mr. Morrison
Mr. Parker
Mr. Randell
Mr. Scott
Mr. Sholl
Mr. Venn
Mr. Richardson (Teller.)

NOES.

Mr. Congdon
Mr. A. Forrest
Mr. Marmion
Mr. Paterson
Mr. Pearse
Mr. Rason
Mr. DeHamel (Teller.)

THE SPEAKER: There is another amendment, moved by the hon. and learned member for the North.

MR. BURT: I will ask leave to withdraw that amendment.

Leave given, and amendment withdrawn.

The original resolution (moved by Mr. Richardson) was then put; whereupon

another division took place, the numbers being—

Ayes ... 10

Noes ... 7

Majority for ... 3

AYES.

Mr. Burt
Mr. Grant
Mr. Loton
Mr. Morrison
Mr. Parker
Mr. Randell
Mr. Scott
Mr. Sholl
Mr. Venn
Mr. Richardson (Teller.)

NOES.

Mr. Congdon
Mr. A. Forrest
Mr. Marmion
Mr. Paterson
Mr. Pearse
Mr. Rason
Mr. DeHamel (Teller.)

Resolution put and passed.

EXTENSION OF GERALDTON JETTY.

MR. GRANT, in accordance with notice, moved: "That an humble address be presented to His Excellency the Governor, praying that he will be pleased to give such instructions as may be necessary for steps to be taken to extend the Geraldton Jetty so as to facilitate the shipment of stock and other produce of the district, and to enable the Northern steamers to go alongside of said jetty; and for which purpose the sum of £2,000 appeared on the Schedule of the Loan Act of 1884." This was a matter of very pressing necessity for Geraldton, which suffered great inconvenience from the want of facilities for loading and unloading the steamers. In fact it was a downright shame that nothing had been done to this jetty before now. This £2,000 was voted a long time ago, and there it was; nothing done. His object in moving this address was to stir up the Government to do something, and put an end to the present state of affairs.

MR. LOTON, in seconding the motion, said it was not necessary to say many words on the subject. The only doubt on his mind was whether the amount was sufficient. In any case something ought to be done in the direction of extending this jetty. At present only one of the steamers on the coast could go alongside, which was a source not only of great inconvenience but also expense. No doubt members recognised the necessity of doing all that was possible to facilitate the shipping of goods inwards or outwards, or in other words to reduce the cost both to the importer and the consumer. He trusted the funds avail-

able would take the jetty out a considerable distance, and, as to the rest, he hoped the House, whoever was in it, would be able hereafter to find the money to complete the work.

THE DIRECTOR OF PUBLIC WORKS (Hon. J. A. Wright) did not suppose there would be any objection to this address being presented; but it was very certain that the funds available would not do what the hon. member proposed. With the amount at present at his disposal it would be utterly impossible to improve this jetty as suggested. There was only about £1,200 left, and that would not take the jetty out 120 or 130 feet. According to the soundings, it would not improve the approach to the jetty at all. Of course it might do as a commencement, but it would require a considerable sum more to make the extension of any practical value. He had said the same thing on previous occasions. If the House wished it, and the Geraldton people wished it, the funds now available might be made to go as far as possible; the money was now lying idle and it might as well be used. At the same time it was only right that he should say that it would not make any improvement, in his opinion, so far as approaching the jetty was concerned for berthing steamers.

MR. VENN: Will the hon. gentleman say what he thinks would be the probable cost of the work?

THE DIRECTOR OF PUBLIC WORKS (Hon. J. A. Wright): It will have to be supplemented by another £3,000 or £4,000.

MR. SHOLL: I understand that some of this money has been reappropriated?

THE DIRECTOR OF PUBLIC WORKS (Hon. J. A. Wright): No.

MR. SHOLL: It has been spent in paying Sir John Coode for examining the harbor,—which is not extending the jetty.

THE DIRECTOR OF PUBLIC WORKS (Hon. J. A. Wright): The hon. member has been misinformed.

MR. SHOLL: Well, it is clear that some of it has been spent, and I think the original amount should be made up. When we take into consideration the importance of Champion Bay, I think it is only fair that the port should have decent jetty accommodation.

THE DIRECTOR OF PUBLIC WORKS (Hon. J. A. Wright): When I

said just now that the hon. member had been misinformed, I meant that he had been misinformed as to any portion of this money having been misappropriated. Sir John Coode was asked to go up to Geraldton at the special request of the people of the town, and their then representative in this House, for the purpose of reporting upon the best site for this jetty, and the best method of spending the money; and, very properly, his expenses were charged to this sum. He made drawings and plans of the jetty as he purposed having it carried out; but the funds available would not admit of the work being undertaken.

MR. BURT said it appeared from what the Director of Public Works said that it would be no use extending this jetty unless they could do so to an extent that would enable the steamers to come alongside. He would suggest that the money be spent in dredging the approach to the jetty. He thought the time had come when the Government should seriously consider the desirability of obtaining a sea-going dredge for the use of these outlying ports; he believed it would be a saving in the end: the amounts spent on jetties and jetty extensions really were something alarming. He believed that the amounts spent in this way during the last fifteen years would have bought half a dozen dredges.

Motion put and passed.

The House adjourned at a quarter past five o'clock, p.m.

LEGISLATIVE COUNCIL,

Wednesday, 17th April, 1889.

Petition from Rev. W. Tait—Messrs. Harper and Hackett's Petition: Personal Explanation—Message (No. 19): Constitution Bill—Karri Piles in South Jetty, Fremantle—Adjournment.

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

PRAYERS.

PETITION.

THE COMMISSIONER OF CROWN LANDS (Hon. J. Forrest) said he had