

WESTERN AUSTRALIA.

PARLIAMENTARY DEBATES.

Legislative Council—First Session of 1883.

Opened on Friday, 13th April, 1883.

LEGISLATIVE COUNCIL,

Friday, 13th April, 1883.

Opening of Council—New Members—Speech of His Excellency the Administrator—Native Convictions Validity Bill: first reading—Address in Reply to the Administrator's Speech—Adjournment.

OPENING OF COUNCIL.

THE Council was prorogued by His Excellency Sir William Robinson, on the 23rd September, 1882, until the 23rd of May next ensuing, but, whereas it was desirable it should sooner meet, it was summoned by His Excellency the Administrator of the Government, to assemble for the despatch of business, on the 13th of April, on which day the House accordingly met.

The Council assembled at three o'clock, p.m.

NEW MEMBERS.

The Hon. Malcolm Fraser, Colonial Secretary, and the Hon. George Walpole Leake, Acting Attorney General, handed to Mr. Speaker the usual oath of allegiance taken and subscribed before His Excellency the Administrator.

THE ADMINISTRATOR'S SPEECH.

Shortly after three o'clock, His Excellency THE ADMINISTRATOR entered the Council Chamber, and took the Chair.

HIS EXCELLENCY, having desired that hon. members be seated, was pleased to deliver the following Speech:—

"MR. SPEAKER AND GENTLEMEN OF
"THE LEGISLATIVE COUNCIL,—

"Circumstances over which I have had
"no control have rendered it necessary
"that I should invite you to meet for a
"special purpose.

"It appears that your late Governor,
"Sir William Robinson, appointed Mr.
"Foss to be an Itinerant Stipendiary
"Magistrate for the Gascoyne, and a
"difficulty has since arisen with respect
"to the legal status which that gentle-
"man so acquired, and his power to pass
"certain sentences in respect of offences
"committed by Native Offenders.

"Papers will be laid before you in ex-
"planation of the appointment, but the
"fact nevertheless remains that Mr. Foss
"has made sixty-three convictions, if not
"many more, and grave doubts are
"entertained with reference to their
"validity.

"It has been observed, and I admit
"not improperly, that we are about to
"legislate in the form of *ex post facto*
"legislation, but, for reasons which I
"beg to offer for the consideration of the
"Council, you will only be asked to
"consider what I venture to term legis-
"lation of a curative character.

"I may state, frankly, that my own
"feeling is opposed to any direct ap-
"plication of what is comprehended in
"the somewhat general term of *ex post*
"*facto* legislation. But, in the present

"case, I wish to remind Honorable Members that, as regards these particular convictions, we have no proof that the respective sentences were unjust. In other words, we are not attempting to uphold, by any undue interference of the Legislature, an improper conviction. Let me add, that if I felt satisfied in my own mind that any reasonable doubt could be raised as to the application of the law to the merits of each particular case, I should be the first person to set aside the decision of the Magistrate, and possibly, I should exercise the prerogative right of the Crown and release the prisoners.

"It appears to me, however, to be a very simple matter, and that we have only to apply our minds to the rectification of a mistake, arising out of an informality, and if so, I respectfully ask the Council to support the desire of the Government to prevent a manifest miscarriage of justice.

"Let me try, however, to assist the Council by a reference to some examples of legislation which appear to be applicable to the present difficulty. The 16th Geo. 2, c. 18, contains the following recital: 'Whereas doubts have arisen whether, according to the laws and statutes now in force, Her Majesty's Justices of the Peace may lawfully act in any case relating to the parishes or places to the rates and taxes of which such Justices respectively are rated or chargeable.' The Council will not fail to see that the question raised was whether Justices could enforce the laws relating to parish rates though chargeable themselves; and by the second clause, it was provided to the effect that no act of the Justices theretofore done should be made void.

"And so, by the 1 Geo. 3, c. 13, it was recited, as follows:—'And whereas doubts have arisen whether persons who were Justices of the Peace at the time of the decease of His said late Majesty King George the Second, and who have been or shall be constituted Justices of the Peace by or under any Commission of the Peace granted or which shall be granted by His present Majesty can act as Justices of the Peace,' &c., &c. The Act then proceeds to give validity to all acts, matters, and

"things done, or to be done, by all and every such Justice and Justices.

"There is another instance, and one which may possibly be more satisfactory to Honorable Members, seeing that we obtain it from a sister Colony. It appears that shortly after the office of Special Magistrate had been established in South Australia, doubts arose as to the powers of such Magistrates to exercise their jurisdiction under a certain Ordinance relating to summary convictions. To avoid the difficulty it was enacted by Ordinance No. 6 of 1865, as follows: 'All convictions, orders, warrants, or condemnations already made by any Special Magistrate shall be deemed to be valid and effectual as if the same had been made after the passing of this Act.'

"This is quite in accordance with the form of legislation which you are now invited to consider; and let me remind Honorable Members that they are not asked to interfere in any way with any privileges which have been well assured to the subject, but only to secure, by legislation, the due administration of the law.

"The loss of the steam ship 'Macedon' was a subject of great regret to us all, and I beg to express my sympathy with all concerned. Arrangements were at once made for the immediate despatch of the Kimberley Expedition Party, and I have only to add that the loss to the Colony will be but trifling.

"Before despatching the 'Rob Roy' with what I may call the renewed Expedition to the Kimberley, every effort was made to secure another ship, but without success. Subsequently, full provision was made for the due despatch of all the Mails by overland conveyance. I fear that for a short time, some personal inconvenience may be felt by a few individuals, but I am glad to feel assured that the interests of the general community have been protected from any permanent injury.

"Since then we have also despatched the ship 'Amur,' taking with her the newly appointed Magistrate, Mr. Fairbairn, for the Kimberley. I trust, for the credit of the Colony, that both Expeditions will prove successful.

"In order to complete previous arrangements, I have had need to call in

"the aid of the Committee of Advice under the recent Audit Act, and I desire to bear grateful testimony to the willingness with which the members of that Committee gave their sanction to the proposals which were submitted for their consideration.

"The undoubted prosperity of the Colony continues to be a subject of congratulation.

"I have no desire to anticipate explanations of a financial character which you will doubtless receive from the hands of your new Governor, but, inasmuch as we are soon to raise money for the purpose of Railway and Telegraph Extension, it appears to me desirable that I should present you with a passing insight into the recesses of the Treasury Chest.

"The Revenue for 1882 amounted to £250,372, exceeding the estimated Revenue by the sum of £40,930. This result, I understand, is mainly attributable to the fact that the receipts under Customs exceeded the Estimate by £19,447, and under Land Revenue by the sum of £18,043.

"The Expenditure for 1882, including the Supplementary Estimates, amounted to £205,451, being an excess of £5,332 over the estimated Expenditure. The receipts of Revenue exceeded the Expenditure by £44,921, from which sum, if the deficit of £12,565 on the 1st January, 1882, be deducted, we obtain a balance of £32,355 to the credit of the Colony on the 31st December, 1882.

"The published returns by the Treasury for the quarter ending 31st March last, show that our financial condition is most satisfactory. The Land Revenue for the quarter exceeds the estimated receipts for the year by the sum of £15,223. The total Revenue for the quarter was £109,198, being an increase of £29,063 as compared with the first quarter of last year. The excess of Receipts over Expenditure amounts to the sum of £58,920, which, if added to the credit balance on 31st December last, will show an amount to credit on 31st March of £91,275.

"This prosperous state of the Treasury Chest points in a remarkable degree to the prudence and economy which has been exercised in the control of

"Expenditure by the late Administration.

"Papers of an important character will be presented to you, but I do not desire to trouble you with any further business."

Hrs EXCELLENCY, having handed a copy of the Speech to Mr. Speaker, withdrew from the Council Chamber.

NATIVE CONVICTIONS VALIDITY BILL.

THE COLONIAL SECRETARY (Hon. M. Fraser), with leave, without notice, moved the first reading of a Bill to give Validity to certain Summary Convictions of Aboriginal Natives of the Colony.

The motion was agreed to.

Bill read a first time.

ADDRESS IN REPLY TO THE ADMINISTRATOR'S SPEECH.

MR. SHENTON rose to move that a respectful Address be presented to His Excellency the Administrator, in reply to the Speech with which he had been pleased to open the Council. He said that at the close of last Session it was confidently hoped that all matters connected with the Native Question were settled, but a difficulty had unfortunately arisen in connection with some sentences passed by Mr. Foss, which were not strictly formal, and the Council had been called together to give these sentences force. At first sight it might seem as if the House was being asked to do an injustice to the natives who had been sentenced. There might be a legal informality about their sentences, but he did not look at the matter from a legal but from a broad general point of view. He believed the sentences imposed were just sentences, and there could, therefore, be no injustice in their being confirmed. The Government could not release the men after they were sentenced. Had it done so, and returned them to the district from which they were committed, the consequences would have been most disastrous. The natives of the district would have thought they might do as they liked with the property of the settlers. The legislation proposed was retrospective in its character, but it was not wholly without precedent. They were only treading in the footsteps of South Australia under very similar cir-

cumstances. Referring to the wreck of the *Macedon*, the hon. member said the arrangements entered into, after the unfortunate event, for sending on a steamer to the Kimberley, was, he thought, a very proper one. He could not, however, concur in the observation that the loss to the Colony was only trifling. The Government might have lost very little, but the loss to private individuals was so considerable as to amount to a national calamity. He had said that he thought the Government acted rightly in making arrangements with the owners of the *Rob Roy* for that vessel being sent to the Kimberley, but very great inconvenience was occasioned by the want of a steamer on other parts of the coast. The Champion Bay District was, for the time, almost isolated, and the loss and inconvenience occasioned in other directions was seriously felt, both by the mercantile community and the general public. Goods came on by the mail steamers to Albany, and were there left to wait for uncertain freight. He should be sorry to press hardly on Messrs. Lilly and Company—they were deserving of sympathy and consideration, but it was not the less a fact that they enjoyed a subsidy of £6000 a year for employing three steamers, and, at the present moment, they had not one steamer on the coast except a steamer employed on a special service. If the Government found that Messrs. Lilly were not in a position to immediately put another steamer on the regular coast service in the place of the *Macedon*, they should have chartered one themselves, and deducted the cost from the six thousand pounds subsidy. The despatch of Mr. Fairbairn to the Kimberley would be of benefit to a district which promised to be one of the richest in the Colony. He was, therefore, glad to find that no time had been lost in sending him there, as well as a survey party. The financial statement made by His Excellency was most satisfactory. The Colony, which was in debt to the extent of about £80,000 in 1881, had emerged from her difficulties, and now found no less than £91,000 to her credit. At the same time, it should be borne in mind that a portion of this balance was obtained at the sacrifice of roads and public works. He hoped that when the Council next met, the

more pressing requirements of the Colony in these respects would receive attention. He thought also that more accommodation should be provided for the port of Fremantle, as it was the chief port of the Colony. He was exceedingly glad to see the revenue so flourishing. The large sum derived from the Customs was particularly gratifying as showing more than anything else the prosperous condition of the country. The seasons had been unfavorable and the times hard, and yet it appeared that the country had been steadily progressing. The Council had been called together merely to pass one Bill, but had more members been able to attend there were many matters with which it might have been well to deal. As it was, he feared the Council was bound to deal only with the particular measure which it was assembled to decide.

MR. RANDELL said he rose to second the motion before the House. He regarded the particular question which the House had now assembled to decide as to a great extent a legal one, and he hoped to hear the views entertained on it by the hon. member for Perth and the hon. member for the Murray and Williams. He thought the House had been very properly called together. He was not prepared to give an opinion as to how far the Bill which was submitted to its consideration would trench on the liberty of the subject, but if it did trench on it, he should be as much opposed to the measure as applied to natives as if it applied to the rest of the population. It appeared that a magistrate had mistaken his powers and inflicted sentences of three years where he had only the right to impose one of six months. This was unfortunate. But there seemed to be only two courses open to His Excellency—either to let the prisoners go or assemble the Council. The last course seemed to him (Mr. Randell) the more advisable. That the Legislature had the power to give a remedy seemed pretty clear. The instances placed before the House by His Excellency seemed to remove all doubt. The precedent in South Australia appeared particularly to the point. Some of the Acts of this Colony moreover provided for the confirmation of acts informally done. His Excellency had invariably shown his respect for the law

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

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

Agreed to.

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

LEGISLATIVE COUNCIL,

Monday, 16th April, 1883.

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

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

PRAYERS.

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

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

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

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