

course we shall take. We should like to consult as to what course we shall take before the House meets to-morrow. With regard to what has fallen from the honorable member for East Sydney, I fear that his warmth—not for the first time—is in excess of the occasion. The Government are not desirous of doing anything but what is most convenient and beneficial to the public. It matters nothing to the Government whether the Appropriation Bill is passed or not, but it will be of consequence to a great number of poor people who expect to be paid. If it were possible to get a Temporary Supply Bill passed we should do that. We must either leave the public servants unpaid or the Appropriation Bill must be passed a few days before the end of the session, for which there are many precedents. By the adoption of this course we do nothing which in any way endangers public liberty or militates against the public welfare. The Government cannot benefit in any way by the passing of the Bill; but we do not desire to cause a great amount of inconvenience to a number of poor people in the Public Service.

House adjourned at 23 minutes before 1 o'clock a.m.

## Legislative Council.

Wednesday, 30 June, 1880.

Aboriginal Natives—Church and School Lands Dedication Bill (No. 2)—Volunteer Land Orders Bill—Messages from Assembly (Executive Councillors' (Functions Substitution) Bill—Wharfage and Tonnage Rates Bill)—Adjournment (Protection of Aborigines)—Supreme Court Temporary Judge Act Continuation Bill (Second Reading).

The PRESIDENT took the chair at half-past 4 o'clock p.m.

### ABORIGINAL NATIVES.

MR. C. CAMPBELL asked the VICE-PRESIDENT OF THE EXECUTIVE COUNCIL,—Does the Government purpose appointing protectors of the blacks in the districts of The Macintyre, The Barwon, The Darling, The Lachlan, The Murrumbidgee, and The Murray, with a view to the protection of the aboriginal natives from oppression and outrage on the part of Her Majesty's demoralised white subjects in New South Wales?

[*Sir Henry Parkes.*

Sir JOHN ROBERTSON replied: It does not seem to me that there is any reason for the protection of aborigines in the districts named any more than in other districts. I do not know why they should be selected. I may be permitted to say that the whole matter of the protection of the aborigines of the colony is under the consideration of the Government.

### CHURCH AND SCHOOL LANDS DEDICATION BILL (No. 2).

Message from Governor—intimating that this Bill had been reserved for the signification of Her Majesty's pleasure thereon—reported.

### VOLUNTEER LAND ORDERS BILL.

Bill returned to the Legislative Assembly without amendment.

### MESSAGES FROM ASSEMBLY.

Messages from Assembly—intimating agreement with the Council's amendments in the Executive Councillors' (Functions Substitution) Bill; and agreement with some, and disagreement with others, of the Council's amendments in the Wharfage and Tonnage Rates Bill—reported.

### ADJOURNMENT.

#### PROTECTION OF ABORIGINES.

MR. C. CAMPBELL moved the adjournment of the House in order to make a few remarks on the subject of the question he had just addressed to the Representative of the Government. He was pleased to hear that the matter was under the consideration of the Government. His own view on this subject was that any portion of the great body of mankind which had been separated from the rest of the civilised races for centuries could scarcely be restored to equality. Therefore it might be supposed that he was indifferent to what was called civilising the aborigines of this country. He thought they were out of the reach of the influences of civilisation, and possibly of the influences of Christianity. But however that might be, the first step to be taken on the part of the Colonial Government ought to be to protect them from outrage by the British portion of the community. The reason why he mentioned the five districts was because there was still a great number of natives in them, and it would be useless to appoint

proteectors to portions of the colony now scarcely inhabited by aboriginal natives. Wherever there were rivers abounding in fish there were still many aborigines; and he maintained that great wrong to them might have been averted by the appointment of gentlemen holding the office of Police Magistrate and having protective powers given to them as in the colony of South Australia. He alluded particularly to those outrages inflicted in consequence of the aboriginal women being subjected to the lust of the white man. About three years ago he was in one of the districts named, when application was made to the gentleman with whom he was residing by a black to assist him in recovering his gin who was kept away from him by force. It was pointed out to the gentleman that he had no power to interfere. He had heard of a case in which an overseer had promised an aboriginal a quantity of goods, tobacco, etc., for the labours of his wife, and after obtaining what he sought with the woman he refused to give the blackfellow the promised articles, and as the black was importunate, the overseer had him tied to a dray and cruelly flogged. A few weeks ago there was a good deal of excitement about a black boy being brought by stockmen into one of the civilised districts. When he was in the district he spoke of, it was a common practice to buy a black boy for £5, and although doubtless it was an illegal act he did not see that much harm was done in bringing the boys into contact with the white population. But the fact that they were liable to such illegal acts showed how necessary it was to give them such protection as that contemplated in the question.

Motion made, and question proposed.

Sir JOHN ROBERTSON hardly knew what his honorable and learned friend had in his mind when he put the question, unless it were the buying and selling of black boys, of which he seemed to approve. For his own part, he had a great objection to the practice, and if the facts could be proved the Government would do all in their power to put it down. But it was denied; and who knew whether it was true or not? He had no sympathy with those who bartered in human flesh. It was usually put forward that the Governments and the people of the colony had not

been good to the blacks; and he quite agreed with his honorable friend that they might have done more good to them. But having had experience in other colonies, especially in Queensland, he could say that our squatters never treated the blacks here as they had been treated in that part of Australia. No one in the Chamber had been so much in the backwoods as he and Mr. Ogilvie; but he defied any one to say that our squatters refused the blacks permission to "come in," as it was called, which refusal was the practice in the northern colony. When he was out in that country, having large stations there, he endeavoured to put down the practice of debarring the blacks from the stations, but he found it out of his power to resist it. If one man had 15 or 18 square miles of territory and others had the same areas adjoining, what was to become of these poor blacks if they were not allowed on the land? In New South Wales he usually made friends with a prominent member of the tribe and gave him sufficient consideration to make peace with the blacks, and there was no instance in which they were refused to "come in" on the run. He knew the proprietors of runs in this colony had almost invariably been exceedingly kind to the blacks. True, some of the convict servants, in olden times, were very cruel to these people; and their conduct was very different from that of their employers. The honorable member said the districts mentioned required peculiar consideration in reference to the blacks. But we had to go only 3 miles from Sydney to find blacks who required protection more than those in any other district. Let him go to Rose Bay and there he would see young children—of course in the guardianship of their parents—and any man might have them for a shilling. He could not understand why the Police Magistrate did not take the children from the women and put them into the Reformatory. A few days ago a clergyman came to him at the head of a deputation, to represent the manner in which these people were treated in the interior, and this case at Rose Bay was brought under his notice. No power was given to issue prosecution, but it was pointed out that the Government had an establishment near these women to which the children might be taken. Although we might not have done so

much as we ought to have done for the blacks, at any rate they received rations sufficient for their support; they also received clothing, and blankets had always been supplied to them. If, however, the blankets were given to them earlier than June, they sold them, and if they were given later people complained if the cold weather came in a little sooner than usual. What can be done with people who could not in these small matters take care of themselves? The other day a gentleman came to him to recommend the establishment of a school for aborigines in The Murrumbidgee district, and he immediately authorised the school without troubling about the mode of action or whether it came within the rule or not. The honorable member said we ought to appoint a Police Magistrate to protect the blacks. Some of them had been provided for, and a boat was given to them, but they quarrelled about it and it had to be given into the custody of the local Police Magistrate. The general matter might well be left in the hands of the Government, and at the present time they were giving it anxious consideration. It was, however, a difficult problem. We could not pretend to provide schools for them, or to improve their morals; they had no idea of morality. In the case the honorable and learned member referred to, the complaint of the aboriginal was not that his gin was the victim of immorality, but that he derived no profit from it. If we wanted to save the poor young children he had mentioned, their cases should be brought before the Police Court, and if the mothers were unfit to have charge of them, the children ought to be put in the Reformatory. We had a suitable place for them, capable of accommodating twenty-five girls, and there were now only four inmates. It was a discredit to the magistracy of the country that the children were not better cared for. It would be an act of philanthropy for some one to look after them. The Government were certainly not amenable to the complaints made by the honorable member.

MR. OGILVIE said the subject was one with which he was conversant, having passed a large portion of his life in the backwoods and taken a great interest in the aborigines. He quite agreed with the Vice-President of the Executive Council

[*Sir John Robertson.*]

that it was exceedingly difficult to know what ought to be done with these people. Neither the colonists nor the Government could be charged with having ill-treated them, though the Government perhaps had not done as much as it might have done in their behalf. They who knew most about the matter must be aware that the great agency in effecting the misery and destruction of the blacks was the intoxicating liquor they obtained, and every means practicable should be taken to prevent it from being supplied to them. Parliament had passed a law prohibiting the practice, but the law remained a dead-letter, sufficient trouble not having been taken to give it force. If the police in the different districts were strongly enjoined to watch public-houses in order to procure convictions for this offence, an improved state of the condition of the blacks might be brought about. But he had known even Police Magistrates to supply them with intoxicating drinks. He had known a Police Magistrate to speak of the prohibitory law as an improper one, more righteous to break than to observe. In the districts where these things took place it was not likely that the police would take much trouble to enforce the law. Something might be done to compel these officers to do their duty in this respect. With regard to the female children he thought the suggestion of the Vice-President of the Executive Council was right, that they should be taken away from parents who were found willing to trade them in the way he described. But he would not advocate their entire separation from their parents by shutting them up in reformatories to which the mothers had not access. Although the mothers might not be fit to be trusted with their children in this respect, as a matter of fact they had great affection for them, and to be deprived of them would inflict great grief and sorrow. Therefore he thought it desirable that the children should be taken from the parents and put under proper control, the parents being allowed access to them. Institutions of this kind had been established in South Australia for several years; the children were gathered together in schools and taken care of. If anything of that kind could be done for the aboriginal children of this colony it would be highly desirable. Any attempts

to civilise or christianise them must result in failure; they were not capable of receiving the influences of civilisation, and the race was not likely to last long enough to derive much benefit from christianity. As soon as the white race appeared in any district the blacks dwindled away and in a short time died out. The injury of taking from them their lands ought to be mitigated as much as lay in our power, and we should make their lives as comfortable as possible during the time they were destined to remain. Suggestions had been made that something should be given to them more than blankets. Clothes might be given to them two or three times a year; the cost would not be so great that we should begrudge it to a race whom we had despoiled of their territory.

Mr. FOSTER thought the state of the aboriginal inhabitants of the colony was a blot on the British name. We came here as British subjects and took up the country in millions of acres appropriating it to our own use, and the smallness of the amount we had contributed to the welfare of those we dispossessed was disgraceful. When we saw the state in which they were placed we could not acquit ourselves of blame. The wrong no doubt was one of neglect rather than of ill-treatment. The blacks here had not been so badly treated as in other countries. The people could not escape the blame of neglect by throwing it on the Government, though a great deal might have been, and had not been, done by the Government, who even now might do more. The honorable and learned member, Mr. Charles Campbell, suggested that some officers like protectors of the blacks should be appointed, and this was reasonable. How could these people who did not know right from wrong know how to protect themselves? Were they to be left to the philanthropy of persons whose interference was looked on as officious? These aborigines were expected to subject themselves to the laws of the country and to have the benefit of those laws. They did not know what benefit the laws afforded, and surely we might appoint persons to see what protection could be given to them. If there had been a protector of the blacks near Sydney he might have prevented the abuse of the children referred to by the Vice-President of the Executive Council. It was a breach of the law, according to

the ages of the children, and would subject the perpetrators to severe penalties. A person whose business it was to protect the children might avert the evil to a very great extent. Not long ago the same thing was going on in the interior, and a philanthropic gentleman spoke of it to the police and they said it was not their business to interfere, not being instructed to do so. He spoke to the Superintendent of the district, and under that officer's authority the infamous state of things was put down. The camps of the blacks had been used in a way that was a disgrace to any Christian country. If the laws were put in force more zealously, the blacks would be in a better position; nine-tenths of the wrongs they suffered were not owing to any defect in the law, but to the want of vigour in its administration. Nothing could be more philanthropic and more consistent with our duty as a Christian people, than to strive to enable these tribes to know the benefits of the law under which they lived. The appointment of officers, like the protectors of the blacks in Victoria and South Australia, to look after these people, and see that they were not wronged, would admit of the law being carried out effectively. He could not agree with what fell from Mr. Ogilvie as to the utter impossibility of doing anything to christianise the blacks. Efforts of that kind had and were now being made by philanthropic individuals and were exceedingly successful. It was true that the blacks had little idea of morality in our sense of the word; but it was true they had feelings like those of other human beings, which were being outraged every day. A gentleman who devoted himself to their interests told him that lately one of these unfortunate girls requested his protection from the brutality to which she was subjected by her tribe. She was put with others under protection. He did not think it likely that the whole of the blacks could be christianised; but something might be done in individual cases, and he was glad that a society was established for that purpose, and to this the Government might very properly give a little encouragement. The main thing, however, was that the Government should deal with the matter having respect to their own powers; and by the appointment of protectors they

might save these poor tribes from evils against which they could themselves offer no resistance owing to their ignorance of our law.

Mr. THORNTON was glad of the opportunity to express his grateful recognition of the kindness of the respective Governments of the colony, and especially of the present Government, to his unfortunate black countrymen. He had been individually and heartily interested in their welfare, and he was well aware that whenever any of the aborigines required attention and aid in any district it was readily given. They had on various occasions been furnished with fishing boats and tackle, sails, when necessary, food, clothing, and regularly with blankets. It was difficult to clothe them, for even if the clothes were marked with the broad-arrow they would sell them to the whites. With regard to food, perhaps the best plan was to supply them with rations at short intervals, say weekly. He was one of those who had come to the conclusion that the civilisation and christianising of the aborigines was an utter impossibility. They were inherently roguish and wild; their nature was untamable. As a people they were not susceptible of civilising influences, and could not understand the difference between right and wrong. As to a protectorate of the blacks, he was disposed to agree that some such system might be successful, but this would require inspectors in every district, north, west, and south, and then the inspectors themselves would require supervision, or the public money might be wholly misused. As far as the Government could do so, they distributed the necessities of life as well as clothing, and the magistrates were ready to carry out the behests of the Government in these matters. Any attempt to do more was not likely to result in any large degree of success. Perhaps he had had as much experience as any person in the colony had of the blacks; he had been with them shooting, hunting, fishing, and in camp from the earliest days which he could remember, and his sympathies for them were such that he could but feel grateful to the Government who had at all times been disposed to alleviate their wants and distresses.

The PRESIDENT: It is not desirable, after the House has proceeded to the Orders

[Mr. Foster.

of the Day, to indulge in a practice of moving the adjournment of the House, with a view to call attention to any particular question and to comment on it; and it cannot tend to the improvement of the mode of conducting the business if it were extended. I may be excused for calling attention to the matter, because there may be a temptation to discuss important questions when once attention has been called to them, and so they would be debated without notice to those who may take great interest in them, and the result would be unsatisfactory as far as any useful purposes are concerned. The latitude allowed to members to call attention to particular subjects on motions for adjournment is intended to apply rather to matters which arise suddenly, topics of temporary interest requiring to be dealt with at once; it was never intended to admit of questions of permanent interest being discussed without the usual notice. If the honorable member had called attention to the fact mentioned by the Vice-President of the Executive Council of a certain body of aborigines being allowed to infest a suburb, that might properly have been introduced in such a manner; but the general question of the relations of the Government and the aborigines is of too great importance to be taken up for discussion in that manner.

Question—That the House do now adjourn—put, and resolved in the negative.

#### SUPREME COURT TEMPORARY JUDGE ACT CONTINUATION BILL.

##### SECOND READING.

Sir JOHN ROBERTSON, rising to move the second reading, said: It will not be disputed that it is necessary to make some provision to uphold the strength of the Supreme Court Bench. I should have been glad if the Government could have seen their way to propose the appointment of a permanent Judge; for I am not disposed to think that the mode proposed by the Bill is the best to adopt in dealing with the matter. But we know from experience the difficulties to be encountered in getting even temporary assistance; and they are so much greater in regard to the appointment of a permanent Judge, that we could not deal with the matter in that form.

Mr. DARLEY : It is with much regret that I rise to oppose the second reading of the Bill. I have no doubt it is the desire of the Government to provide the necessary assistance for the Supreme Court ; but I can scarcely conceive any course more unconstitutional and dangerous to the due and proper administration of justice than the appointment of Judges temporarily at the will of the Executive. Nearly a year ago, in consequence of the pressure of business in the Supreme Court, and the inability of one or more Judges, owing to illness, to discharge their duties, it was found necessary to appoint an additional Judge. The Government did indeed bring in a measure to authorise the appointment of a permanent Judge, but it failed to pass owing to causes to which it is not now necessary to allude. The pressure still continued and the Government brought in a Bill providing for the appointment of a temporary Judge for one year ; and, although to those conversant with the circumstances, this appeared an ill-advised course, the Bill passed without much comment. Now we are near the close of that year we are asked to pass a Bill to provide for a temporary Judge for another year. I say that this is not only unconstitutional, it is also dangerous, and must be to the prejudice of the person who holds the position of temporary Judge. I do not see how any Government can pass him over. This Government may not be in office in 1881 when the Act expires, and it is also possible, though highly improbable, that another Government may not think fit to appoint him. He would, then, after sitting for two years as a Judge be thrown back into his profession at the Bar. It is not right so to treat any gentleman, or to subject him to such risk. The permanent Judges of England and in the colonies hold office during good behaviour, and are removable only on the address of both Houses of Parliament. How does that come about ? Prior to the Bill of Rights, passed in the reign of William III., no Act of Parliament regulated the appointment of Judges ; different monarchs appointed them in different ways. Some kings appointed Judges during good behaviour, and the three kings preceding the Commonwealth appointed the Judges during their pleasure. When William III. came to the throne it was thought the

time had arrived when so important a matter should be settled ; it had been struggled for by the people who sought to secure their independence, and it was held that the Judges ought to have a certain tenure of office. In the Bill of Rights, therefore, was introduced a clause that they should hold their appointments during good behaviour. This was forced on the Crown. It did not give satisfaction in the course of the reign of George I. and George II. The question was referred to the Judges who held that inasmuch as they received their patents from the Crown, the Judges on the death of the Sovereign ceased to hold office. When Queen Anne came to the throne there were actually three Judges, who were acting as Judges in the previous reign, dismissed from office. When George III. came to the throne he reappointed all the Judges ; but in his speech on proroguing Parliament in 1761 he pointed out the evil consequences likely to ensue from the Judges ceasing to act after the king's death, and requested that a Bill be brought in to set the matter at rest ; and a Bill was brought in. In "Hansard's Parliamentary History" it is recorded that on the 3rd March, 1761, the king made a speech respecting the independence of the Judges. His Majesty said—

My Lords and Gentlemen,—

Upon granting new commissions to the Judges, the present state of their offices fell naturally under consideration.

In consequence of the Act passed in the reign of my late glorious predecessor, King William III., for settling the succession to the Crown in my family, their commissions have been made during their good behaviour ; but notwithstanding that wise provision, their offices have determined upon the demise of the Crown ; or at the expiration of six months afterwards, in every instance of that nature which has happened.

I look upon the independency and uprightness of the Judges of the land as essential to the impartial administration of justice, as one of the best securities to the rights and liberties of my loving subjects, and as most conducive to the honor of the Crown ; and I come now to recommend this interesting object to the consideration of Parliament, in order that such farther provision may be made for securing the Judges in the enjoyment of their offices during their good behaviour, notwithstanding any such demise, as shall be most expedient.

Gentlemen of the House of Commons,—

I must desire of you in particular, that I may be enabled to grant and establish upon the Judges such salaries as I shall think proper, so as to be absolutely secured to them during the continuance of their commissions.

Lord Hardwicke moved the address in reply, which says—

We look upon your wise and just sentiments concerning the independency and uprightness of the Judges of the land as the strongest proof of what Your Majesty has formerly declared to us \* \* \* and we will not fail to take into consideration this important object of the continuance of the Judges.

In the notes to the speech of Lord Hardwicke, after referring to the statute of Will. III., it is said—

Upon the demise of Queen Anne the same point came in question. At that time it was found that the Act had made no alteration—had only used words, of which the law had settled the construction, etc. \* \* \* Three Judges left out and all the rest had new commissions. \* \* \* Upon the demise of George the First the like happened, but only one left out. \* \* \* Besides, it gave the Judges a new heterogeneous and unconstitutional dependence. They were sworn to one king, and depended on a future king in expectancy—

So it is here, a Judge is sworn in under one Government and depends upon a future Government in expectancy.

His Majesty has demonstrated his wisdom in chusing to shut this door. In the first place, to secure his people; in the next place, to prevent encouragement to divisions in a place where division must always create the worst and most disagreeable faction in the State.

I was curious to look at the statute passed to carry into force the provisions of the Act of Will. III., and this is 1 Geo. III. cap. 23. It recites the Act of Will. III., and then says—

“May it therefore please Your Majesty that it may be enacted; and be it enacted by the king’s most excellent Majesty \* \* \* that the Commission of Judges for the time being shall be, continue, and remain in force during their good behaviour, notwithstanding the demise of His Majesty or any of his heirs and successors, any law, usage, or practice to the contrary thereof in any wise notwithstanding.

The salaries were provided for in that statute. One of the ablest writers, regarded by Sir James Martin as one of the most scientific writers on law, I mean Kent, who wrote commentaries on the laws of America, as Blackstone did on those of England, in dealing with this subject says—

“By the Constitution of the United States, the Judges, both of the Supreme and Inferior Courts, are to hold their offices during good behaviour: and they are, at stated times, to receive for their services a compensation, which shall not be diminished during their continuance in office.” The tenure of the office, by rendering the Judges independent, both of the government and people, is admirably fitted to produce

[Mr. Darley.]

the free exercise of judgment in the discharge of their trust. This principle, which has been the subject of so much deserved eulogy, was derived from the English Constitution. The English Judges anciently held their seats at the pleasure of the king, and so does the Lord Chancellor to this day. It is easy to perceive what a dangerous influence this must have given to the king in the administration of justice, in cases where the claims or pretensions of the Crown were brought to bear upon the rights of a private individual. But, in the time of Lord Coke, the barons of the exchequer were created during good behaviour, and so ran the commissions of the common law Judges at the restoration of Charles II. It was still, however, at the pleasure of the Crown, to prescribe the form of the commission, until the act of settlement of 12 and 13 Will. III. cap. 2, which was in the nature of a fundamental charter, imposing further limitations upon the Crown, and adding fresh securities to the Protestant succession, and the rights and liberties of the subject. It established that the commissions of the Judges be made *quandiu se bene gesserint*, though they were still to be removable upon the address of both Houses of Parliament. The excellence of this provision has recommended the adoption of it by other nations of Europe. It was incorporated into one of the modern reforms of the Constitution of Sweden, and it was an article in the French Constitution of 1791, and in the French Constitution of 1795, and it was inserted in the constitutional charter of Louis XVIII. The same stable tenure of the Judges was contained in a provision in the Dutch Constitution of 1814, and it is a principle which likewise prevails in most of our State Constitutions, and, in some of them, under modification, more or less extensive and injurious.

In monarchical governments, the independence of the judiciary is essential to guard the rights of the subject from the injustice of the Crown: but in republics it is equally salutary in protecting the Constitution and laws from the encroachments and the tyranny of faction. Laws, however wholesome or necessary, are frequently the object of temporary aversion, and sometimes of popular resistance. It is requisite that the Courts of Justice should be able, at all times, to present a determined countenance against all licentious acts; and to deal impartially and truly, according to law, between suitors of every description whether the cause, the question, or the party, be popular or unpopular. To give them the courage and the firmness to do it, the Judges ought to be confident of the security of their salaries and station.

It seems therefore that this notion of ours of appointing Judges to hold office from year to year, dependent on the vote of Parliament, is the creation of a precedent never yet admitted in any British community. I trust that we shall not adopt that course. Nothing can be worse than to appoint temporary Judges to carry on the business of our twelve circuits. Judges have been appointed to do those duties. In April two temporary Judges were

appointed. One of them, Mr. M. H. Stephen, taken from the Bar, was undoubtedly an able Judge, and perhaps a better could not be appointed as a permanent Judge. But he is taken from the Bar to preside as a Judge, and then has to go back to the Bar, and may hear his decisions as a Judge appealed against. Another instance is that a District Court Judge is sent to preside at an Assize. This must sap the independence of the District Court Judge. He was paid a fee in addition to his meagre salary. It is possible that you may make these gentlemen seekers for these offices; and one of the fundamental principles laid down for counsel is that he ought never to seek the office of Judge. If it comes to him he may take it; if he seeks it, he is not fit to be a Judge. You make these gentlemen dependent on the Attorney General of the day. One Attorney General may have a friendly feeling towards some one District Court Judge and he is appointed, and another Attorney General may be on intimate terms with another Judge and appoint him. Thus you sap the very foundation of their independence, and the practice tends to make them seekers for this particular office. I trust, if the House throws out the Bill, as I press upon them to do, that the Government will see fit to bring in a Bill to create a permanent appointment. It is thought by many persons that a fifth permanent Judge is not necessary. I disagree with them. At present, at any rate for a year, a fifth Judge is necessary. Let a Bill be brought in providing for a permanent Judge, with a saving clause that it shall not be necessary in case of a vacancy that the vacancy shall be filled up; let the Government have the discretion to fill it up or not as they see fit, and as the necessities of the business require. I happen to know that the business of the Court of Common Pleas in Ireland fell off. There had been four Common Law Judges; a vacancy occurred, and the Government of the day did not see fit to fill it up. Several years passed, and then the number was reduced to three. So here, if the Government under Acts of Parliament are bound to fill up vacancies, they may under the Bill I suggest introduce a clause that it shall not be incumbent on them to do so, unless the public requirements and the state of the business of the Court render

it necessary. It is exceedingly dangerous in every possible way, as well as unconstitutional to appoint Judges in the manner now proposed, and it must be unsatisfactory to the holder of the office, to whom it is almost a cruelty. Independently of that, a Judge in the minds of the people ought to be held in respect, which cannot be the case if he is on the bench to-day and to-morrow at the Bar, perhaps ranking below other members of it. The obedience and respect due to a Judge is the respect and obedience due to the administration of justice. I beg to move,—

That all the words after the word "Bill" be omitted with a view to insert in lieu thereof the words "be read a second time this day six months."

Mr. STEWART intended to vote for the second reading of the Bill; but, at the same time, he should like to hear some reasons for bringing in such a Bill. He believed that the present state of the bench would be improved by the restoration of the Chief Justice to health, and it might be as well to wait a little longer until that came about. No one could deplore that gentleman's illness more than he did, or would be more rejoiced at his restoration to health, as he was so well able to effect a reform in the practice and procedure of the Court. As the vacancy was only temporary, he did not see how it could be filled up. He was surprised that the Government did not take advantage of the law as it stood, which enabled them to appoint any of the District Court Judges.

Mr. DARLEY: Only on circuit.

Mr. STEWART: That, I believe, is not the reason. He believed it was because the District Court Judges were alleged to be inferior; not by the public, who appreciated the justice they obtained in the District Courts quite as highly as that administered in the Supreme Court; possibly this was because they were easily reached. But why should there be so much difference in the course of proceedings in the District Courts and those in the Supreme Court? Why, also, so much delay in the latter? Justice could be obtained at a reasonable price in the District Courts, but not in the Supreme Court. What was the real difference in the kind of justice administered in the two Courts? He hoped the time was not far distant when some attempt would



be made to abolish the Supreme Court ; we could do well without it. All we had to do was to give the District Court Judges the same powers as those of the present Supreme Court Judges. At any rate he hoped that next session a select committee would be appointed to inquire into and report on the practice and procedure of the Court, or into the administration of justice in all the Courts. To effect any reform required the qualifications of professional men, and the difficulty in choosing them was that they had a bias prejudicial to fair and full inquiry. But it must be made. He should like to have it explained, if another Judge was necessary for a temporary period, why the Government did not issue a commission to a District Court Judge, as they were empowered to do by the 26th section of the District Courts Act ? Why should the Circuit Courts be all held at the same time—and why have long vacations of three months each ? That was, he supposed, arranged by the Judges ; not provided for by law. The Government must have given the matter more consideration than he could give it, and he should, therefore, vote for the second reading of the Bill.

Mr. OGILVIE said although he was quite sensible of the necessity existing for additional power on the bench of the Supreme Court, he should feel it his duty to vote for the amendment, in order to give the Government an opportunity to bring in a Bill such as that shadowed forth by Mr. Darley. He entirely agreed with that honorable and learned member in the objections he pointed out against the employment of District Court Judges as Judges of the Supreme Court on Circuit. It must not be forgotten that considerable difficulty had been experienced in finding barristers of high standing, to accept appointments as Judges of the Supreme Court. It followed that if a District Court Judge was appointed to do duty as a Supreme Court Judge on Circuit, the public who might be compelled to have recourse to the Supreme Court, would have an inferior quality of justice. All knew that the expense of litigation was greater in the Supreme Court than in the District Courts, and why in such case should the litigants be compelled to pay Supreme Court rates for administration by District Court Judges ? He did not

mean to imply that there were not among the District Court Judges gentlemen sufficiently eminent as lawyers to be able to discharge the duties as efficiently as Supreme Court Judges ; but, as a rule, they must be considered inferior, and if the public were compelled to take the substitute, they would be subject to an injustice. It was highly desirable that a permanent appointment should be made with power reserved to decline to fill up a future vacancy.

Mr. FOSTER found it impossible to disagree with the arguments urged by Mr. Darley, for he held that it was essential to the purity of the administration of justice that the Judges of the Supreme Court should be permanent. This was almost as essential to the healthful carrying out of the principles of our Constitution as that we should have a Governor. It was the main support of the Constitution, if we were to be a free people, the Constitution being that we shall depend on the purity of the Supreme Court to determine the rights of British subjects in the colony. He did not mean to say that Judges appointed temporarily would be open to corruption ; far from it. He believed that men might be found as honest if appointed temporarily as any who might be appointed permanently. But the principle was bad. The public should have the fullest confidence in the purity of the Judges. There was only one circumstance under which the appointment of a temporary Judge would be excusable, and that was absolute urgent necessity. It was stated last session that there was such necessity for a fifth Judge, and a Bill was brought in to provide for the appointment, the urgent necessity being given as a reason for introducing the Bill. Seeing that there had been this admission by both Houses, we might have expected a fifth Judge Bill on this occasion. The Bill of last session was assented to by both Houses and was lost owing only to differences as to details.

Sir JOHN ROBERTSON : Differences between attorneys and barristers.

Mr. FOSTER did not think so. But there was a minor difference, not on the matter of principle. But the necessity for a fifth Judge having been admitted, surely we might have expected that this session we should have had a Bill providing for the appointment.

[*Mr. Stewart.*

Sir JOHN ROBERTSON : Then we should have had another silly squabble, and lose another month over it.

Mr. FOSTER : Then was it not to be supposed that those who made the mistake once would have been wiser on another occasion. It appeared to him that there was no possible excuse for not endeavouring to appoint Judges in accordance with the Constitution, or for making an express exception in the present circumstances. The only thing which he saw telling against this argument was that according to the Bill providing that a temporary Judge might be appointed, the appointments might have lasted for two years from that time, and up to the present even there was a power to appoint for twelve months. That Act expired this evening. It would be scarcely right to appoint a temporary Judge for a second year without consulting Parliament. For this reason he thought the Government were right to consider whether it was justifiable under the circumstances to appoint a temporary Judge beyond the present year. But there was no reason why the appointment should not be permanent. He could not see that the inconvenience would be great, and the pressing necessity of the case would be a sufficient justification.

Sir GEORGE INNES said if he thought there was a reasonable probability of a Bill, such as Mr. Darley had indicated, passing into law this session, he would unquestionably go with the honorable member; because every one must admit the full force of his reasons. We want to secure the perfect independence of the Judges provided for in the Constitution under which we had the happiness to live; there could be no greater guarantee for the preservation of the liberties of the people and the conservation of everything that leads to the good of society. No doubt a system of appointing temporary Judges would strike a blow at that principle. Looking at the matter from every point of view, he did not see any reasonable probability that the two Houses would be brought into accord on the matter; even if the Government adopted the suggestion of Mr. Darley the Bill could scarcely be passed this session. That being so he thought the administration of justice would even more than now be thrown out of gear, and that was not a desirable state of

things. It would be in the recollection of the Council that when the measure we were asked to continue, the Temporary Judge Act of 1879, was before Parliament, the justification for it was that owing to the illness of some of the Judges there was a great pressure of business, consequent on the accumulation of arrears. Unfortunately those circumstances existed now, and as a matter of fact there was the same justification for this measure as for that of 1879. It was, then, no doubt contemplated that if the same circumstances continued there should be power to appoint a temporary Judge for the second year. Honorable members of course were aware that it was not at all certain that the hopes that the Chief Justice would be restored to health before now had been realised, and we had no means of knowing whether his Honor was likely to resume his seat on the bench; another Judge had leave of absence on the ground of illness, and we knew his health was still in a failing condition. So that there did not seem to be a possibility, without additional help, of clearing off the arrears and keeping the Court free from such impediments. The principle of a measure of this kind was vicious and wrong, and could only be defended on the ground of extreme necessity under peculiar circumstances. The circumstances at present were exceptional so far as to justify the course taken by the Government with reference to the Bill. It was a choice of evils, and he thought the lesser one was to pass the measure.

Mr. C. CAMPBELL said the argument of Sir George Innes would have been effective if Mr. Darley had proposed that no Judge should be appointed. He considered that there should be five Judges—four for common law and one for equity. From the earliest period we could recall in modern history, we found that there were in England twelve common law Judges in addition to the Chancellor who had the equity jurisdiction. In Scotland they always had fifteen Judges. At that period the business in England and Scotland did not exceed the business now to be transacted in Sydney owing to the great change of circumstances, from increase of commerce and other causes. There would then be no impropriety in having a fifth Judge in addition to the Equity Judge.

The question now was whether we could dispense with another Judge in the event of Sir James Martin being able to resume his seat. He considered that there would still be a strong necessity for another Judge. When four Judges sat there could hardly be a decision if they differed in equal numbers. At present he believed the fourth usually retired in order that a decision in such case might be arrived at. Then, with regard to the propriety of having a Judge temporarily appointed, he could not understand how any Englishman, prejudiced as an Englishman, could entertain the proposition. At the accession of George III. it was thought necessary to appoint Judges during good behaviour, but it was only due to the origin of party Government and could not be traced further back than William III. Henry V., on the death of his father, was represented by Shakespeare as reinvesting the Chief Justice with his authority, saying that he was unwilling to deprive the country of so independent a Judge. The feeling of Englishmen was so strong in favour of permanent appointments that, except in the times preceding the convulsion of 1688, nothing else would satisfy the people. It was scarcely necessary to allude to the eccentric suggestion that the Supreme Court be abolished and a number of District Court Judges be appointed to do the duties. The whole theory of our Constitution was that the Judges on the bench were the visible representatives of the power of the Throne, and anything tending to detract from the respect due to their office and to destroy the principles which had been sanctioned would deprive the people of that happiness which had been the result of our well-balanced Constitution. He should vote for the amendment.

Sir JOHN ROBERTSON, in reply: I think no lawyer who reads the Act which this Bill is to continue will venture to say that it is in the power of the Government to reappoint the present temporary Judge under the present law. I am sure that what was intended by that measure was that the Government may appoint two Judges for the year, if necessary, and not appoint one after the other. The Government have not failed in their duty in the matter. With regard to Mr. Darley's assertion that there is no

[*Mr. C. Campbell.*

precedent for the appointment of a temporary Judge before the Bill of last session, I may remind him that Sir William Manning was appointed a temporary Judge not many years ago. I think the appointment of temporary Judges is open to unbounded objection; it is not fair to the Judge appointed, because of his having to return to the Bar. But Mr. Darley ought to know how it is that we have not a fifth Judge. The Government provided in a Bill for the appointment, the Assembly agreed to the Bill, but the Council inserted in it restrictions not known in the mother country. The honorable and learned member spoke of the powers the king had, but he never told us—he could not tell us—that the king was restricted in his choice in the manner in which the Council desired to restrict the Government. The Government tried, and the Assembly tried, to provide for a fifth Judge; the Council obstructed the passage of the measure, and the other Chamber gave it up.

Mr. DARLEY: The Council was then supporting the views of the Government.

Sir JOHN ROBERTSON: No. The Government desired to pass the Bill as it came from the Assembly. The representatives of the people are entitled to have something to say on these matters. That Bill left it fairly open to make a choice, just as the King of England at one time had the power to make a choice, but the Council insisted on a restriction, and so the Bill was lost.

Mr. FOSTER: There was no restriction; the words "any fit person" were substituted for "any attorney."

Sir JOHN ROBERTSON: That was after we lost week after week in discussing the Bill. If the present Bill be not passed it is not likely that any other Bill on the subject will be brought in this session. That is enough for me to say on that point. I feel convinced that no other Bill will be brought in. I feel strongly in favour of permanent Judges, not absolutely permanent, because there is a power to remove all these Judges, and there ought to be such power. We have permanent legislation for the appointment of temporary Judges.

Mr. DARLEY: On circuit only.

Sir JOHN ROBERTSON: I say we have permanent legislation for the

appointment of temporary Judges of the Supreme Court, and that is to be found in the District Courts Act. What is the great difference between the consideration of causes in Sydney and out of Sydney? I cannot see why suits should not be tried on Circuit. We should now have had a fifth Judge if it had not been for the action of this House. I hope the present Bill will be passed to save business from further confusion.

Question—that the words proposed to be omitted stand part of the question—put, whereupon the House divided with the following result:—

Ayes	...	...	...	11	..
Noes	...	...	...	6	
					—
Majority	...	...	...	5	

AYES.

Sir John Robertson,	Mr. Marks,
Mr. Samuel,	Mr. Blaxland,
Mr. Frazer,	Sir George Innes.
Mr. G. H. Cox,	<i>Tellers.</i>
Mr. Norton,	Mr. Flood,
Mr. Piddington,	Mr. Stewart.

NOES.

Mr. Foster,	<i>Tellers.</i>
Mr. Busby,	Mr. A. Campbell,
Mr. Darley,	Mr. Ogilvie.
Mr. C. Campbell.	

Amendment consequently negatived.

Original question put, and resolved in the affirmative.

Bill read the second time.

Reported from Committee of the whole without amendment; report adopted.

House adjourned at 12 minutes before 7 o'clock p.m.

## Legislative Assembly.

Wednesday, 30 June, 1880.

Church and School Lands Dedication Bill (No. 2)—  
Endowment of Municipalities—Wharfage and Tonnage  
Rates Bill—Duty Stamps—Ways and Means (Proposed  
Export Duty on Coal)—Volunteer Land Orders Bill—  
Appropriation Bill (Second Reading).

Mr. SPEAKER took the chair at half-past 4 o'clock p.m.

## CHURCH AND SCHOOL LANDS DEDICATION BILL (No. 2).

Message from the Governor—intimating that this Bill had been reserved for the signification of Her Majesty's pleasure—reported.

## ENDOWMENT OF MUNICIPALITIES.

Motion (by Sir HENRY PARKES) made, and agreed to,—

That this House will, to-morrow, resolve itself into Committee of the Whole to consider the expediency of bringing in a Bill to grant to the municipalities of the colony other than the Municipal Council of Sydney a special endowment extending over twelve calendar months.

## WHARFAGE AND TONNAGE RATES BILL.

Motion (by Mr. WATSON) made, and agreed to,—

That a message be sent to the Legislative Council stating the Assembly's reasons for disagreeing with certain of the Council's amendments in the Bill.

## DUTY STAMPS.

Mr. BURNS asked the COLONIAL TREASURER,—Whether it was intended to allow postage stamps to be used as duty stamps?

Mr. WATSON replied: The Act as passed in 1873 provides that postage stamps may be used as duty stamps. The question has, however, arisen as to whether that Act is still in force, and I have referred the point to the Attorney General for his advice, and he has advised that the Act is still in force. Instructions have therefore been given that postage stamps may be used as adhesive duty stamps.

Mr. MACINTOSH: Will stamps sold when the old Act was in force be available for use under the existing Act?

Mr. WATSON: Yes.

## WAYS AND MEANS.

### PROPOSED EXPORT DUTY ON COAL.

Mr. WATSON rose to move,—

That from and after the first day of August, 1880, there shall be taken and levied upon all coal and shale exported from the colony a duty of 6d. per ton.

He said: So much has already been said on this matter that I think I need hardly use much argument in favour of the proposal which I have made. I desire to point out that the proposal I now submit