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Sir Julian Emanuel Salomons, Kt., K.C.

His Life Till 1886.

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(Read before the Society, December 20, 1944.)

Sir Julian Emanuel Salomons, Kt., K.C., was born at Edgbaston, Birmingham, England, on 4th November, 1836. § He was a man of crises, for throughout his career he had to make momentous decisions, which vitally affected his future.

His father was Emanuel Salomons,* a merchant of Birmingham. He originally spelled his surname Solomons, as is evidenced by the spelling of his name in the York Street Synagogue records, though in the *Australian Almanac* for the year 1857, p. 164, his name is printed Solomon. In the earliest *New South Wales Law Reports* his name is recorded as Salamons, but after 1870 always as Salomons, which is the style uniformly used in the *Government Gazettes* which refer to him.

His mother's maiden name was Levien, she being the sister of Mrs. P. J. Cohen (wife of the founder of the Sydney Jewish community), also of Mrs. Saul Samuel (the first wife of Mr. Saul Samuel, afterwards Sir Saul Samuel, Bart.), and of Mrs. S. A. Joseph, whose husband was for a number of years a member of the Legislative Council of New South Wales, and was also at one time President of the Sydney Chamber of Commerce.

It appears to me probable that this relationship was the cause of Salomons' determination to come to Australia. He arrived here in September, 1853, and obtained employ-

§ *Jewish Year Book*, 1907-8.

* See *Dictionary of National Biography*, 2nd Supplement, Vol. 3, p. 254.

ment "in a book-selling establishment in Sydney where his taste for literature found plenty of scope."†

In October, 1855, a vacancy occurred in the office of Secretary to the York Street Synagogue, and in response to an advertisement Salomons was the only applicant for the position. On October 24th he was interviewed by the Board, and recommended to the General Body at the special general meeting held on October 28th, 1855. Mr. Maurice Alexander spoke of the high talents and capabilities of "Mr. Salomons," considering him "equally competent with any person we could procure in the Colonies," and Mr. Mark Marks "from his long and intimate knowledge of the present candidate supported the motion," but the meeting "considered him too young and that insufficient publicity was being given to the vacancy." In the result, the Committee declined to adopt the recommendation.

However, the Board apparently appointed him to hold the office for three months, and advertised the position in Sydney, Melbourne and Hobart. Four applications were received, of which three (including that of J. E. Solomons) were referred to a subsequent general meeting, which, after a ballot, appointed him Secretary.

Salomons early indicated his independent spirit, for the minutes of the Synagogue Board of 16th April, 1856, recorded that the President stated that "the Secretary, through him, requested the protection of the Board against the undue interference of the Treasurer with the discharge of his official duties." The minutes recorded that :—

The Secretary, at the desire of the Chairman, explained the circumstances which had compelled him to bring it under the notice of the Board, instancing particularly the fact of a clerical error having been made in the Register of a marriage entered by the Treasurer, which, with the leave of the President, having been corrected by him (the Secretary), a question as to the validity of the marriage might thereby be raised.

Salomons established his point, for the minutes recorded that :—

The President instructed the Secretary to take entirely under his own charge the whole of the books of the Synagogue to which the Treasurer would also have access in the presence of the Secretary.

†*Daily Telegraph*, April 9, 1909.

His salary as Secretary was at first £100 per annum.† On 1st February, 1857, he applied for some acknowledgment for his extra services since assuming office, and on 15th February, 1857, he was granted £20 for his services performed previous to his appointment as Secretary. The Annual Report for 1857 indicates that the salary in that year was at the rate of £120 per annum. On this occasion a resolution was passed to index the various resolutions of the Board from 1853. It does not appear whether Salomons suggested it, but it may well have been his suggestion.

Mr. Salomons first discovered his power as a debater at the Sydney School of Arts Union, where he trained himself in readiness and fluency by purposely avoiding any study beforehand of the subject under discussion and arguing in maintenance of rapidly formed opinions without having previously "got up" his speech.‡

The *Great Synagogue Jubilee Volume* records that :—

He was full of ambition and particularly active in the work of the Congregational Debating Society and School of Arts Debating Society, and displayed brilliance and acquired no small reputation for promise of oratorical powers. In consequence several Jewish citizens of Sydney subscribed to a fund to enable him to return to London to study for the Bar.

On 8th July, 1857, he notified his "intention of resigning his office on 1st August next," and on 14th July it was accepted, the minute recording that it was "owing to other considerations on his part."

His resignation of his position of Secretary of the Synagogue apparently did not altogether please the Treasurer, whose report for the years 1856-7 stated that :—

The resignation of the late Secretary, Mr. Salomons, placed me in a rather unpleasant position, the Board of Management having to obtain the services of Mr. De Lissa, whom you have duly elected to that office, he having all the arrangements of the Synagogue to learn.

Indirectly, this was a tribute to Salomons, for no reference to Salomons' lack of acquaintance with Synagogue arrangements appeared when he took office.

On arrival in England in 1858 he was admitted a

†See the Synagogue Annual Report dated September 25, 1856.

‡*Illustrated Sydney News*, August 16, 1890.

member of Gray's Inn, where he qualified, being admitted as a barrister-at-law by his Inn on 26th January, 1861.||

While studying, he indicated his appreciation of the value of logic, which he later made such a characteristic of his work, for in 1859 he gave my father, then a student at London University College, a copy of Smart's *Manual of Logic*.

He returned to Sydney early in 1861 and commenced practice at the Bar, taking chambers at 112 Elizabeth Street, which appears to be where *The Sun* Newspaper Building now stands.*

On his return to Australia,

he divided his time between literature and law, being in the late Mr. S. Bennett's time a contributor to the *Empire* newspaper during which period a curious incident occurred. Having written an article with some pungency, the wit thereof offended a worthy politician who sought his legal advice as to whether certain paragraphs were libellous or not, little knowing that the learned counsel was the very author on whose words he wished to found an action. History telleth not what was the result, but it is to be concluded that the young advocate's ready wit enabled him to persuade his client that there was only honied intention where he had imagined a sting.§

This statement does not appear to be altogether accurate, for the last issue of *The Empire* was in December, 1860, just before he returned to Australia, and thereafter it was incorporated in the *Sydney Evening News*.† It is therefore probable that he wrote for the *Evening News*, and not *The Empire*, and that the article appeared in the former newspaper.

He soon acquired a practice at the Bar, for in the first volume of the Supreme Court Reports (1862) appeared reports of three cases in which he appeared *alone* in June, 1862; of these cases, two related to Bills of Exchange and the third to a point of practice. Later in 1862 he went to England. Not knowing how long he would be absent, he resigned from his Synagogue seat.** On arrival in London he married his cousin, Louisa, the

||*New South Wales Law Almanac*, 1862.

**Sands Sydney Directory*, 1864.

§*Illustrated Sydney News*, August 16, 1890.

†See note in Card Catalogue of Mitchell Wing of New South Wales Public Library.

**See letter from Secretary to him of October 7, 1863.

daughter of Maurice Solomons, of Edmonton, near London,^{††} and returned to Sydney before 30th August, 1863. On his return from England he went to live at 263 Crown Street, Surry Hills.[§]

In 1863 he appeared in two reported cases relating to "Ejectment," the former being heard on 7th October, 1863.

In September, 1861, he applied to be admitted a Privileged Member of the Synagogue, and the minutes record that this was done unanimously.[‡] On 1st September, 1861, he was appointed one of the auditors of the Synagogue, and apparently re-elected in 1862, for on 30th August, 1863, he was asked to audit the accounts for the past year.[¶]

In September, 1863, the Secretary of the Synagogue informed him that he was not a member of the Synagogue, which he resented,^{||} and the President on 7th October, 1863, wrote a full explanation of the position,* which apparently satisfied him, for in 1868 he became a member of the Board.

In the report for the year 1870-1871 he is not mentioned as attending any Board meetings. At that time, as well as being Solicitor-General and a member of the Executive Council, he was a M.L.C. and represented the Government in that Chamber.

In the period 1864 until 1871 his practice increased, the cases in which he appeared relating extensively to Electoral and Municipal matters, Real Property, Bills of Exchange, but also to others matters, including Criminal Law, and occasionally, though not often, he appeared in cases in the Equity Jurisdiction of the Court.

While Solicitor-General he led members of the Bar far his senior, and obviously showed considerable confidence in himself.

In 1866 the Bertrand Murder Case brought him considerable prestige, and it has been said that his association

^{††}*Jewish Year Book*, 1907-8.

[§]*Sands Sydney Directory*, 1864.

[‡]See Minutes.

[¶]See the Secretary's letter to him of October 7, 1863.

^{||}See his letter of September 3, 1863, recorded in the Minutes.

*See Letter Book, folio 675.

with that case laid the foundation of his reputation,[†] though reports inaccurately describe him as having conducted the prosecution.

Bertrand was tried before Sir Alfred Stephen, C.J., on a charge of murder. On the first trial the jury disagreed. Shortly afterwards he was re-tried before the same Judge, and defended by Mr. W. B. Dalley, Q.C., and Mr. W. C. Windeyer.

In connection with this case, two facts are of importance. At the first trial, the Crown Prosecutor did not exercise his right of reply. On the second occasion he did so. At the second trial, at the suggestion of counsel for the accused, the Chief Justice's note of the evidence given by several witnesses was read over to such witnesses after they had been sworn, and they were asked if such was correct; and counsel for the Crown and the accused were given the right of asking any further questions, and whether the witnesses desired to add to it and qualify it in any way. On the second trial the accused was convicted.[‡]

Salomons was then briefed to conduct an appeal. The course of events indicates his pertinacity. First, an appeal was made to the Supreme Court on questions reserved at the trial. He sought to raise the question of the irregularity of the method in which the evidence was taken at the trial, but the Court held that these points could not be raised, but that they might be represented to the Executive if counsel thought them of any weight. The appeal was dismissed by majority.[§] Thereafter, he applied for leave to re-argue the matter before four Judges; this application was not granted.**

Then he moved for a *rule nisi* for a new trial or arrest of judgment upon four grounds, which related to the method of taking the evidence, the permission granted counsel for the Crown to address the jury in reply, the facts that the points reserved in the special case had not been argued before four Judges, and that the first jury

[†]See the *Dictionary of National Biography*, 2nd Supplement, Vol. 3, pp. 254-255.

[‡]See *Sydney Morning Herald*, February 28, 1866, and 4 Moore, P.C.N.S. 460.

[§]*Sydney Morning Herald*, March 8, 1866.

***Ibid*, March 9, 1866.

impanelled for the trial of the accused had been improperly discharged without giving a verdict.††

His address to the Court was described as a masterpiece of foresight, skill and penetration.||

The Court held against him on all the points raised except the first, as to which, while all agreed that it was an irregularity, two considered it invalidated the trial and two considered otherwise. Salomons prevailed upon the junior Judge to withdraw his opinion, and the Court ordered a new trial.§

Salomons' argument is fully reported in the press,|| which indicates the interest the public took in the matter. The report shows the research that Salomons had put into his work, and the logical way in which he argued this matter.

Of his work in connection with this case, an obituarist wrote :—

Possessing a thorough knowledge of the technicalities of the law and how to utilise this for the benefit of his client, the young barrister worked so zealously that delay caused by appeals eventually resulted in the commutation of the death penalty to imprisonment for life.‡

On an appeal on behalf of the Crown to the Judicial Committee of the Privy Council which followed, it was decided that the trial, though irregular, was valid, and, further, that no new trial could be granted in a case of felony. However, the members of the Board intimated that :—

They have no doubt that upon an application on behalf of the respondent, which they recommend to be made to the proper authorities, such weight will be given to their remarks as they may be found to deserve.||

Subsequently, as above stated, Bertrand was reprieved and the sentence of death commuted to one of imprisonment for life, he being released in 1894, shortly after the death of Sir Alfred Stephen.

††*Ibid.*, March 17, 1866.

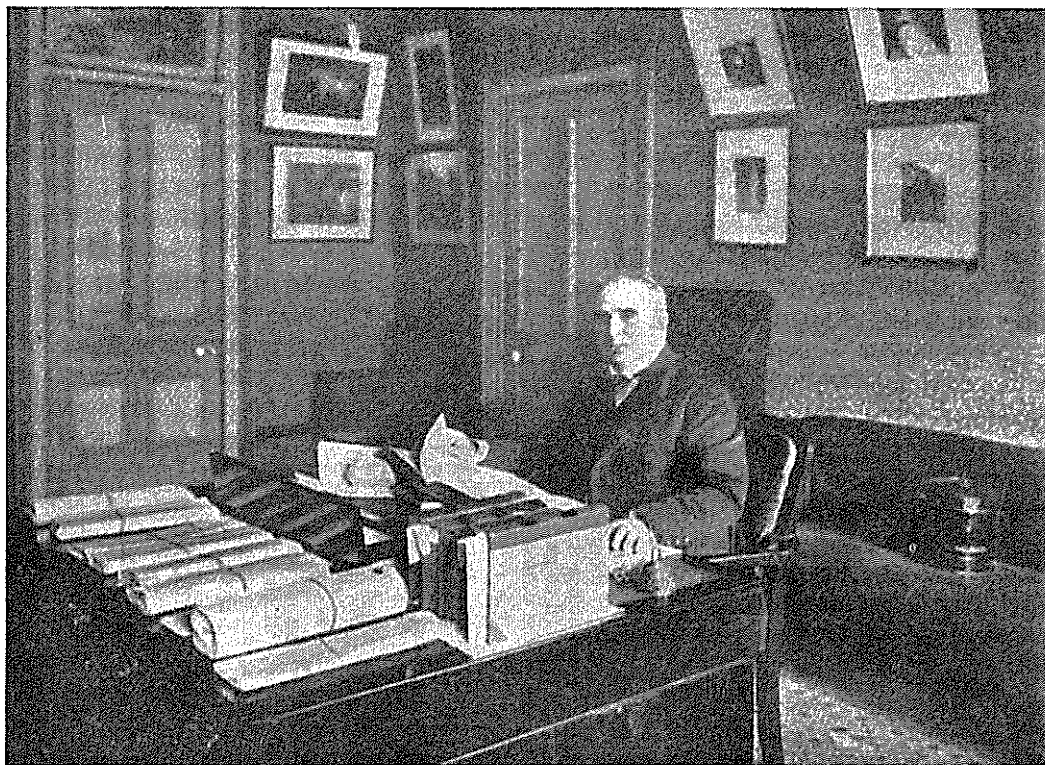
||*Daily Telegraph*, April 9, 1909.

§*Sydney Morning Herald*, March 20, 1866, and 4 S.C.R., 526.

||*Sydney Morning Herald*, March 16 and 17, 1866.

‡*Ibid.*, April 7, 1909.

||L.R. 1 P.C., 520.



SIR JULIAN SALOMONS IN HIS CHAMBERS, 1890.
(Reproduced from the magazine "Cosmos" by courtesy of the Mitchell Library.)

In the year 1866, and again in 1870, he was appointed one of two examiners for candidates for admission to the Bar of New South Wales.

From this starting point Salomons rose rapidly in his profession, and however acutely his legal opponents might suffer from his untiring energy, pertinacity of purpose and close acquaintance with all the details of his case—and that of the other side—his great ability was conceded everywhere. He exhibited a marked degree of talent in examination and cross-examination, and woe to the hostile witness who tried to fence with him or to shuffle out of a compromising position. His wit and promptness in repartee were frequently brought into play to brighten the dullness of an uninteresting case, but unless provoked his humour was without venom.*

He was prominent in cases that arose between squatter and free selector consequent upon the Land Act of 1861 (which authorised "Free Selection before Survey"), and in the large majority of Crown cases and commercial actions that came before the Courts.†

However, the Law Reports do not mention his name between June, 1866, and September, 1867, this being due to illness; for on 2nd October, 1895, in the Legislative Council, when making his famous speech in connection with the Dean Case, he stated that he "about 29 years ago unfortunately from overwork suffered from an attack of brain-fever."

In March, 1868, O'Farrell, a Fenian, shot the Duke of Edinburgh—but not fatally. This event caused great excitement, as can be thoroughly appreciated by perusal of the account of the picnic at which it occurred, which is given in the *Sydney Morning Herald* of 20th January, 1945.

On 19th March a meeting of Jewish residents was held for the purpose of preparing an address for presentation to H.R.H. the Duke of Edinburgh. Mr. Saul Samuel, M.L.A. (afterwards Sir Saul Samuel, Bart.), presided, and said he believed all had felt horrified at the late attempt to assassinate His Royal Highness. He hoped they would deal with the matter *calmly*, and avoid giving pain to anyone by their remarks. Rev. A. B. Davis moved the adoption of an address which he read. Mr. Salomons' position in the community is indicated by his being chosen

**Sydney Morning Herald*, April 7, 1909.

†*Ibid.*

to second the motion. In doing so, he said it was almost impossible to speak *calmly* of the dastardly attack upon the life of His Royal Highness.† So apparently he was one who shared the common excitement.

From 1868 to 1871 Mr. Salomons was on the Committee of the York Street, Sydney, Synagogue, and in the year 1869-1870 attended ten out of fifteen meetings. He was re-elected in 1870, but apparently owing to pressure of political work he did not attend any meetings that year. He continued to show his interest in the Jewish community—for example, he was present at the annual general meeting of the Sydney Jewish Sabbath School on 15th December, 1869, and proposed a vote of thanks to the honorary officers, "to whose untiring zeal were mainly due the proud results this day witnessed."§

His legal practice had by this time become firmly established, and the Supreme Court Reports, Vol. 8, shows that he appeared in thirty out of eighty-eight cases there reported. In most of these he appeared alone.

At this stage it is as well to mention that he squinted and was short in stature, and, at any rate by the time he reached middle age, thick set, but none the less handsome, as those who remember his profile have told me. He was at times clean-shaven, at other times wore side-levers, but after his return from England in 1900 on vacating the Agent-Generalship he wore a beard—and that is how I remember him. Incidentally, it is here appropriate to tell a story which illustrates his quick humour. A solicitor with whom he was very friendly, on meeting him after he had shaved off his side-levers, mentioned the fact. "Yes," was the reply, "I am as barefaced as any attorney!"

His photographs indicate a strong, determined character. He was always alert and walked with a spring. His squint, which gave rise to many jokes, is emphasised in Phil. May's *Sydney Bulletin* caricature on November 27th, 1886: "Trying it on—The C.J., as was."

Mr. Salomons had a great reputation for hard work, careful perusal of his briefs, his judgment on the question of what issue he would fight a case on, and the pertinacity

†*Sydney Morning Herald*, March 20, 1868.

§*Ibid*, December 16, 1869.

with which he forced the Court to pay attention to the point which he contended was the vital one in the case. He fought a case literally on his toes, often very excitedly, the blood showing in his face and on the back of his neck, coming back again and again to the point which he regarded as vital. He was always witty and ready to enforce his point with a joke, often at the expense of the Court. In ordinary conversation a joke was often used to enforce a point. For example, once on being briefed to appear at East Maitland Court, he said, "I am always glad to go there—I appreciate my home so much afterwards!" On another occasion he said to a solicitor who brought him a brief, "What bad fives you make!" and proceeded to alter the thirty guineas marked on the brief to fifty.

On 9th September, 1869, the then Solicitor-General was appointed a District Court Judge, and, on 18th December, Mr. Salomons accepted the vacant office of Solicitor-General. The then Prime Minister was Mr. John Robertson, Sir William Manning, Q.C., being Attorney-General. He was also appointed a member of the Executive Council, and became a member of the Government,* but was not until August, 1870, a member of the Legislature.

At that time Salomons lived at Ballast Point Road, Balmain. He appears to have been popular with the Judges, for when the Attorney-General presented him to the Supreme Court as Solicitor-General, the Chief Justice said that for some years past the Judges had abstained from officially congratulating Crown Law officers on their appointments, such appointments being purely political. *Personally*, he had great pleasure in congratulating Mr. Salomons as Solicitor-General. Mr. Justice Hargrave and Mr. Justice Faucett also joined in courteously recognising the new Solicitor-General, the last-named Judge adding that he had *personally* great pleasure in congratulating Mr. Salomons on his appointment to that office.†

He did not limit his attention to the legal and political side of his office, but also devoted time to its social side;

**Sydney Morning Herald*, December 22, 1869; *Government Gazette*, December 21, 1869.

†*Sydney Morning Herald*, December 21, 1869, p. 4, col. 3; and p. 2, col. 6.

and on 22nd December, 1869, he accompanied the Governor, the Earl of Belmore, to a picnic to the officers of the Flying Squadron and spoke at the luncheon.† Later in the month he, with other members, accompanied the officers of the Flying Squadron to Lithgow§ and was present at the New South Wales Rifle Association Meeting.||

He was present at the Anniversary Day Regatta Luncheon, sitting on the right of the Earl of Belmore, and proposed the "Health of the Countess of Belmore and the Ladies."||

On 15th November, 1869, the fifth Parliament was dissolved, polling day for the elections being between 3rd December, 1869, and 10th January, 1870. The newspaper reports of the campaign indicate much criticism of the appointment of his predecessor to be a District Court Judge, but I have found none in respect of the appointment of Mr. Salomons to succeed him.

On 13th January, 1870, Mr. Charles Cowper succeeded Mr. Robertson as Prime Minister, but he and other members of the Ministry retained their offices.**

In February, 1870, the *Sydney Morning Herald* stated that he had resigned his office

from the circumstances that neither of the law officers of the Crown have a seat in the Assembly, and as he considers such a state of things ought not to exist, he resigned with a view of enabling his former colleagues to obtain a Solicitor-General from the legal gentlemen returned to the Assembly.††

Such intention was not carried into effect, nor was the reason for the proposed resignation or withdrawal of same publicly stated. On 6th May, 1870, Mr. Henry Parkes asked the Prime Minister about the incident, and was informed that, although no doubt the Solicitor-General intended to resign, he never actually resigned and was performing the duties of Solicitor-General, and was then on circuit.*

†*Ibid.*, December 23, 1869.

§*Ibid.*, December 31, 1869, pp. 5-6.

||*Ibid.*, p. 6.

||*Ibid.*, January 27, 1870.

***New South Wales Parliamentary Records*, 12th Edition, p. 224.

††*Sydney Morning Herald*, February 2, 1870, and February 7, 1870.

**Ibid.*, May 7, 1870, col. 2.

He apparently contemplated entering the Legislative Assembly, for on the Northern Goldfields seat becoming vacant in March, 1870, his name was advertised in the local newspapers as that of a candidate,[†] but he did not lodge his nomination.[‡]

He apparently did unsuccessfully contest one seat,[§] but I have found no record of when that election occurred.

In the preceding February, 1870, an action by Mr. D'A. W. L. Murray against Mr. Henry Parkes for libel was heard. The Solicitor-General led Mr. M. H. Stephen for the plaintiff against Mr. James Martin, Q.C., Mr. Darley and Mr. Windeyer. Salomons' conduct of that case gives some indication of his strength in deciding matters of policy, for he indicated that he would refrain from calling the plaintiff as a witness, unless the defendant went into the witness-box, and he carried out such intention and succeeded in getting a verdict for the plaintiff for £100.||

On 28th February, 1870, the nominations for candidates for West Sydney election, necessitated by the resignation of Mr. John Robertson, took place. The latter again stood for election, being opposed by Mr. John Stewart, who, on the occasion of his nomination referred to the Ministry as unsound, and said that, on Mr. Josephson being sent to the District Court, that gentleman was superseded by another brilliant young lawyer, who was such a thorough churchman that he would plead no client's cause unless that client brought a certificate that he was in the habit of attending church. This sally was greeted with laughter and interruption.|| I do not know what the allusion was, but it is interesting as indicating that thus early the public realised his ability.

While Solicitor-General he led men who were his senior at the Bar in important criminal and in civil cases,

[†]*Ibid*, March 9, 1870, p. 4, col. 5.

[‡]*Ibid*, April 5, 1870, p. 5, col. 2.

[§]See Sir James Martin's speech reported in *Sydney Morning Herald*, August 12, 1870.

^{||}*Sydney Morning Herald*, February 19, 1870.

^{||}*Ibid*, March 1, 1870, p. 3.

indicating his self-confidence, and also the fact that solicitors regarded him at that early stage qualified to be a leading counsel.*

In the early part of his tenure of office, the Attorney-General and he were called upon to advise the Government in two major matters with regard to the administration of justice. The first related to the fact that a gentleman appointed to hold an office "during ability and good behaviour" had induced his predecessor to resign by actions which were questionable. The Attorney-General on 31st January, 1870, gave an opinion to the Minister in which he said that the Solicitor-General was firmly of opinion that the power to remove such an officer for misbehaviour did not authorise such action in that case, since the alleged misbehaviour was prior to the appointment. The Attorney-General gave his own opinion that he considered the power highly questionable, but that his opinion was not so clearly against the power as that of the Solicitor-General, and that "Mr. Salomons is decidedly of opinion that such misbehaviour is not cognizable."†

Not long afterwards, the judicial behaviour of a Judge was reported to the Government, which asked the Law officers for their opinion. This they gave on 5th July, 1870. I do not know how far Mr. Salomons was responsible for the wording of the opinion, but, in view of his opinion last referred to, one may be sure that he fully shared the views to which he placed his pen, and I consider them worthy of quotation. The opinion in part stated :—

We regret to be compelled to report that a consideration of these various charges, and the Judge's replies thereto, has left upon our minds an impresson that the complainants are not without grounds for their dissatisfaction, at least as regards some of the cases above enumerated ; and further, that the Judge too often exhibits a deficiency in that patience, temper and courtesy towards jurors, witnesses and advocates, which are so essential to the maintenance of respect for the Bench, and without which justice itself may not be satisfactorily administered.

We do not, however, find sufficient grounds to justify the Executive in calling upon the Judge to show cause why he should not be removed. . . .

**Sydney Morning Herald*, May 15, 1870, p. 5; 8 S.C.R., 83, 133, 259, 285, and 9 S.C.R. Eq. p. 50, also 10 S.C.R. Eq. 15.

†*Votes and Proceedings of Legislative Assembly*, 1870, Vol 1, Part 1, p. 609 : Administration of Justice.

The defects, however, in the Judge's execution of his office, which we have noted above, are, we think, sufficiently obvious to make it proper, and we recommend that the Executive should cause to be conveyed to the Judge the expression of its regret that after a careful consideration of the various complaints against him, and of his answers thereto, they are forced to the conclusion that the complainants are not without grounds for their dissatisfaction in several of the particulars enumerated by them, and that they are of opinion that he occasionally exhibits a deficiency in that patience, temper and courtesy towards jurors, witnesses and advocates which are so essential to that maintenance of respect for the Bench and to the satisfactory administration of Justice, and that they trust that there may not be such further complaints as to impose upon the Government and Executive Council the necessity of considering whether it is compatible with the public interest that he should continue to retain his office.||

On 21st June, 1870, a Royal Commission was appointed to inquire into the subject of Law Reform, the members of the Commission being Sir Alfred Stephen, C.J., Sir W. M. Manning (Attorney-General), Mr. Salomons (Solicitor-General), Sir James Martin, and Mr. Edward Butler.*

The importance which the Minister attached to the Royal Commission on the subject of Law Reform may be gathered from the fact that they were the first matters mentioned in the Governor's Speech on 11th August, 1870.†

A report was not made by the Royal Commission until 1871. When the Ministry resigned, he was replaced on 16th December, 1870, as a member of it by the incoming Solicitor-General, and I am not aware of the extent to which Mr. Salomons was responsible for the report of the Commission, which was issued on March 28, 1871.‡

On 3rd August, 1870, Salomons was appointed a member of the Legislative Council and representative of the Government there, and took his seat on 11th August, 1870, when Parliament reassembled. He then announced that he was deputed to take charge of Government business in that Chamber, and hoped he would meet with the same

||*Votes and Proceedings of the Legislative Assembly, 1870-1871, Vol. II, pp. 366-367, Administration of Justice.*

**Sydney Morning Herald*, May 14, 1870, and June 30, 1870, p. 2, col. 1.

†*Ibid*, August 12, 1870.

‡*See Votes and Proceedings of Legislative Assembly, 1871.*

courtesy and consideration as had been experienced by his predecessor (Mr. Robert Owen).§

This announcement did not pass without comment from Mr. Docker, the official Leader of the Opposition in the Legislative Council, who referred to

the very anomalous position of the two legal advisers of the Government who were in that House, the principal legal officer of the Crown being strangely enough subordinated to a member of the Government who thought himself doubtless equal to the responsibility; and this principal law officer, who was a man full of great experience, parliamentary ability and powerful energy, was not the honourable member who represented the Government, although he had shown himself during the last session fully equal to the task. This position was occupied by the subordinate law officer, who, however talented, had no parliamentary experience whatever and was quite unknown in the political world. He might very possibly be perfectly qualified, but it was not too much to say that in public life he was quite unknown.

Sir William Manning, Attorney-General, who was not a member of the Executive Council, replied and defended the arrangement, stating that the reason was that

he did not believe that it was desirable that the officer, who was a public prosecutor, should be one holding the position of a public partisan.¶

In the Legislative Assembly, Sir James Martin also referred to the fact that the Attorney-General was not a member of the Government, and to the rumoured resignation of Mr. Salomons from the office of Solicitor-General, the reason for which had never leaked out. He then criticised the appointment of Mr. Salomons to the Legislative Council, saying :—

The Solicitor-General was a young barrister not known to public life, who, having made one attempt to get into the House and having failed, was now thrust into the Legislative Council as the representative of the Government. The great majority of the members of the Council had held seats in this Assembly or in the Council which preceded it, and they were, for the most part, men of large means, great experience, and highly respected by the entire community. He thought it was no compliment to a body like that to have the young gentleman thrust upon them in this unseemly way. We knew from the Solicitor-General himself that towards the end of the year he intended to go to England, but we were not told that he was under any promise to resign, and it was therefore presumable that though absent from the colony, he might hold that position for life. The

§*Sydney Morning Herald*, August 12, 1870.

¶*Ibid.*

Solicitor-General was there as the leader of the Government and as a member of the Executive Government.]]

These comments of Sir James Martin may be taken to a great extent as purely political, and considerably discounted by the fact that, when Prime Minister in 1868, he had appointed to the Legislative Council a barrister only a few years older than Salomons, who had arrived in Australia about the same time as the latter. He, also, had never been a member of the Legislative Assembly. It is interesting to note that when the appointment of 1868 was made it was criticised in the Assembly by another member of the Bar, who subsequently became a Supreme Court Judge, as follows :—

Who knew him? Did we find him supporting any of our philanthropic or charitable institutions? How had he shown interest in public affairs in this country? Yet he had been appointed at the instance of a gentleman who a few years ago made this Chamber ring because of the appointment of Mr. Bayley (Darval) as Attorney-General of Mr. Cowper's Government. He thoroughly concurred in that disapprobation of the appointment of an utter stranger.*

The Prime Minister, Mr. Cowper, when replying to Sir James Martin's criticism of the two Law officers (Sir W. M. Manning and Mr. Salomons) being in the Council, after pointing out it was a common practice, said that there was no one qualified in the Assembly, and continued :—

Then the hon. members disparaged the Solicitor-General because he was a young man, but that surely was no valid objection.

Mr. Buchanan, a barrister, also criticised the appointment, but not on the ground of Salomon's fitness. However, he said :—

How was it we never found the Attorney-General or the Solicitor-General prosecuting in our Criminal Courts? This was a Government that boasted of retrenchment, and yet we had two law officers of the Crown refusing to perform their duty, and members of the Bar had to be subsidised to do their duty for them. To his astonishment, the Colonial Secretary (Mr. Cowper) said he told the Solicitor-General that he would be compelled to prosecute, and that his refusal would not be tolerated. (Laughter.) The Solicitor-General seemed determined to do as he liked and dictated his own terms to the Government.

||*Ibid.*

**Sydney Morning Herald*, October 14, 1868.

These remarks are difficult to understand, because in May, 1870, Salomons led Mr. W. J. Foster in a prosecution for murder,[†] and the Law Reports mention three criminal appeals in which he appeared between March and June, 1870.[‡] He also appeared in another reported criminal appeal in September, 1870.[§] I have not made a search of the records, and, of course, these instances do not establish that Salomons continually prosecuted in the Courts, but they certainly do appear to cast doubt upon the accuracy of Mr. Buchanan's statement.

Mr. G. A. Lloyd criticised the appointment of Mr. Salomons to represent the Government in the Upper House as an insult to that body, inasmuch as there was already in that House an Attorney-General older and more experienced, but he described Mr. Salomons as "a young man of considerable ability no doubt."[§]

The Parliamentary Reports in the *Sydney Morning Herald*—for there were then no *Hansard* reports—indicate that Salomons had made a close study of parliamentary procedure, and knew his way through the intricacies of the rules governing it. As an illustration of this may be mentioned his objection to the Companies Bill introduced by Mr. Darley, on the ground that it contained clauses imposing taxation, and therefore could not be introduced in the Council. This point was agreed with by the President. Mr. Darley and Sir W. M. Manning, Attorney-General, dissented from Salomons' opinions in the matter, and moved to dissent from the ruling.* I cannot find what happened to the motion, but it is immaterial to this monograph.

Soon after Parliament met, Salomons was called upon to defend the Government against attacks, and appears to have used tact and judgment, refusing to be unnecessarily drawn into detailed replies to "speeches which should have little weight with the House." For instance, when Mr. John Campbell referred to "the evils which arise from secular education," and moved that the Lord's Prayer, the

[†]*Sydney Morning Herald*, May 14, 1870.

[‡]9 S.C.R., 55, 75, 131.

[§]9 S.C.R., 311.

[§]*Sydney Morning Herald*, July 12, 1870.

**Ibid*, September 29, 1870.

Ten Commandments and the Apostles' Creed should be said daily or displayed in all schools, and said that "nothing but Christianity could restrain men from the commission of crime, from robbing banks, shops and private houses," and spoke of the fights between Sydney Grammar School boys and those in the William Street School, Salomons contented himself with saying that "with respect to what the hon. member had said as to other matters in connection with his motion, he did not consider it necessary for him to answer those remarks. He thought they might be left to have that weight which others might be disposed to attach to them."[†]

In this connection, it is to be noted that the Public Instruction Act of 1880, Section 7, provides that :—

In all schools under this Act the teaching shall be strictly non-sectarian, but the words "secular instruction" shall be held to include general religious teaching as distinguished from dogmatical or polemical theology.

At that time he apparently retained the views held in 1870, for in his obituary notice in the *Sydney Morning Herald* of 7th April, 1909, it is stated :—

In the agitation for the establishment of a secular education he took an active interest with his voice and with his purse, but subsequently confessed from his seat in Parliament that the elimination of religious training from the public school curriculum was a mistake.

So far I have not found any evidence of such "active interest" or the speech in Parliament, but in 1895, when addressing the members of the Royal Commission on the Dean Case, he referred to the practice of consulting fortune-tellers as being

only one of the consequences of the kind of education the young people receive in this colony under the dangerous and false system of secular education in vogue; that we have young people growing up without any curb upon them of any kind whatsoever, who instead of going to people who might guide them and give them good advice, see these advertisements, that Madam So & So the well-known phrenologist, or the renowned clairvoyant . . . will tell you what happened or might happen, or is going to happen (as if they had control over the whole Universe), and as a result they go to see them.[‡]

[†]*Ibid*, August 25, 1870.

[‡]*Report of Royal Commission on R. v. Dean*, p. 21.

In contrast to the off-hand way in which he dealt with Mr. Campbell's remarks as to religious teaching in the schools, in his reply to a member who made charges against the Government with regard to the Loan Fund Account, Mr. Salomons, in a lengthy address, combated the views expressed by the mover of the resolutions, and urged that "assertions injurious to the interest of the colony had been recklessly made by him and might have been ascertained to be unfounded by reference to public records." Mr. Docker described this speech as "frantic denunciations hurled by the Solicitor-General against the introducer of the resolution." Mr. Docker also said that

the Solicitor-General dwelt strongly and frequently upon what he called the evil of using expressions that would injure the colony without availing himself of the information that would confute his statements.[§]

In October, 1870, a Matrimonial Causes Bill to permit divorces to be granted by the Supreme Court was introduced into the Council, after passing the Assembly. Salomons stated that :—

He was utterly opposed to divorce on any ground whatever. It might in some cases bring consolation to sorrowing hearts, but the balance of good would be against it. . . . The bill here would be a bill for men and not for women, and that would tend to their material injury as well as to their social degradation, for women aged much faster than men. It would eventually come to this—that divorces would be sought for and be obtained even on incompatibility of temper. . . . Divorce was likely to cause collusion.¶

Salomons took the course of opposing the Bill, although Sir William Manning, Attorney-General, supported it, which illustrates his independence of mind. In the result the Bill was defeated, and a similar provision was not enacted until 1873. However, both his predictions as to the consequences that would follow the alteration of the law have been fulfilled.

Shortly after this the Government was defeated in the Assembly, and, on 7th December, Salomons announced that he and his colleagues had resigned.||

Not long after the fall of the Government, Salomons carried out his intention of visiting England. It will be

[§]*Sydney Morning Herald*, September 8, 1870.

[¶]*Ibid*, October 14, 1870.

^{||}*Ibid*, December 18, 1870.

remembered that Sir James Martin had referred to such intention on August 11, 1870, and on January 25, 1871, the latter, as Prime Minister, informed the Assembly that Mr. Salomons had left the colony by the last mail steamer via Suez.* The following month Salomons resigned his membership of the Legislative Council.† He apparently omitted to write to the Synagogue Committee about his departure, for not long after he left for England his seat thereon was declared vacant pursuant to Clause 51 of its Constitution, the records showing that he had been absent from four consecutive meetings of the Synagogue Committee.

Under the Constitution Act of 1855, the seat of a member of the Legislative Council became vacant "if any Legislative Councillor shall for two successive sessions of the Legislature of the Colony fail to give his attendance in the said Legislative Council without the permission of Her Majesty or of the Governor." I am not aware if Salomons applied for leave of absence, nor whether he contemplated being absent for two successive sessions. He returned prior to June, 1872, for the Law Reports show that in that month he appeared in three cases.‡ In fact, the session during which he went away did not conclude until the 22nd June, 1871, and the next one lasted from 14th November, 1871, to 1st February, 1872; and he was back in the colony in the middle of the following session, which commenced on 30th April, 1872. So that, had he so desired, he could have legally retained his seat while away.

While away from Australia he visited not only England, but Europe, for in a speech at the Royal Colonial Institute Dinner held on April 25, 1900, he said :—

When I was much younger I witnessed the bitter fruit that is entwined in the laurels of victory. I passed through France and Germany at the close of their momentous wager of battle thirty years ago, and I saw there evidence of the penalties of life and limb that must fall almost equally upon victor and vanquished.

After his return from England, which was about the middle of 1872, Mr. Salomons again showed his interest

**Ibid*, January 26, 1871.

†*Ibid*, February 16, 1871.

‡11 S.C.R., 68, 69, 92.

in Synagogue affairs by standing for election as a member of the Committee in 1872 and 1874, but on each occasion without success. In 1872 he was present at the annual meeting, and moved the appointment of an auditor. In 1878 he contributed £105 to the fund for building the present Great Synagogue in Elizabeth Street, and he remained a member of the Synagogue until 1901.

He was a member of the Barristers' Admission Board for the year 1872-1873, a position to which he was again elected for the year 1889-1890. He regularly attended meetings of the Board during his first term of office, but not during the second.

In the following years the Law Reports indicate that Salomons retained his practice, and his name continued to figure prominently in the Law Reports up to and inclusive of the year 1877.

Early in the 'seventies he lived at "Havilah" in Darlinghurst Road, near the corner of Macleay Street, Potts Point, and about 1876 at "Orwell," Orwell Street, Potts Point, which was later the home of the late Mr. Louis Phillips, who was on several occasions President of the Great Synagogue, Sydney.

His method of enforcing a point is illustrated by the following story, which was told by the Rt. Hon. G. H. Reid, P.C., M.P. (later K.C.M.G.), at a meeting of the Sydney University Law Society about 1905.

Sometime in the 'seventies Mr. G. H. Reid, then a clerk in the Crown Law Office, informed Mr. Salomons that he was studying for the Bar. Mr. Salomons asked him if he had passed the Intermediate Examination, and Mr. Reid said "No." This same question was asked on several occasions at considerable intervals of time, and on each occasion the same reply was given, until finally Mr. Salomons remarked: "I beg your pardon, Mr. Reid; I see that you intend practising at the Bar of the next world!" This so impressed Mr. Reid that he set himself seriously to work and passed the Intermediate Examination in December, 1877, and his final in September, 1879.

Salomons' name does not appear in the Law Reports for the years 1878-1879, 1880, nor was his name on the list of practising barristers published in the years 1878-1881.

There is little further to record from a purely Jewish standpoint as to his actions in this period. After his return from England in 1880 until the 'nineties he lived at "Ranelagh," at the corner of Darling Point Road and New South Head Road, now an Australian Comforts Fund Club for women of the Services. He was living there when appointed Chief Justice, and several of his letters relating thereto were written from there.

I do not know the reason for his absence from the colony from 1878 to 1880, but it appears that it was not on account of illness, for on October 2, 1895, he almost expressly stated in the Legislative Council, when speaking on the Dean Case, that he had not had a recurrence of his former illness.*

He apparently returned to New South Wales towards the end of the year 1880, for on 18th December of that year he was appointed a Queen's Counsel. That he was justified in applying for that rank is shown by the fact that in the Law Reports of 1881 his name appears in forty-five out of approximately eighty cases reported in Vol. 2 of the New South Wales Law Reports, despite the fact that for several months of the year 1881 he was acting as a Royal Commissioner in connection with the Milburn Creek scandal, a big political matter which at that time considerably exercised the public mind. With this his name will always be associated. It involved an inquiry into the acts of two well-known public men. Following on Mr. Salomons' report, one of them was expelled from the Assembly on 9th November, 1881, though the resolution was rescinded on 1st May, 1883, by a majority of 23 votes to 21. Following on the expulsion, the expelled member was defeated at the polls. In respect of the other member, a motion for expulsion was defeated by a majority of two votes. The facts are shortly referred to in Sir Julian Salomons' obituary in the *Sydney Morning Herald* of April 7, 1909.

The Commission which issued on 16th August, 1881, directed Salomons to make a full, diligent and searching inquiry into the expenditure and distribution of a sum of £15,199 paid by the Government under the authority of a Parliamentary Vote to Milburn Creek Copper Mining

*See *Sydney Morning Herald*, October 2, 1895, p. 5, col. 7.

Company Limited, and as to the persons to whom and in what amounts and for and in respect of what services or consideration any and every part of the said sums have been paid, given or transferred.

His appointment was hailed as a good one. Mr. Wisdom, Attorney-General for the Government, said that he had reason to know that the appointment had met with approval on all sides; and Mr. McElhone thought the appointment a good one, and that Mr. Salomons' ability was undoubted.†

The *Daily Telegraph* was not pleased, thinking three Commissioners should have been appointed,§ but when the report was issued it stated :—

A careful perusal of the report and even a cursory glance through the evidence proves that the learned gentleman has thoroughly and efficiently discharged the important duties entrusted to him, and, although we disapproved of the appointment of a single commissioner at the time it was made, we are free to admit that the unusual course adopted by the Government has in this case resulted in an investigation and a report which will be satisfactory to the public—satisfactory as regards the ability and impartiality which characterises the inquiry, but far from satisfactory concerning the conclusions which Mr. Salomons has found it his duty to record.*

Subsequently that newspaper stated :—

Whoever reads the evidence—irrespective of his report—must come to the conclusion that he entered upon his work with a fixed determination to do his duty, his whole duty and nothing but his duty, and that in the face of some most peculiar difficulties he managed to unearth one of the greatest public scandals—there has never been anything like it. The thanks of the public are due to Mr. Salomons for dragging it into the broad daylight, and for his report and the evidence upon which that report is founded.‡

The article then refers to an “attempt to hoodwink Mr. Salomons with false dates and fictitious claims for imaginary services. The learned gentleman was, however, too old and experienced a legal bird to be caught by such stuff, and the flimsy and fallacious documents submitted to him were torn to pieces by the professional

†*Sydney Morning Herald*, August 19, 1881, p. 3, cols. 1 and 2.

§August 20, 1881, p. 4, col. 6.

**Daily Telegraph*, November 4, 1881, p. 2, col. 4.

‡*Ibid*, November 8, 1881, p. 2, col. 4.

acumen which he brought to bear upon exposing the deceptions which were attempted to be practised upon him"; and the article then refers to a witness' silence as "to a well understood attempt to bribe him until it was squeezed out of him by Mr. Salomons."

He conducted the Commission in his chambers at Wentworth Court, without (as is now usual) counsel to assist the Commissioner or counsel appearing for persons interested. Their absence must obviously have been a great handicap to the Commissioner, for he had to decide what persons should give evidence and examine and cross-examine the witnesses. That necessarily involved that the scales are weighted against that judicial attitude which is so necessary in the holding of any judicial or *quasi* judicial investigation. He held almost continuous sittings from 22nd August to 19th October, and made his report to the Governor on 3rd November, 1881. His questions were very searching, but very fair throughout. His notes at the foot of various pages of the evidence indicate his thoroughness and system, and his report closely analyses the evidence.

The public opinion of Salomons may be judged from the *Sydney Morning Herald's* comment that "the Government began well by entrusting the preliminary inquiry to competent hands."||

A leading article in the *Sydney Morning Herald** stated :—

We are further indebted to him [the Attorney-General] for having exercised a wise discretion in his choice of an investigator. Mr. Salomons has been clearly the right man in the right place. Some complaint has been made in Parliament at the investigation having been entrusted to one man, but we think that no person can read the evidence without seeing that this was a wise course to pursue. The inquiry was a very delicate one and required great circumspection. There has been very great difficulty in getting at the truth and most elaborate attempt to mislead the Commissioner. It required a man with some professional tact in examining and cross-examining and some one quite unhampered by his colleagues to follow up the trail. The *prima facie* case as laid before the Commissioner was not the real case and the truth had to be ferreted out. Receipted accounts and letters were put before him, adapted to deceive an ordinary man. They represented things supposed to

||*Sydney Morning Herald*, November 4, 1881, p. 5, col. 2.

*November 7, 1881, p. 4, col. 6.

have happened that never did happen, and many an easy going inquisitor might have been thrown off his guard. We owe it to Mr. Salomons' penetration that he has not been taken in by these ingenious attempts to mislead him.

One of the parliamentarians affected by his report, when addressing the Legislative Assembly on the report, not unnaturally claimed that the Commissioner had not accorded him justice and impartiality, but in the course of his speech referred to him as :—

This sapient lawyer whose business capacity has been so much extolled.†

A tribute to the report was also paid by Mr. Michael Fitzpatrick, M.L.A., who stated that he objected to a single Royal Commissioner, but added :—

But no man in this country could have performed the duty more honestly or more ably than Mr. Salomons.‡

The debate in the Assembly on the motion for rescission of the resolution of expulsion is reported in the *Sydney Morning Herald* of the 4th, 18th and 25th April, and 2nd May, 1883. The main argument for rescission appears to have been that it was not right to expel a member without a trial, and it does not appear that there was any criticism of Mr. Salomons ; indeed, Mr. Walter Edmunds, who appeared for the expelled member, at the Bar of the House, said :—

Far be it for me to disparage the labours of the Commissioner, or to say that he did not act fully and fairly according to the tenor of the Commission under which he was appointed.

On November 13, 1886, the *Sydney Morning Herald* leader writer, on page 10, col. 6, wrote :—

Some five years ago he gained for himself recognition for his judicial qualities when sitting as Commissioner in the Milburn Creek investigation. He conducted the inquiry in such a manner as, apart from the merits of the issues involved, was regarded on all hands as showing the most marked ability. The report, which was fearlessly outspoken, displayed a special knowledge of commercial law and great power of arranging and dealing with intricate facts. Mr. Salomons' conduct of the inquiry was therefore such as to show him possessed of some of the best judicial qualities.

†*Ibid*, November 5, 1881, p. 3, cols. 4 and 5.

‡*Ibid*, November 9, 1881.

In another article in the *Sydney Morning Herald* of the same date, it was stated :—

The prominent feature of his labours in that case was the great knowledge he displayed of the law relating to commercial transactions. The report he drew up, apart from the merits of the case itself, was remarkable for the acquaintance it showed with commercial subjects and for its grasp of the various points in a complicated mass of evidence. The ability with which Mr. Salomons dealt with that inquiry won high admiration from the public.¶

It is as well to refer here again to Salomons' manner in Court. I have no personal knowledge of such until the early part of this century, but members of the Bar who knew him in the 'nineties have told me that he worked literally and figuratively on his toes, and that he compressed into hours an argument that others would take days to elaborate. A picture of him appears in *Worshipful Masters*, by A. B. Piddington.¶

In his best days Salomons was worth any three men at the Bar. He had all the vivacity of a Continental Advocate, and many who heard Salomons storming and declaiming in Court, raising himself on tip toe, his short, round frame quivering like a lance when it crashes home, shouting till he was purple to the ears and seemed on the verge of apoplexy, could realise how many hours of plodding drudgery he had devoted beforehand to the preparation of every part of his case.

How unusual were his methods may be judged from the remark of the late G. E. Flannery, K.C., referring to the period 1892-1894, when he was a student :—

We were encouraged to look for "models." In jury and appeal work I picked Pilcher, Barton and Wise, Q.C.'s. There were two very successful but inimitable men, Salomons and Jim Gannon.¶

The articles which appeared in the newspapers when in 1886 he was appointed Chief Justice indicate that he had built up a splendid reputation as an advocate, was energetic, plucky, never disheartened, gave unremitting attention to his cases, was courteous to suggestions from his juniors, and given to making puns.

In the period between his being appointed a Queen's Counsel in 1880 and 1886, his practice at the Bar was

¶*Ibid*, November 13, 1886, p. 12, col. 4.

¶Page 201.

¶*The Jubilee Book of the Law School of the University of Sydney* (1940), p. 70.

great in volume and importance, but he appears to have been away in 1883, for his name does not appear in any reported case in that year.

A summary of his life after 1880 is as follows :— On 15th November, 1886, he was appointed Chief Justice of New South Wales, but resigned twelve days later, before taking the oath of office, because of the manner in which his appointment was received by some of the members of the Supreme Court Bench. On 7th March, 1887, he was again appointed a member of the Legislative Council, and held the position of Vice-President of the Executive Council and Representative of the Government in the Legislative Council from that date until the 16th January, 1889, and again from 23rd October, 1891, to 26th January, 1893. In 1899 he was appointed Agent-General for New South Wales in London, and resigned his membership of the Legislative Council on 21st February, 1899. In November, 1900, he retired from the Agent-Generalship and resumed his practice at the Bar of New South Wales, retiring from practice in 1907. On 6th April, 1909, he died, being buried at Rookwood Cemetery.

The Sands Sydney Directory and the *Sydney Bulletin* caricature, to which reference is made, were perused at the Mitchell Library, Sydney.