

**Record of the
Proceedings of the Queensland Parliament**

...
Legislative Assembly
3rd July 1860

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Extracted from the third party account as published in the
Moreton Bay Courier 5th July 1860

The Speaker took the chair at a quarter past 3 o'clock and read prayers.

PETITION.

Mr. LILLEY presented a petition from the Rev. Dr. Lang, which was read by the Clerk of the house. The honorable member referred to the long and arduous services of the petitioner in the cause of separation, and on behalf of the colony generally. The petition briefly related the circumstances under which during the years from 1846 to 1849 the ships Fortitude, Chasely, and Lima had been sent to the port of Brisbane with emigrants from London, and the manner in which a scheme of emigration had been organized by the petitioner and afterwards thwarted by the New South Wales Government. The document also stated that, in consequence of the non-fulfilment of promises made to Dr. Lang by the Government, he had been subjected to great pecuniary loss, and many of the emigrants whom he had introduced into the colony were deprived of the land which was to have been granted to them as an equivalent for their passage money. The petition prayed that the Legislature would take the circumstances of the case into consideration.

WATER WORKS AT GLADSTONE.

Mr. FITZSIMMONS moved pursuant to notice—

“That this house will, on Wednesday next, resolve itself into a committee of the whole, to consider of an address to the Governor, praying that his Excellency will be pleased to cause the sum of £250 to be placed on the supplementary estimates for 1860, for the repair of the waterworks at Gladstone.” After urging the claims of Gladstone on the consideration of the house, and stating the necessity which existed for the particular works his resolution referred to, the honorable member concluding by saying he would not at that time occupy the house longer but would reserve further remarks, if they were required for his reply.

The motion having been seconded, was carried without opposition.

APPOINTMENTS TO OFFICE OF POLICE MAGISTRATES.

Mr. MACALISTER moved, pursuant to notice—“That, in the opinion of this House, the office of Police Magistrate is one of great responsibility, involving high qualifications in the holder thereof; that an office of so much importance to the peace and good order, and to the due administration of the laws in the various districts of the colony, demands that all parties to be appointed to this office should possess not only an intimate acquaintance with the various Statutes under which jurisdiction is exercised by Courts of Petty Sessions, but a knowledge of the general rules of evidence, as applicable to such Courts; and that no appointment to such office should be made without first subjecting the proposed appointee to an examination as to his possession of these requirements.” He said the purport of his resolution was so plain on the face of it that he did not deem it necessary to enter into any lengthy explanation of his object in introducing it. He was influenced by no party motives, but solely by the necessity which appeared to him to exist for a better system of administering the laws than at present prevailed in this young colony, where the people enjoyed a larger share of civil and religious freedom than in the mother

country. The Government had intimated that it was their intention to appoint paid police magistrates throughout the country, and he thought therefore the present time afforded them a favorable opportunity for enquiring how best they could secure the services of efficient gentlemen to fill the high and important office of the magistracy. If the resolution he had read were carried, the Government would be saved much trouble and annoyance, for all that would be necessary for them to do, when incompetent persons made application for appointment to the magistracy, would be to point to the resolutions adopted by the house relative to the qualifications deemed necessary for the proper discharge of the duties of the bench. He was happy to be able to record an opinion he had long entertained, that the unpaid magistrates of this colony would bear favorable comparison, as to their zeal and ability, with those of either New South Wales or Victoria. Still it must be admitted that great injustice was often done in consequence of their ignorance of the laws which they were required to administer. Very many were not possessed of those necessary qualifications which could only enable them to arrive at correct conclusions with regard to Acts of Parliament, or to come to a determination as to what are offences and what are not. And it was a matter of wonder to him, not that errors had been committed, but that they had been able to make progress at all, under the magisterial system that at present prevailed. A course similar to the one pursued here had been adopted in the other colonies; but in England the case was altogether different; and no men were appointed to the magistracy who were not possessed of the necessary qualifications for discharging their duties. There, members of the bar, solicitors, or gentlemen acquainted with the rules of evidence, sat on the bench; and they were in general able assisted by clerks, whose previous education and studies enabled them to afford valuable information. The consequence was that, while in the mother country grand juries seldom found it necessary to ignore the decisions of the magistrates—the Attorney-General in this country had frequently to do so. He remembered that in one year no fewer than forty cases were disposed of by an Attorney-General of New South Wales, the committals having been made against law, on insufficient evidence, or otherwise irregularly. Such a state of things arising out of the ignorance of the magistrates occasioned great injustice to the public. For it must be remembered that, in each case where the Attorney-General had found it necessary to ignore the decision of the magistrate, the accused person had been wrongfully committed for trial; and not only so, but had to receive intimation of the fact at the bar of the Supreme Court, the usual course being for the Attorney-General to decline to prosecute when the man had been brought up for trial. In these cases men were unjustly committed, and the law regarded them as innocent. In this colony two magistrates may go upon the bench from their squatting stations of their counting-houses and be utterly unable to determine whether a person brought before them be chargeable with an offence at all, never having read an Act of Parliament in their lives, or being incapable of interpreting its clauses. In such circumstances the clerk of the bench is generally referred to, and it often happens that he likewise can give no reliable information. From him an appeal is made to the Chief Constable, who, with an air of authority, delivers himself of an oracular response, which is received as conclusive in the absence of any sound testimony, or any clear understanding of the difficulty. Hence the number of irregularities that have to be remedied by the Attorney-General, and the numerous appeals that are constantly made to the Supreme Court against the decisions of the magistrates. Instances of flagrant ignorance on the part of Justices of the Peace had frequently come under his notice. The bench at Warwick committed a man for trial for a certain offence to the gaol at Warwick, when everybody but themselves knew that there was but one gaol in the colony, and that that one was at Brisbane. Before another bench a man was accused of bullock-stealing, and the magistrates issued a warrant for the apprehension of his team of bullocks. The Dalby bench issued a summons for debt against a man living at Canal Creek, a long distance off, and although it was not served until the day on which it was made returnable, the magistrates adjudicated upon the case, and issued a warrant for the apprehension of the man. When such cases occurred, he thought it high time for the whole question of the magistracy to be inquired into, with a view to put a stop to irregular and unwarrantable proceedings. It was the duty of the house and of the government to interfere, for if they did not see that justice was duly administered in the meanest, equally with the highest, courts in the country, the very foundation of justice itself would be sapped. He had cited these instances of

magisterial blunderings to show not only that the government proposed a wise course when they stated it to be their intention to appoint police magistrates throughout the colony; but that it was their duty to see that the parties whom they appointed were duly qualified to discharge their duties. It might be said that many gentlemen, who did not possess the whole of the qualifications indicated in the resolutions he had proposed, were quite competent to discharge the necessary duties. It was to be remembered, however, that during many years scarcely a single session of the New South Wales Parliament had closed without the passing of some Act or other to extend the powers of the magistracy. This system had been carried so far, that now there is hardly a case in which the justices cannot interfere. It was necessary, therefore, that they should be well acquainted with the laws; and he thought he was justified in asking that they should be fit to determine respecting them. It may be objected that the sum of money placed on the estimates was insufficient to enable the government to carry out the objects indicated in his resolutions. That objection, however, could easily be remedied. If he thought that any additional sum, to be placed on the estimates by the government, would be improperly expended, for the purposes of patronage, or to get rid of some obnoxious Commissioner of Crown Lands, whose district had grown too hot for him, he would not have introduced his resolutions at all. He had said nothing about emolument, because he considered that, if his motion were carried, it would be for the government to determine what sum would be fair remuneration for the services of an efficient police magistrate, who would devote himself to the discharge of his sacred duties. There were no terms mentioned in his resolutions, which a gentleman duly qualified would deem it beneath his dignity to comply with. There was nothing in them which any Englishman might not cordially assent to. After expressing his confidence in the government with reference to any appointments to the magistracy they might make, the honorable gentleman concluded by urging them to select such persons only as would reflect credit on themselves, and on the department over which they might be called upon to preside.

Mr. GORE cordially approved of the resolutions and of the general principles they embodied. The only question with him was, whether any gentlemen possessing the high qualifications stated in the resolutions, would accept appointments at the small salaries set down on the estimates. If it were practicable to procure them, he had no doubt that the carrying out of the suggestions laid down in the resolutions would confer a great boon to the country. With reference to the remarks that had fallen from the honorable mover regarding the conduct of the Warwick magistrates, in certain cases on which they had been called to adjudicate, he thought, as member for Warwick, that it might be well for him to inform the house that he was not on the bench when the cases happened, and that he was a member of that bench at all.

Mr. BLAKENEY had listened with great pleasure to the remarks that had fallen from the honorable member for Ipswich, and considered him entitled to the thanks of the country for the manner in which he had introduced his subject. He (Mr. Blakeney) had frequently been made aware of mistakes that had been made by magistrates in issuing warrants and in adjudicating on cases. But these mistakes were not to be wondered at, for it could not be expected that the justices of the peace throughout the colony could be familiar with Acts of Parliament and laws of evidence. It became necessary therefore for the sake of justice, that the present mode of appointment should be altered. In this colony a change was particularly necessary, as there is not here as in New South Wales and Victoria a court of appeal, and the decisions of the magistrates are in most cases final. There is no remedy here except in cases of error in law, and the enormous cost of appealing renders it tantamount to a denial of justice. He thought police magistrates duly qualified to administer the law should be appointed for the different districts of the colony, and that the unpaid justices should only be required to assist them on the bench, or to take their place in case of accident or emergency, instead of being constituted sole judges in matters that they could not reasonably be expected to be thoroughly acquainted with. It had been found necessary in Ireland to change the system that formerly prevailed with reference to unpaid justices; and at present there were not fewer than twenty police magistrates in that country, from whose decisions there were few cases of appeal, and whose warrants of commitment were very rarely ignored by the grand juries. These paid magistrates were for the most part members of the

bar, or of the other branches of the legal profession. Hence arose the satisfaction which their decisions gave, and the large amount of public confidence enjoyed. It had been very justly stated that the sum placed on the estimates would not afford adequate salary to well qualified gentlemen, and that it would only be accepted by inferior men. He thought, however, that by appointing one gentleman to preside over two or more benches, the country would require but a few paid magistrates, and would be able to pay them respectably. One gentleman for instance could be appointed to Toowoomba and Drayton, the business of both of which places he could manage without much personal inconvenience.

The COLONIAL SECRETARY said that after the reasons that had been adduced by the honorable mover in favor of his resolutions, and the clear manner in which he had stated his subject, he did not think it necessary to say more than that he accepted the resolutions on behalf of the Government, and cordially concurred in them. With regard to the smallness of the sum set down on the estimates for police magistrates it was to be viewed rather as a retaining fee for competent gentlemen, than as adequate remuneration for the services of paid servants of the Crown. At the same time, he thought it would be advisable for many reasons to appoint permanent police magistrates throughout the colony, who would be paid so as to render them independent of all petty influences that might otherwise be brought to bear upon them; who would be able to act independently, for instance, in that large class of cases that came under the operation of the Masters' and Servants' Act. The salaries of police magistrates would have to be increased, in order to secure efficiency, in the performance of their important duties. He thought, however, that by adopting the suggestion of the hon. member for North Brisbane (Mr. Blakeney) that economy as well as efficiency could be regarded by placing extensive districts under the supervision of qualified administrators of the law. It could not be expected that gentlemen of long standing and large experience would submit to such an examination with regard to their qualifications for the office of police magistrate as the resolutions proposed, and he thought such an examination would only be required in the case of junior officers. British consuls were subjected to a strict examination as to their qualifications; and as they did not consider it derogatory to their character, he had no doubt that men who felt themselves competent would not refuse to be examined as to their qualifications for discharging the duties of a police magistrate. He concluded by stating that if it were the desire of the house the Government would place a sum on the supplementary estimates, adequate to provide for the appointment of duly qualified gentlemen, to discharge the duties of police magistrates.

The ATTORNEY GENERAL was glad to find that an independent number of the house had taken up this subject, and congratulated the hon. member for Ipswich on the able manner in which he had done so. He was aware that in many cases Attorney Generals had been obliged to ignore the decisions of magistrates with reference to the commitment of persons for trial, on account of the loose manner in which they had taken down important evidence. The duties of a magistrate in the colony were frequently very arduous; and he thought as a body they should be better paid for their services, while he concurred with the hon. member for Ipswich in the opinion that none but duly qualified persons should be appointed to so important an office.

Mr. WATTS supported the motion in a brief speech, in the course of which he instanced a case in which a man had been committed for trial, through the incompetency of the adjudicating magistrates, on a warrant which had no date, and was signed by an officer who had no right to issue it. It had often been the case that persons had to travel fifty or sixty miles to prosecute, but had been obliged to abandon their cases, because there was no police magistrate or a sufficient number of Justices of the Peace present to decide the cases.

After a few remarks from Mr. RAFF in support of the motion,

Mr. MACALISTER said in reply—After observing the manner in which the house received his resolutions, and the government were prepared to act upon them, he ought to say—nothing. (Cheers and laughter.)

The question was then put and passed.

HOSPITAL AT ROCKHAMPTON.

Mr. FITZSIMMONS moved—That this house will, on Wednesday next, resolve into a Committee of the whole to consider of an address to the Governor praying that His Excellency will be pleased to cause the sum of £200 to be placed on the supplementary estimates for 1860, in aid of the hospital at Rockhampton. He thought no opposition would be offered to his motion, and therefore would occupy but little time in introducing it. The hospital at Rockhampton had been built and finished without assistance from the government, by private subscription; and as it had supported a large number of infirm and aged persons, who came to the district at the time of the rush to the Canoona goldfields, he thought it was now entitled to some consideration from the Executive.

Mr. COXEN seconded the motion.

The COLONIAL TREASURER stated that the government would be willing to place the required sum on the estimates, and pay it to the hospital committee, on condition that a similar amount was raised by private subscription. He thought the Rockhampton people were not entitled to more, as the hospital had been erected at the expense of the government at the time of the rush to the Canoona gold-fields, and not by private subscription at all.

Mr. FITZSIMMONS stated in reply that he was not previously aware of the fact just mentioned by the Colonial Treasurer, otherwise he would have presented his motion in a different shape.

The resolution having been put, was passed without dissent.

POSTAL COMMUNICATION WITH NEW SOUTH WALES.

Mr. JORDAN moved, pursuant to notice,—“That this House will, on Wednesday next, resolve itself into a committee of the whole to consider the following resolution,—‘That, whereas it is expedient to facilitate the intercourse between this colony and the colony of New South Wales, in order to the promotion of the commercial interests and general convenience of both colonies, an address be presented to His Excellency the Governor praying that immediate steps be taken by communication with the Government of New South Wales to endeavor to reduce the present rates of postage between the two colonies, and to re-establish the rates which obtained before the separation of Queensland from New South Wales.’” He said that he did not consider it necessary at the present time to say much on the subject of his resolution, as a better opportunity would present itself when he came to reply, or when the house went into committee on the subject. He regarded the present rates of postage between Brisbane and Sydney as too heavy and exorbitant; and did not consider that because they had obtained separation they should not continue the old scale of charges. He considered it to be unwise to adopt a policy which would prevent free and frequent intercourse between the colonies; and thought that the government should communicate with the New South Wales authorities with a view to a return to the old arrangement. He thought that by reducing the rate of postage a larger revenue would be derived by the post office, as the system of sending letters by private hand, now so extensively followed, would be discontinued.

Mr. BLAKENEY seconded the motion.

Mr. GORE agreed that the diminution of the rates of postage would augment the revenue, by increasing the number of letters; but suggested that the adoption of the reduced rates should be contingent on the New South Wales government agreeing to adopt a similar measure.

Mr. RAFF had great doubts as to the results of any negotiation with New South Wales on the subject, but was willing to make the attempt suggested in the resolution.

After a few observations from Mr. JORDAN in reply, the motion was passed.

SUPPLY.

On the motion of the COLONIAL TREASURER the Speaker left the chair and the house

resolved itself into a committee of supply.

The following items were then voted without discussion :—

Director of Botanic Gardens	...	...	£300
Overseer and head Gardiner	...	...	90
Salary for Propagator	...	...	35
5 Out-door Laborers	...	...	290
Plant Collector	...	...	50
Formation of Botanical Library	...	...	50
Incidental Expenses	...	...	50
Reserves for Public Recreation at Brisbane and Ipswich	...	...	200

With regard to the last item Mr. FERRETT asked for some explanation from the government as to the mode in which they proposed to expend the sum.

The COLONIAL TREASURER explained that it was to be expended in fencing in the reserves.

Mr. FORBES believed the Sydney Government had placed £600 on the estimates for Ipswich; and asked how £200 could be expected to pay for the fencing in of the two reserves.

The COLONIAL SECRETARY was not aware that the larger amount had been placed on the New South Wales estimates; but thought at the same time that £200 was a sufficient amount for 1860, while a further sum would be provided for 1861.

MESSAGES FROM THE GOVERNOR.

On the motion of the COLONIAL TREASURER the Chairman reported progress and obtained leave to sit again at a later hour. After which the Speaker read,

Message No. 7, from his Excellency, announcing that, in accordance with the resolution of the house, £1000 would be placed on the supplementary estimates for the formation of a Parliamentary Library, and £300 for its current expenses.

Message No. 8, to the same effect, with reference to the vote of £200 for waterworks at Toowoomba; and Message No. 9, conveying the reply of Captain Denham of H.M.S Herald to the resolution of the Assembly thanking him for the services he had rendered to the colony in exploring and surveying the northern coast.

The messages having been ordered to be printed the Speaker left the chair again and the Committee resumed.

SUPPLY.

On the motion of the COLONIAL TREASURER the following items were passed :—

Government Domain	...	...	£200
Engineer for Roads	...	...	600
Draftsman and Clerk	...	...	300

Messrs. TAYLOR and WATTS were of opinion that the remuneration was too large.

Mr. THORN said this was money thrown away to the great damage of the public thoroughfares. It was disgraceful to see the public roads in their present state. He would not vote a single farthing for this service.

The motion was subsequently carried.

The sum of £500, as salaries for two foremen of public works, was voted without opposition.

The COLONIAL TREASURER moved the sum of £380 for contingencies and travelling expenses, in connection with the engineer of roads department.

Mr. WATTS thought that the sum of £250 for travelling expenses was monstrous, even supposing the officer in question were travelling every day, which was notoriously not the case. He concluded by moving that the sum be reduced by £250.

Messrs. THORN, FERRETT, and TAYLOR also opposed the item.

Mr. BLAKENEY supported the motion, remarking that, if the officer were compelled to pay his travelling expenses out of £600 a year, his salary would be of very little value to him.

Mr. RAFF pointed out that the money was intended to cover all contingencies connected with travelling through the country, but that the Government would not be bound to spend any more of it than was absolutely required.

After a few words from the COLONIAL SECRETARY to the same effect, the amendment was put and negatived, and the original motion carried.

The COLONIAL TREASURER then moved the sum of £4500 for the Brisbane and Drayton road at the rate of £50 per mile, which, after some explanation, was carried.

The next sum proposed was £850 for draining, forming, and metalling the road to the Three Mile Scrub.

The item was passed, after some remarks from Mr. GORE and Mr. FERRETT.

The sum of £850 for the road between Three Mile and Seven Mile Creek was passed without observation.

The following sums were then passed nem. con.: £140 for clearing three miles of road to the Scrub; £850 for metalling one mile of road at Sandy Plains; and £1000 for keeping in repair minor roads.

The COLONIAL TREASURER moved the sum of £1500 for the road between Maryborough and Gayndah.

Mr. HALY complained that the sum was too small, and drew a comparison between the expenditure in those districts and other districts of the colony, to show that the former did not receive their fair share of the public money.

The SPEAKER corroborated the remarks of the last hon. member. He was intimately acquainted with the road referred to, and could bear testimony to the fact that there was not a worse road in the colony. He hoped next year that a more liberal provision would be made.

The motion was then put and passed.

The sum of £800 for the road to the northward was carried without opposition.

The sum of £1190 for the road from Ipswich to Warwick, at the rate of £14 per mile, was next proposed by the COLONIAL TREASURER.

Mr. GORE thought that £14 per mile, for a road scarcely second to any other in the colony, was altogether too small. He hoped, however, that in pursuance of an answer received from the government last night, the matter would be liberally considered in framing the estimates for the next year.

Mr. WATTS would support the motion, if it were three times the amount, inasmuch as he was a great advocate for expending the public money in repairing the roads.

After some remarks from Messrs. RAFF, FERRETT, and TAYLOR, the motion was put and passed.

The COLONIAL TREASURER moved that the sum of £250 be granted for Breakfast Creek Bridge.

Mr. THORN opposed the motion, remarking that he would like to know how much money had been expended on this bridge, as he was aware that it had been a source of continual

solicitation during the last nineteen years.

After a few remarks from the ATTORNEY-GENERAL, the motion was passed.

The COLONIAL TREASURER next proposed £1000 for a bridge over Condamine at Warwick, which was passed, as were also the following items—

Bridge over Oakey Creek, at Gayndah	...	£800
Ditto ditto Lockyer's Creek	... ..	1500

For Colonial Architects' Department :—

On the motion of the COLONIAL TREASURER to grant £600 as the salary of the Colonial Architect,

Mr. FERRETT sought for information as to the duties of this officer, and

The COLONIAL TREASURER having explained, in a manner evidently anticipated by the house, and satisfactory to Mr. Ferrett, the sum was granted.

The COLONIAL TREASURER proposed the following items, which were passed without discussion.

Clerk, 1st class	... ..	£300
Foreman of Works	... ..	900

On a vote of £340 for contingencies being proposed, Mr. WATTS objected to the item set down for travelling expenses and moved accordingly that the amount be reduced to £290.

The amendment having been seconded, the question was put and the house divided on the amendment with the following result —

Ayes, 5.

Noes, 15.

Mr. Mr. Thorn
 “ Taylor
 “ Ferrett
 “ Watts } Tellers
 “ Haly }

Mr. Coxen
 “ Jordan
 “ Blakeney
 “ Edmondstone
 “ Fitzsimmons
 “ Herbert
 “ Royds
 “ Forbes
 “ Pring
 “ Buckley
 “ Raff
 “ Richards
 “ Lilley
 “ Gore } Tellers
 “ Mackenzie }

The original motion was then put and passed.

The COLONIAL TREASURER proposed the following items, which were carried without discussion :—

Salary of Sub-Commissioner of Gold Fields		
at Canoona	... ..	£138
Forage for ditto	... ..	25

The COLONIAL TREASURER having explained that the office of Sub-Commissioner of

Gold Fields at Canoona, being found no longer necessary, was abolished, the Chairman left the chair, reported progress, and obtained leave to all again to-morrow.

The house then adjourned, on the motion of the COLONIAL SECRETARY, at 10 minutes past 6 p.m. till 3 o'clock to-morrow.