

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

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**Legislative Assembly**  
**11<sup>th</sup> June 1861**

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Extracted from the third party account as published in the  
Courier 12<sup>th</sup> June 1861

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The Speaker took the chair at twenty minutes past three, and read prayers.

**PAPERS, &c.**

The ATTORNEY-GENERAL laid upon the table returns moved for by the hon. member for North Brisbane (Mr. Blakeney), in connection with business done in the Circuit Courts of Queensland. Also, returns moved for by the hon. member for North Brisbane (Mr. Cribb), of the number of writs of summons, &c., &c., issued from the Supreme Court during the past year.

On the motion of Mr. BLAKENEY the returns moved for by him were ordered to be printed.

**RESIGNATION OF MR. MACALISTER.**

The SPEAKER reported that he had received the resignation of one of the hon. members for Ipswich, Mr. Macalister, and that it would therefore be necessary for him to issue a new writ.

**REFUSAL TO ATTEND A SELECT COMMITTEE.**

The COLONIAL TREASURER, in accordance with the 168th clause of the standing orders, drew the attention of the house to the fact that a witness had been summoned before the native police committee, who had refused his attendance. The name of the person summoned was William Henry Walsh. One course which the committee had laid down for themselves in order to arrive at an impartial verdict was to get the testimony of as many persons as possible, who were known to be inimical to the native police, and advocates of the rights of the aborigines. Mr. Walsh had been summoned before the committee, and written a note in reply, refusing to attend. (The hon. member here read the letter of Mr. Walsh, in which that gentleman in substance stated that he was unwilling to travel 200 miles to appear before a select committee whose constitution had caused so much animadversion outside the house, and whose impartiality must be at least questionable.) He (the Colonial Treasurer), in bringing the matter under the notice of the house, merely wished to have it made known that the committee had done their utmost to bring before them all witnesses whose testimony might be favorable to the conduct of the blacks; and inimical to the native police. Mr. Walsh had made some severe charges in the public journals against the native police, and was, in fact, one who had participated in the "cowardly attacks" upon that body, alluded to on a previous occasion in the house. (hear, hear.)

Mr. WATTS moved, "That William Henry Walsh be ordered to attend before this house on this day month." It was highly necessary that the committee upon the native police, &c., should be enabled to get all possible information.

The motion having been seconded,

Mr. O'SULLIVAN rose to advise the hon. member for Drayton and Toowoomba to withdraw the motion. He did not believe the motion to be a practicable one, and should therefore oppose it, and press his opposition to a division. It would answer all purposes if a resolution of another description,—that is to say, merely condemnatory of Mr. Walsh's conduct,—were arrived at. He would move an amendment, "that this house consider the conduct of Mr. Walsh, in refusing to attend before the committee to be most discourteous." If the steps proposed by the hon. member for Drayton and Toowoomba were taken with regard to Mr. Walsh, a similar step would have to be taken with other parties who refused to attend before select committees, and numerous complications would thus ensue. Moreover, it was at present a question whether, if the resolution were passed, the house possessed the power to enforce it.

Mr. LILLEY would suggest to the hon. member for Ipswich to withdraw his amendment as he (Mr. L.) had an amendment to propose which would perhaps meet the case better. With the permission of the hon. member and the House he would move—“(1.) That the conduct of William Henry Walsh, a justice of the peace for the territory, in disobeying the summons of a select committee of this house is most reprehensible, and merits the severest reprobation of the house; (2) that the above resolution be communicated to his Excellency.

Mr. O’SULLIVAN begged to withdraw the amendment he had originally proposed.

Mr. LILLEY then moved, and Mr. O’SULLIVAN seconded, the amendment proposed by the former gentleman.

Mr. FITZSIMMONS much regretted to perceive that this matter of the native police and the treatment of the aboriginals, was one which had caused not only more misunderstanding, but also more ill-felling, than any other broached this session. He thought that certainly there were no parties whom the committee should be more anxious to examine than those who had been writing in favor of the aboriginals, and against the native police. Their evidence would be calculated, when taken in connection with the evidence of those who took opposite views, to guide the committee to the real truth of the case. Very serious charges had been made against the native police, and certainly the persons who brought those charges ought to be examined before the committee. It was neither right nor just for parties to make grave charges, and then, when summoned before a proper tribunal, to refuse to appear and substantiate them. Such a course was calculated to inflict injustice not only upon the committee, but also the public at large. He should oppose the amendment and vote that Mr. Walsh be summoned before the house.

The COLONIAL SECRETARY thought that the real difficulty of this case lay in the undefined character of the powers which, under such circumstances, the house actually possessed. As far as his own individual opinion as a private member was concerned, he believed the Standing Orders of the house to be law, and he believed that the parliament of the colony had the power to enforce the laws of the colony; but he was aware that in the other colonies difficulties and disputes had arisen with reference to the powers of the house, and also of the Sergeant-at-Arms to make arrests in conformity with the decrees of the house. Recognising the existence of these difficulties, he proposed shortly to bring in a short bill to define the powers of the house, and place matters in this respect upon a more satisfactory and definite footing. Such a bill no doubt, if assented to by the house, would receive the Royal assent. (Hear, hear.) In the meantime he thought that there was a certain amount of doubt in the minds of many persons, although there was none in his own mind, with regard to the powers of the house, which rendered it undesirable that the motion of the honorable member for Drayton and Toowoomba (Mr. Watts) should be passed. No doubt this man had by the letter just read by his hon. colleague insulted both the house and the committee. He was evidently one of those blustering fellows who make all sorts of charges in public print, and who sneak away in a cowardly manner when called upon to support the opinions they have expressed. He (the Colonial Secretary) believed that the man could not give a particle of evidence of any value either with regard to the aboriginals or the Native Police, and therefore his refusal to attend would not entail upon the committee any important loss of information. At the same time, as this individual had been very pertinacious in making charges against the native police, the committee deemed it advisable to summon his attendance, and refusal to attend was most ungracious. He (the Col. Secretary) did not think it necessary that the witness in this case should be made to attend. The suggestion of the hon. member for Fortitude Valley would meet the merits of the case, and he hoped that it would be adopted by the house.

Mr. WATTS believed that a very important question was involved in his motion. From what the Colonial Secretary had stated, there could be no doubt that the actual powers of the house was a subject of great uncertainty. If these doubts were not at once definitely set at rest, considerable trouble would be continually accruing to the house, and considerable expense to the colony. If the desirable evidence were not forthcoming, the committee would not be enabled to come to any conclusion. The committee was appointed with a view to ascertain whether this native police force was one which benefitted the out-settlers or not; whether some other force, equally efficient, and not liable to the same objections, might not be organised; and whether some more humane mode of dealing with the aboriginals than that hitherto observed, might not be pursued. These points could not be properly decided unless all the evidence desired were forthcoming. This gentleman, Mr. Walsh, through the medium of the public journals, made some severe strictures upon the conduct of the native police, and the general treatment of the aboriginals; and it was very hard that now having been summoned before

the committee he should shirk the matter, and refuse to give any information. If this gentleman knew as much about the working of the native police and the habits of the blacks as he professed to know, it was his duty to come before the committee and give them such information as might guide them in arriving at a correct conclusion, or else the committee might be stigmatised as prejudiced and as not having done their duty. He (Mr. Watts) believed that that house ought to have power to compel the attendance of witnesses; they should have power to put a witness who refused to attend a summons into custody, and there to keep him till an order came out from the Imperial Parliament, who could alone release him. If they took upon themselves to do this in one case, it would serve as a warning to other parties who might be disposed to disobey the summons of the house. He spoke strongly on the subject, because a slur had already been cast upon that committee by a portion of the press. This gentleman held a position as justice of peace, and had sworn to see justice done to the best of his ability, and thus made his refusal to attend before that committee, appointed to promote the cause of justice in particular cases, more reprehensible. If the amendment of the hon. member for Fortitude Valley were carried, what would be the result? This gentleman would still hold the commission of the peace (cries of "no, no.") At present he was not prepared to withdraw his motion, but if he heard sufficiently valid reasons urged in favour of this step, he would withdraw the motion and vote for the amendment.

The ATTORNEY-GENERAL thought that after the hon. member for Drayton and Toowoomba had heard the few observations he was about to address to the House, he would be persuaded to withdraw his motion. However desirable he might think it that this refractory justice of peace should be compelled to give his attendance at the bar of the House, yet he could not bring his mind to feel that the House had the power to compel that attendance. With the greatest respect to the standing orders (and he considered it a reflection upon himself that he allowed these orders to pass without discerning the flaw to which he was now drawing attention), it appeared to him that the clause referred to by the Colonial Treasurer only referred to the power of the House over its own members. It did not confer any jurisdiction over persons outside, who were not members of the House. He believed that the 13th clause of the order in Council, erecting this into a separate colony, by which the constitution and powers of the House were defined, did not give them power to make standing rules and orders by which persons outside the House would be affected. If this motion were passed, it would force the House to seek to take advantage of a standing order *ultra vires*; that is, if the order referred to were interpreted to confer a jurisdiction over persons not members of that House. Under that order in Council the House derived all its powers, and it would be as well for him to read the clause referred to. (The hon. member here read the 13th section.) It would be seen by this that no power was given to that Assembly to frame a standing order making it compulsory upon persons summoned before a select committee to attend. Some of the legislative bodies in other colonies might have some such power conferred on them, or might inherently possess it; but he believed that at present in this colony no such power was in existence. Taking into consideration, then, the 13th section of the Order in Council, he doubted whether the house could exercise sufficient power to enforce the resolution of the hon. member if it was carried. It would, therefore, be a much more dignified course for the House to refuse to pass the motion, as they sought to inflict a punishment they ought to be assured that they were in a position to do so. He believed that if the House adopted the amendment of the hon. member for Fortitude Valley, they would be acting in a manner consistent with their dignity. This gentleman (Mr. Walsh) holding a position of high trust had refused to give the committee the benefit of his evidence in forming an opinion upon certain points, being moreover one of those who had most loudly invoked that opinion. The gentleman was a Justice of the Peace, and in that capacity it was his duty in all transactions with the aborigines to extend the same justice to them as he would to white men. It was his duty in that capacity to protect both the black man and the white man against injustice as far as lay in his power. If injustice be done to the blacks, and a justice of the peace be in the neighbourhood, it was just as much his duty to take steps for the punishment of that injustice as it would be if the injustice had been committed against white men. Here, however, they found a Justice of the Peace who had made very grave and somewhat clamorous charges against the native police, but who, when called upon, refused to give any advice or information which might assist the committee in coming to a conclusion as to how the aborigines could be more effectually protected or the native police be better organized. He conceived that the letter of Mr. Walsh inflicted great indignity not only upon the committee, but also upon the house, for it assumed that the house would adopt the committee's report, whether it proved to be a just or unjust one. The committee was chosen in the usual way by ballot. He had heard nothing said detrimental to the committee, and he believed that the house had full

confidence in the impartiality of the committee.

Mr. WATTS expressed his desire to withdraw his motion, but was informed by the Speaker that he could not do so in the present stage.

The amendment of Mr. Lilley was then put and passed without a division.

### **SOUTHERN BOUNDARY.**

Mr. WATTS postponed the resolutions standing in his name until Friday next.

### **FENCING BILL.**

Mr. BLAKENEY moved the second reading of his Bill to regulate the Fencing of Land in Queensland. The Act at present in force, passed August 2nd, 1859, contained certain defects which the present measure was calculated to remedy. One clause of that Act provided that if an owner of land erected a fence between his own and the adjoining land, and had given due notice of his intention to his neighbour, the latter should be compelled to pay half the cost of this fence, and could sue for the money upon refusal to pay. The matter however had to be taken before the Supreme Court if the amount involved were more than £10. The Bill he now introduced extended the summary jurisdiction of Justices of the Peace in cases of this nature to amounts not over £50. The third section of his Act provided that a certain notice (he thought three months should be the time fixed) should be given by the party, who wished to fence off his land from his neighbour's, to that neighbour. After which time he could proceed to fence, and his neighbour would be held responsible for half the cost. All notices under the Act would have, when possible, to be served personally, and would have to be in writing. When the owner was unknown or absent from Queensland the Act provided that notice should be inserted twice a week for two consecutive weeks in some Brisbane newspaper, and once a week for the same time in the journal published nearest to where the land referred to was situated. The bill also provided that many matters which under the present Act were decided by arbitration, thereby causing much delay, expense, and injustice, should be decided by two or more Justices of the Peace. It would be seen that existing agreements would not be interfered with by the Act.

Mr. LILLEY seconded the motion.

The COLONIAL SECRETARY agreed with the main features of the measure as far as he had had an opportunity of making himself acquainted with them. Some of the clauses, the 4th and 6th for instance, he believed in committee would be found to require some slight modification.

The motion was then carried, and the bill read a second time, and, on the motion of Mr. BLAKENEY, its committal was set down as an order of the day for that day fortnight.

### **MARRIAGE BILL.**

Mr. LILLEY, since he introduced this bill, had learnt that a bill of a similar character passed by the South Australian Parliament had been disallowed by her Majesty, he therefore thought it would be useless for him to press on this measure during the present session. The reason that he had postponed the motion which now stood in his name was, that he wished to make himself acquainted with the details of an important judgment recently given by the Lord Chancellor, in which he thought the principle contained in his bill might be involved. A perusal of that judgment had convinced him there was no analogy between the case dealt with by the Lord Chancellor and any which might be affected by his (Mr. L.'s) measure. He believed that the principles of his bill were in accordance with Scripture and common sense; but for the reasons he had set forth, he begged to move that the motion standing in his name be discharged from the business paper.

The motion was seconded; and after a few words from Mr. R. CRIBB in favour of the general principles of the measure, was carried unanimously.

### **POSTPONEMENTS.**

The motion that the house resolve itself into a committee of supply, standing in the name of the COLONIAL TREASURER, was postponed until Thursday next; and the motion that the house resolve itself into a committee of Ways and Means, was postponed until that day month. The consideration of Immigration Regulations in Committee, was, on the motion of the COLONIAL SECRETARY, postponed for a fortnight; and on the motion of the same hon. member, the consideration of the Revenue and Audit Bill in committee was postponed until the other orders of the day had been disposed of.

## SERVICES OF LIEUTENANT HEATH.

Mr. O'SULLIVAN, pursuant to notice, moved,—“That there be laid on the table of this House a Return shewing the amount of work, and its practical utility, performed by Lieut. Heath in this colony, as a Marine Surveyor or otherwise, specifying the quantity of work performed, and the time consumed in the different localities, by whom employed, the expense in each case; and also shewing what vote of this House warranted the expenditure.” He was quite unacquainted personally with Lieut. Heath when he gave notice of this motion, but since then he had had the honour of being introduced to that gentleman by the Colonial Treasurer. What that honorable member meant by effecting the introduction he (Mr. O'S.) did not know. (Laughter.) It was very plain that by making this motion he had no personal feelings of any kind towards Lieut. Heath, whom he did not then know. He had been induced to take steps in this matter by the answer given by the colonial Secretary to one of the members of that house who had asked a question concerning the expenditure of a sum of money voted last session for clearing the navigation of the Brisbane and Bremer rivers. Instead of answering that question the Colonial Secretary had put upon the table a lot of papers purporting to be a report from Lieut. Heath. When he found that those returns were apparently the only satisfaction the house was to receive for the £2000 voted last session, he thought they would contain something very well worth reading (laughter). He candidly confessed that he had studied them for the last month, and was no wiser for the trouble he had taken (laughter). He had occupied the whole of that morning in endeavoring to make out the first paragraph and was as wise now as before he sat down to read it (laughter). The hon. member for Western Downs had, it was true, drawn attention to certain eccentric passages alluded to had been attributed entirely to the printer. No doubt the printer had sinned, and was in the habit of sinning, but he thought that in the present instance the old adage of “give a dog a bad name and then hang him” was exemplified. (Laughter.) Every blunder or flaw in a bill was now set down as the fault of the printer. Printers were bad enough he must own, but he did not believe that the sins of other people ought to be visited on their heads. With regard to this particular case he had made enquiries, and he found that the only sin of the printer was in putting an a for an o; he had printed “painted rocks,” instead of “pointed rocks,” He (Mr. O'S.) had come to the conclusion, that if the services of Lieut. Heath were to be valued by the literary attainments of the report to which he was alluding, the sooner these services were dispensed with the better for the colony. The Colonial Secretary had a great partiality for answering questions and putting a lot of papers on the table of the house. He seemed to think that the easiest way of stopping the mouths of hon. members was to force large lumps of paper down their throats (Laughter.) The same trick—for he could designate it by no other name—had been successfully tried in the recent vote of additional money for Government House. A question with regard to the vote of £3000 for a bridge at Ipswich, passed last session, had been treated in a similar manner. He did not see how the government could object to furnish the returns asked for. Large sums of money were down on the Estimates for the improvement of rivers and harbours; and, although Lieut. Heath might be a very good marine surveyor, yet, judging by the report recently laid before the house, he should question the ability of that gentleman to decide upon matters involving the expenditure of the large sums of money referred to. He contended that, as far as the house could judge, Lieut. Heath had not shown the scientific skill necessary to deal with such matters. In one portion of his report he had told them that, at a certain part of the river there were pointed rocks, and that the points of the rocks could be got off by hard labour; but he did not say which was the way to apply the hard labour to the points of the rocks, (Laughter) He (Mr. O'S.) thought that a Board of scientific men should be appointed to examine our harbours and rivers, wherever it was proposed to spend large sums of money, and should make their recommendations as to the best way of expending this money.

Mr. B. CRIBB seconded the motion.

The COLONIAL SECRETARY had no objection to furnish the returns asked for, so far as the information could be obtained, but he thought they might well tremble at the idea of a board, formed on the principles propounded by the hon. member. With reference to the officer whose character had been brought so prominently before the house, he could only say that Lieutenant Heath was a gentleman of the highest attainments in his profession, and one who had uniformly discharged his duties to the entire satisfaction of the government. The errors in the draft report, to which the hon. member referred, were entirely the result of imperfect punctuation, which to a certain extent he confessed made the document a somewhat curious one. But the fault, so far as this was concerned, was attributable to the clerks, and not to Lieutenant Heath. As for the returns asked for, the government would be prepared to furnish all the information they had in their power, and in the mean time he might state that the total cost of the

services rendered by Lieutenant Heath, including his surveys of the rivers Brisbane and Bremer, with a view to the facilitation of navigation and the construction of a bridge between North and South Brisbane, and the discovery of a harbor north of Bribie Island, only amounted to about £700 altogether. Adverting to the "pointed rocks" to which the hon. member made such special allusion, he might state that these rocks were situated in shallow water, and in such a manner (according to Lieutenant Heath) as to admit of their removal by the aid of pick axes and other implements of that kind without resorting to the more costly process of scientific apparatus; and so far as could be judged by existing circumstances there did not appear to be any reason for doubting the correctness of that gentleman's ideas on the subject. With reference to the portion of the resolutions requiring a return as to the utility of Lieutenant Heath's services, he thought that was a matter of opinion upon which they might all differ, and with respect to which the government could not be expected to furnish any returns. The other information asked for in the resolution would of course be supplied.

The ATTORNEY-GENERAL explained that Lieutenant Heath's salary as first-class marine surveyor was of more than £680 a year.

Mr. RAFF suggested that after the explanation of the Colonial Secretary, the hon. member for Ipswich should withdraw his motion. From that explanation there could be no doubt that Lieutenant Heath was a thoroughly qualified government officer, and unless the hon. member doubted this fact, there could be no object in asking for the returns enumerated in the motion. The Colonial Secretary had once accused the hon. member of not having a very scientific turn of mind, but he imagined the hon. member's display on this occasion would prove a complete answer to the contrary. (Laughter.)

Mr. O'SULLIVAN replied, and in doing so he remarked that he did not see anything in the construction of the board to frighten the Colonial Secretary, who, under the expression of perfect innocence, possessed a great deal of public cunning. (Laughter.)

In answer to Mr. O'SULLIVAN, the COLONIAL SECRETARY said the government would be prepared to lay on the table such papers on this subject as it might be in their power to furnish.

The motion was then put and passed without division.

### CHAIRMAN OF COMMITTEES.

On the motion of the COLONIAL SECRETARY, Mr. Blakeney was appointed Chairman of Committees for the day.

### ALIENS' BILL.

On the motion of Mr. LILLEY, the house resolved itself into a committee of the whole for the purpose of considering this bill in detail.

The first clause was agreed to without opposition.

The second clause was amended, on the motion of Mr. LILLEY, by the insertion of the words, after the word "alien," "being a native of an European or North American state, and."

A new clause was then inserted, on the motion of the same gentleman, excluding Asiatics, &c., who had not resided in the colony during a period of three years.

A further clause was introduced, on the motion of Mr. LILLEY, adapting the provisions of the bill to the foregoing alterations.

The remaining clauses were passed with a few verbal alterations, and the house having resumed, the Bill with amendments was reported to the house, and the adoption of the report was fixed as an order of the day for Wednesday next (this day).

### COTTON GROWING.

On the motion of Mr. WATTS, the house resolved itself into a committee of the whole for the purpose of considering the following resolutions, which, it will be remembered, were carried at a former sitting of the House:—"(1.) That, considering the importance of promoting and establishing another export staple from Queensland, it is desirable that land be granted to any person or company undertaking the cultivation of cotton on an extended scale. (2.) That the government be therefore empowered to grant land in fee simple in blocks of not less than 320, nor more than 1,280 acres, if, within two years, capital in the proportion of £5,000 to each 640 acres shall have been expended in preparing for and in carrying on the cultivation of cotton. (3.) That the above resolutions be

communicated by address to his Excellency the Governor, with a request that the necessary regulations in this behalf may be notified without delay."

Mr. WATTS moved that the resolutions be adopted with the expectation of the third, for which he proposed to substitute the following—"That these resolutions be transmitted to the Legislative Council for their concurrence." The resolution now omitted could be reintroduced when the matter came back from the other house.

Mr. O'SULLIVAN could not see what the other house had to do with the matter, seeing that the question at issue was simply one involving the expenditure of money. He suggested moreover that the resolutions should be put by one.

The COLONIAL SECRETARY pointed out that an arrangement such as was proposed could only be carried out with the "sanction of the legislature," which clearly implied the two houses of Parliament.

Mr. R. CRIBB contended that the spirit of these resolutions was utterly inconsistent with the spirit of the existing land laws, and in support of his argument he quoted copiously from the clauses of the acts passed during the last session.

The COLONIAL SECRETARY explained, showing that the resolutions could be carried out in thorough harmony with the existing land laws.

At this stage Mr. FITZSIMMONS called attention to the state of the committee, whereupon the Chairman (without counting) immediately resumed and reported the circumstance to the Speaker, who, on counting, found there were only fifteen members present, and accordingly adjourned the house until 3 o'clock the next day.