Record of the
Proceedings of the Queensland Parliament
...
Legislative Council
30th July 1861
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Extracted from the third party account as published in the
Courier 31st July 1861

The PRESIDENT took the chair at a quarter past 3 o'clock, and opened the proceedings with prayer.

THE NATIVE POLICE.

The PRESIDENT said that before proceeding to the motion which stood in his name, he begged leave to move that the 8th paragraph in his Excellency's opening speech, to which reference had been made, be now read.

The motion having been carried,

The CLERK read the following extract:—

"I recommend you to direct your attention to the condition of the aborigines in Queensland, and to take evidence before a Parliamentary Committee as to the feasibility of improving it, whether by the establishment of Industrial Schools, or in any other practical manner. In connection with this subject, I recommend you to take evidence as to the organization and present condition of the native police corps, and to consider what means it may be desirable to adopt to increase the discipline and efficiency of this necessary protective force."

The PRESIDENT then proceeded to address the house at considerable length. The extract just read would bring to the recollection of hon. members the circumstances under which the legislature had been invited to enquire into the subject, and the objects sought to be achieved by that enquiry. It was true the subject had in a certain sense been fully treated in the other branch of the legislature, but up to the present time that house had taken no part in the discussion: and he maintained that, as a co-ordinate branch of the legislature, it would not be dignified on their part to allow the matter to pass without offering some opinion upon it. He would not have moved the matter at all had the other house sent up to them a series of resolutions embodying their opinions on the subject, or had they even adopted any other proceeding by which that house could have made common cause with them in the treatment of this very important question. In looking at the subject in a general point of view, it did seem strange to him that it never occurred to those who took an active part in the discussion that the native police force as at present constituted, was clearly illegal, and in direct violation of the fundamental principles of the British constitution. The hon. gentleman then went on to show that, according to the Bill of Rights, the raising of a standing army in time of peace other than the regular army, was illegal. This, in fact, was the foundation of all their rights, as secured to them by the great constitutional measure to which he had alluded. He maintained, therefore, that the native police, being an armed force unconnected with the regular army, was, according to the article in the Bill of Rights, an illegal force, and, as such, in direct violation of a law sanctioning the appointment of militia. It might be that the organisation of the native police force up to the present time had proved harmless; but in contemplating this subject they were bound to regard the future, and in so doing, they could not but perceive that very serious inconvenience might arise from the extension and maintenance of an illegally constituted armed force. The existence of such a force had in times past proved extremely dangerous to the liberty of the subject, and he saw no reason to doubt that, if tolerated,

it would prove so again. For these reasons it struck him that they ought to point out to the government and the other house of legislature the blot which now attached to the organisation of the present native police corps. Putting out of sight the question as to the legality of the organisation, he contended that the force was lamentably deficient in point of discipline. Hon. gentlemen would doubtless remember the case of the unhappy female at Rockhampton (Fanny Briggs), who was ravished and then murdered by one of the native police. It would be remembered that the culprit in this case succeeded in making his escape, and was never apprehended by any member of the corps, although it was well known that he remained in the neighbourhood for a length of time after the commission of the fatal deed. This, he contended, was a strong evidence of want of discipline in the corps, for not only was the deed committed by one of the number, but the remainder proved themselves wholly unable to apprehend the delinquent. It appeared, however, that the criminal (Gulliver) was eventually apprehended by a mob of bullock drivers, who, after making him drunk, bound him hand and foot, and delivered him over to the native police, under the charge of Lieutenant Powell, who had a warrant against him. Whilst in this position, it appeared from the evidence, that the officer in question deliberately shot him. Seeing that the prisoner was scarcely in custody, there could clearly have been no reason for taking such an extreme step, and therefore, he contended that the officer had not only exceeded his duty, but had been guilty to all intents and purposes of wilful murder. In support of this statement the honourable member quoted from the evidence apprehended to the report, pointing out that the witness, in answer to certain questions, was told not to make any inquiries, that Gulliver could not get away again. The same party some time ago took a blackfellow, against whom he had obtained a warrant, off his (the President's) own station, and deliberately shot him, in just the same manner as he had done Gulliver. Unfortunately the evidence of the native police was not admissible in a court of justice, otherwise he should certainly have issued a warrant for the officer's apprehension on the charge of wilful murder. These, however, were only two out of many other cases of a similar description that might be adduced. In fact he believed that it was customary with some of the officers of the native police, when they obtained a warrant for the apprehension of a blackfellow, to make it in the strict sense of the term a death-warrant. At all events, he could hardly remember any instance in which the warrant had been executed according to law, so far as his experience went in the northern districts. The only instance to the contrary which he could remember was with reference to a blackfellow named Toby, who was apprehended at his own request, and duly forwarded for trial. With regard to the murder of the black fellow first alluded to, he regarded it with still greater abhorrence, because he believed it was committed by a person who had taken the oath of a magistrate. He could not in such gross cases as this designate the crime by the mild term "indiscretion," which he found was the favourite phrase used in the report. He did not think it was possible, with any regard to veracity, to designate the crime by any other term than that of murder. In bringing this matter before the house it was not simply with a view to ascertain their opinion on a dry question of constitutional law, but mainly with a view to facilitate the passing of a measure having for its object the entire regulation of the native police force. He believed that, as the force now stood, it was liable to be indicted for riot in the event of its assembling in greater number than three. Such was the law of England, and in the absence of any local act he imagined that the same law applied. With regard to the composition of the force he had no desire to raise any discussion which might bring them into collision with the other branch of the legislature. He was of opinion, however, that those who argued that only a black police could perform the duties assigned to them, paid but a very poor compliment to their countrymen. He instanced a case to the contrary which occurred in the northern districts, in which the whites had proved themselves to be even superior to the blacks. His own idea was that the force should consist of whites, with a certain number of black trackers, and he reminded the house that such a form would be available, in case of emergency for any other police service. He would not enter into the general question as to the treatment of the aborigines with a view to their civilisation, as that was no doubt a question surrounded with the greatest possible difficulties. He admitted, however, that several cases had occurred within his own knowledge wherein the aborigines of Australia had been thoroughly reclaimed from their wild state of life, and he was inclined to think, moreover, that some general system might be devised

by which their civilisation would be greatly promoted. He concluded by moving—"(1.) That this Council believes it to be in violation of the fundamental principles of the British Constitution, and in contravention of the laws of the empire, to maintain an armed force without laws to authorise its formation or to govern its order and discipline. (2.) That the native police of this colony is now a force so constituted. (3.) That in the opinion of this Council the government ought to introduce, at as early a moment as possible, a measure giving legality to the formation of this force."

Mr. FITZ did not think we could do without the native police force, and therefore he thought we ought not to interfere with it in the manner proposed. He did not agree with the President, moreover, that the blacks could be civilised. The experiment had frequently been tried, and in every instance it had failed. Governor Macquarie, for example, had set apart a twelve-acre farm near Windsor, in New South Wales, for the purpose of training the blacks in the habits and customs of civilised life. That establishment was known to the present day as "Black Farm." A considerable number of young blacks were trained and educated on it, but after several years of experience, it was found that these blacks relapsed into their former state of barbarism, and in many instances became even greater ruffians than those who had never been taught. Thus the experiment proved an utter failure. With regard to the charge of indiscriminate slaughter of the aborigines, he believed most hon. members would admit that the slaughter was much greater before than since the establishment of the native police corps. The hon. member here cited several cases in support of his argument, showing that before the organisation of the native police the squatters were devoid of protection, and were consequently compelled to make fearful examples as a means of defence. He had now a station in the north which was supposed to be peculiarly liable to the attacks of the blacks, but which, owing to the good behaviour and efficiency of the native police, enjoyed the most perfect tranquillity. With regard to the case of Gulliver, he had no doubt that this black had been killed in the manner described, but when they considered his ruffianly character and the frightful crime committed by him, he thought they ought to consider his death as an act of justifiable homicide. In conclusion, he contended that if the native police were done away with the slaughter of the aborigines would be much greater than it was at the present. He would therefore vote against the motion.

Mr. GALLOWAY differed from the President as to the constitution of the present native police force. The hon member seemed to look upon this force as an irregular troop of soldiers, whereas he (Mr. G.) looked upon it simply as police, and therefore just as legal as any other police. He agreed however that the shooting of Gulliver was unwarranted and that it was nothing else but murder for a policeman to shoot a prisoner under such circumstances. He believed that the enquiry instituted by the other house would result in much good, and that the government would be induced, in consequence, to recognise the force and to place it on a more efficient basis.

Mr. BALFOUR took a similar view with regard to the constitution of the native police. He contended that any service for which money was voted by the parliament became legal, as a matter of course. He was sorry that the President should have made use of such hard terms as "murder," &c., in speaking of the officers of the native police. Whatever might have been their faults, he did not think they were guilty of murder. As to the composition of the force, he was decidedly in favor of blacks, as being more suited to the circumstances of the case than whites. And then with regard to civilising the aboriginals, he contended that the moment hostilities ceased between the whites and the blacks, the process of civilisation set in, and any one who had witnessed the happy state of the blacks, as they were employed on the stations, must at once corroborate this statement. Under these circumstances, he thought the native police ought to be continued, but at the same time he admitted the necessity which devolved on the government, of issuing instructions designed to place the corps on a more efficient basis in point of discipline. He hoped, therefore, that the hon. member would withdraw his resolutions.

Mr. BROWN thought the hon. gentleman who spoke last night did not exactly comprehend the meaning of the resolutions. The object was not to disband the native police force, but to improve its efficiency. He regretted that he could not agree with the report of the select committee

in so far as the efficiency of the native police was concerned, but he entirely agreed with the President, that persons who acted as Powell had done were entitled to be called murderers.

Dr. HOBBS maintained that the organisation of the native police was perfectly legal. There was, in fact, no difference between them and the ordinary police, beyond the fact that the one carried arms and the other did not. This, however, could make no difference, as in point of law, it merely placed the native police in much the same position as the mounted patrol in England, which every one would admit to be a legalised body. It might perhaps be desirable that the native police regulations should be laid before parliament for approval.

The CHAIRMAN of COMMITTEES concurred with the President, that the native police were not a legalised body. The mere voting of money for particular purposes did not necessarily imply, as the honourable member representing the government seemed to think, that those purposes were legally carried out. He regretted that the legislature had not long ago taken this matter up, as, by that means, they might have prevented much bloodshed. He quite concurred with the remarks of the President in reference to the shooting of Gulliver; no circumstances could justify a policeman enforcing a warrant to take upon himself all the functions of judge, jury, and executioner. The hon. member then cited several cases in which black offenders had been taken into scrubs and shot without anything having been heard of the matter afterwards.

Mr. MACDOUGALL contended that the black police were just as legally organised as any other police, and were the same in every respect with the exception that their evidence could not be taken on oath. On the other hand, supposing that the force was not legally organised, he could see nothing in the resolutions to show how it should be organised. No doubt atrocities had been committed by the native police, but the same thing might be said of the white police. The hon. member then went on to show that he commenced squatting in Queensland in 1840, and that he suffered great losses both in men and cattle from the incursions of the blacks, but that ever since the establishment of the native police under Mr. Walker he never had a single bullock or sheep killed on his run by the blacks. He hoped therefore that the President would withdraw his resolutions.

The PRESIDENT replied, and in doing so, stated that it was his determination to press the resolutions to a division.

The motion was then put, and negatived as follows:—

Contents, 3.		Non-contents, 9.	
Mr.	Brown	Dr.	Hobbs
	Roberts	Mr.	Galloway
	Harris		Barker
			Fitz
			Macdougall
			McConnell
			Balfour
			Wood
			Compigne

APPROPRIATION BILL.

The PRESIDENT reported that he had received a message from the Legislative Assembly, transmitting the above bill.

The bill was read a first time, and the second reading was fixed for the next day.

CLOSING ROADS BILL.

The PRESIDENT reported that he had received a message from the Legislative Assembly returning the above bill.

AUDIT BILL.

The PRESIDENT reported a similar message with regard to this bill.

CARRIERS AND BAILEES' BILL.

Mr. FITZ moved the second reading of this bill with a few remarks, wherein he explained that carriers under the existing state of the law were perfectly irresponsible.

At the suggestion of Mr. GALLOWAY Mr. FITZ agreed to postpone the consideration of the bill in committee for another day or two in order to allow hon. members time to think over the matter.

The CHAIRMAN of COMMITTEES thought the bill ought to be regarded with considerable suspicion. He had not had time to read the bill, but from what he could see of it he was disposed to think that it was intended to confer extraordinary privileges on the squatters. At all events the hon. mover in his explanation had not alleged anything which was not already provided for by the law.

Mr. BROWN remarked that if we could amend the Masters' and Servants' Act, he could see no reason why we could not amend the Carriers' Act.

The motion was then put and passed, and the consideration of the bill in committee was fixed as an order for Thursday next.

MASTERS' AND SERVANTS' BILL.

Mr. BALFOUR moved the third reading of this bill.

Mr. MACDOUGALL moved that the bill be recommitted, for the purpose of reconsidering the 11th clause.

After some remarks from Mr. GALLOWAY in opposition, the amendment was carried on the following division:—

Contents (7).		Non-contents (5).	
Mr.	Fitz	Mr.	Galloway
	Macdougall		Barker
Dr.	Hobbs		Balfour
Mr.	Roberts		McConnell
	Brown		Compigne
	Harris		
	Wood		

Mr. ROBERTS explained that he voted with contents under mistake.

The house accordingly resolved itself into committee.

Mr. MACDOUGALL moved that the 11th clause be expunged.

Mr. HARRIS moved an amendment, fixing the rate of discount so as to remove all doubt on the subject.

Mr. GALLOWAY supported the amendment, and hoped Mr. Macdougall would withdraw his motion for expunging the clause.

Mr. MACDOUGALL opposed the amendment.

The amendment was carried by a majority of 7 to 5.

The clause as amended was carried.

The house having resumed, the report was adopted and the bill read a third time and passed.

ADDITIONAL RESPONSIBLE MINISTER.

The PRESIDENT reported that he had received a message from the Legislative Assembly

acknowledging the receipt of the Council's resolutions relative to the appointment of a fourth responsible minister, and intimating that they had taken steps to carry the same into effect.

FENCING LAND BILL.

The PRESIDENT reported that he had received a message from the Legislative Assembly returning the above bill.

ALIENS BILL.

The PRESIDENT reported that he had received a message from the Legislative Assembly returning the Naturalisation of Aliens Bill, with an intimation that they did not insist on the amendments requested by the Council.

The house adjourned at 6 o'clock until the next day at 3 o'clock.