

1883.
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WESTERN AUSTRALIA.

R E P O R T

OF THE

Select Committee of the Legislative Council

Appointed to consider and report upon

THE ABORIGINAL NATIVE OFFENDERS BILL.

Ordered by the Council to be Printed, 29th August, 1883.

SECOND SESSION.

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PERTH:

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1883.

EXTRACTED FROM THE MINUTES.

WEDNESDAY, 15TH AUGUST, 1883.

ABORIGINAL NATIVE OFFENDERS BILL.—The Order of the Day for the further consideration of this Bill in Committee being read, the Honorable A. P. Hensman moved, That the Order of the Day be discharged, and the Bill be referred to a Select Committee; such Committee to consist of the Honorable J. Forrest, Mr. Brown, Mr. Steere, Mr. Grant, and the Mover, and, by leave, Sir T. C. Campbell and Mr. Burt; and to report on 24th August.

Question—put and passed.

WEDNESDAY, 29TH AUGUST.

ABORIGINAL NATIVE OFFENDERS BILL—REPORT OF SELECT COMMITTEE.—Mr. Steere brought up the Report of the Select Committee appointed to consider and report upon this Bill, and moved, That it be received.

Question—put and passed.

Report received, and ordered to be printed.

R E P O R T

OF THE SELECT COMMITTEE, consisting of the Honorable A. P. Hensman, the Honorable J. Forrest, Mr. Brown, Mr. Burt, Sir T. C. Campbell, Mr. Grant, and Mr. Steere, appointed to consider and report upon the Bill intituled "An Act to consolidate and amend the laws providing for the Summary Trial and Punishment of Aboriginal Native Offenders in certain cases."

YOUR COMMITTEE, having discussed the provisions of the Bill which has been referred to them by Your Honorable House, with an earnest desire to endeavor to arrive at some satisfactory solution of the differences of opinion which exist as to the principles which should be adopted in dealing with a measure for the summary trial of aboriginal offenders, have by a majority adopted the following principles, which they think might be accepted by Your Honorable House as a guide in framing the above measure:—

1. That a Magistrate with one or more Justices should be enabled to give two years' imprisonment.
2. That two Justices should be enabled to give one year's imprisonment.
3. That there shall be no cumulative sentences.
4. That a Magistrate with one or more Justices, or a Magistrate alone, be empowered to flog in lieu of imprisonment (a similar provision being embodied in the law now in force).

The Committee is of opinion that, should Your Honorable House concur in the foregoing suggestions, the Bill for dealing with the summary trial of native offenders should be drafted in accordance therewith.

I concur, except as to point 4.

ALFRED P. HENSMAN.

JAS. G. LEE STEERE,

Chairman.

We dissent from the above recommendations, and are of opinion that summary jurisdiction to sentence aboriginal natives to imprisonment or to whipping should be vested in Her Majesty's Justices of the Peace without regard to their official status, as is all other summary jurisdiction carrying with it the power to imprison or to whip in England and in Australia.

To provide that a paid official shall have power alone to award summarily a punishment that any number of unpaid Justices shall be debarred from awarding independently of an unpaid Justice, as is proposed by the Committee, would constitute an unwise departure from the course of English and Australian legislation, which goes no further than to allow a paid Justice to exercise the power of two or more unpaid Justices. The proposal constitutes an insult offered to the intelligence and integrity of Her Majesty's Justices of the Peace throughout the Colony of Western Australia, and if carried into law would be subversive of that independence of thought and action which should always accompany judicial decisions.

Under the proposal of the majority of the Committee, the graver cases would have to be tried before a tribunal upon which one of the Justices was a paid official; this course would necessitate needless expenditure to the Crown, and loss to the complainants in bringing the offenders to justice, and thereby be a temptation to sufferers from offences by aboriginal natives to deal with the offenders outside the provisions of law, a result which, in the interests of the natives, we desire to guard against.

With the view of rendering the application of the law more prompt, easy, and inexpensive to all concerned, we suggest, in lieu of the recommendations of the majority of the Committee, That—

1. A paid Justice, or two or more unpaid Justices, be empowered to award two years' imprisonment or two dozen lashes.
2. One Justice, no other being within 20 miles, one year's imprisonment.

We may remark, in conclusion, that Messrs. Steere and Burt, during the discussions in Select Committee, expressed their preference for our proposals, but offered, in case the Government would not agree to them, to join the Government in those which now, through the action of the members named, constitute the recommendations of the majority.

MAITLAND BROWN,
McKENZIE GRANT.

I prefer the compromise contained in the paragraphs numbered 1 and 2, included in the above rider, to that determined upon by the majority of the Committee.

T. COCKBURN-CAMPBELL.