

1854.

—
VICTORIA.
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R E P O R T

FROM THE

S E L E C T C O M M I T T E E

OF THE

LEGISLATIVE COUNCIL

ON THE

I N F L U X O F
C R I M I N A L S P R E V E N T I O N B I L L ;

TOGETHER WITH THE

Proceedings of the Committee,

AND

MINUTES OF EVIDENCE.

ORDERED BY THE COUNCIL TO BE PRINTED,

7TH NOVEMBER, 1854.

By Authority :

JOHN FERRES, GOVERNMENT PRINTER, MELBOURNE.

Wednesday, 11th October, 1854.

INFLUX OF CRIMINALS PREVENTION BILL.—The Order of the Day for the consideration of His Excellency the Lieutenant Governor's Message, No. 19, having been read—On the motion of the Colonial Secretary, the Message was read by the Clerk. The Colonial Secretary then moved that the Bill accompanying such Message be now read a first time.

Question—put and passed.—Bill read a first time, and ordered to be printed.

The Colonial Secretary then moved that this Bill be referred for consideration to a Select Committee, to consist of the following members, viz.,—The Attorney General, The Colonial Secretary, Mr. Fawkner, Mr. Greeves, Mr. Griffith, Mr. Haines, Mr. Miller, Mr. Nicholson, Mr. O'Shanassy, and Mr. Strachan.

Question—put and passed.

Wednesday, 25th October, 1854.

INFLUX OF CRIMINALS.—On the motion of Mr. Hodgson, the Petition presented by him on the 24th instant, signed by John Hodgson, as Chairman of a public meeting of the Colonists of Victoria, held in the City of Melbourne, on the 23rd instant, for the purpose of taking into consideration the recently received Despatch from the Right Honorable the Secretary of State for the Colonies, on the subject of the "*Convicts Prevention Act*," was read by the Clerk.

Mr. Hodgson then moved, pursuant to notice, that such Petition be printed, and referred to the Committee now sitting on "*The Influx of Criminals Prevention Bill*."

Question—put and passed.

Friday, 27th October, 1854.

UNREFORMED CRIMINALS—VAN DIEMEN'S LAND.—Mr. Myles moved, pursuant to notice, That it be an instruction to the Committee appointed to report on the Bill for the prevention of the introduction of unreformed Criminals, that they enquire into and report upon the mode adopted by the authorities in Van Diemen's Land in granting conditional pardons, so as to inform this House if the reports extant in this Colony be true, that criminals are provided with conditional pardons irrespective of evidence of reformation manifested by "*them*."

Mr. Snodgrass moved, as an amendment, That the words "or upon the express condition of their leaving Van Diemen's Land" be added after the word "*them*."

Debate ensued.

Question—That the words "or upon the express condition of their leaving Van Diemen's Land" be added after the word "*them*"—put and passed.

Question—That it be an instruction to the Committee appointed to report on the Bill for the prevention of the introduction of unreformed Criminals, that they enquire into and report upon the mode adopted by the authorities in Van Diemen's Land in granting conditional pardons, so as to inform this House if the reports extant in this Colony be true, that criminals are provided with conditional pardons irrespective of evidence of reformation manifested by them, or upon the express condition of their leaving Van Diemen's Land—put and passed.

WITNESS EXAMINED :—

Captain Andrew Clarke, R.E. (Surveyor General) PAGE.
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REPORT.

The Committee appointed to consider the Bill intituled "A Bill to prevent the Influx of Unreformed Criminals into Victoria," have the honor to report as follows:—

Your Committee did not deem it necessary to take evidence upon the general subject referred to them; but upon the point upon which they are instructed by the House to take evidence, namely, as to whether criminals are provided with conditional pardons by the authorities in Van Diemen's Land, irrespective of evidence of reformation manifested by them, they examined the Surveyor General, and, from his evidence, it seems that such pardons are not granted unless it appears that during the period of his probation the conduct of the individual recommended for this indulgence has been good; but your Committee are not prepared to say that any test is applied that could be considered as proof of moral reformation.

Your Committee have also considered with attention the Petition of the Colonists of Victoria referred to them; and, upon the whole question, have agreed to the following resolution—"That the difficulties in the way of carrying out the passport system seem so great that the Committee cannot recommend the adoption of the Bill referred to them by the Council," and they report accordingly.

PROCEEDINGS OF THE COMMITTEE.

FRIDAY, 13TH OCTOBER, 1854.

Members present :—

The Colonial Secretary, The Attorney General, Mr. Nicholson, Mr. Strachan, Mr. Griffith, and Mr. Haines.

The Colonial Secretary called to the Chair.

Provisions of the Bill for Preventing the Influx of unreformed Criminals discussed.

Adjourned to Wednesday next, at twelve o'clock.

WEDNESDAY, 18TH OCTOBER,

Members present :—

The Colonial Secretary in the Chair,
The Attorney General, Mr. Fawcner, and Mr. Griffith.

Discussion resumed.

Adjourned to to-morrow, at twelve o'clock.

THURSDAY, 19TH OCTOBER.

Members present :—

The Colonial Secretary in the Chair,
The Attorney General and Mr. Strachan.

Provisions of Bill further considered.

Adjourned to Wednesday next, at twelve o'clock

WEDNESDAY, 25TH OCTOBER.

Members present :—

The Colonial Secretary in the Chair,
Mr. Miller and Mr. Griffith.

Chairman instructed to prepare draft report.

Adjourned to to-morrow, at one o'clock.

THURSDAY, 26TH OCTOBER.

Members present :—

Mr. Fawcner and Mr. Nicholson.

No quorum.

WEDNESDAY, 1ST NOVEMBER.

Members present :—

The Colonial Secretary in the Chair,
The Attorney General, Mr. Nicholson, and Mr. Griffith.

Order read, instructing this Committee to enquire into and report upon the mode adopted by the authorities in Van Diemen's Land in granting conditional pardons, so as to inform the House if the reports extant in this Colony be true, that criminals are provided with conditional pardons irrespective of evidence of reformation manifested by them, or upon the express condition of their leaving Van Diemen's Land.

Captain Andrew Clarke, R.E., Surveyor General, called in and examined.

Adjourned to to-morrow, at one o'clock.

THURSDAY, 2ND NOVEMBER.

Members present :—

The Colonial Secretary in the Chair,
The Attorney General, Mr. Griffith, Mr. Nicholson, Mr. Strachan, Mr. Fawcner, and Mr. Greeves.
Motion made—That this Committee do adjourn until Wednesday next, at twelve o'clock.

(*Mr. Nicholson.*)—Question put and passed.

Adjourned to Wednesday next, at twelve o'clock.

TUESDAY, 7TH NOVEMBER.

Members present:—

The Colonial Secretary in the Chair,

The Attorney General, Mr. Nicholson, Mr. Fawcner, and Mr. Griffith.

Order read, referring to this Committee the Petition of the Colonists of Victoria in public meeting assembled, presented to the Council by Mr. Hodgson, on the 24th October last.

Petition read.

Draft Report brought up and read, as follows:—

The Select Committee appointed to consider the Bill for the prevention of the Influx of Criminals have the honor to report as follows:—

Although deeply impressed with the vital importance of the matter referred to them, they have deemed it unnecessary to call any evidence on a subject as to which little or no diversity of opinion exists in the Colony. The magnitude of the evil with which it is threatened is obvious to all, and none could be produced more cognizant of the details and working of the present Law than your Committee themselves.

The Act for the apprehension of offenders illegally at large, which was intended to stem the tide of crime inundating our shores, will shortly expire. Experience has proved that it was ineffectual to this end, that it was unequal in its operation, that it frequently inflicted unnecessary cruelty, that it deterred from settling here those who respected the laws, and was inoperative as to those who systematically defied all restraint, that it excluded by name a class amongst which were many once criminals, but who, when removed from the pressure of poverty, had given good reason to hope they would prove useful members of society, and to whom for this cause indulgence had been granted, while it admitted the larger class of those to whom no indulgence had been extended, who had displayed no symptoms of reformation, and who are notoriously the most dangerous to good order.

In addition to these considerations your Committee have noticed that it is in contemplation to extend a free pardon to all prisoners now in Van Diemen's Land. Whatever effect therefore the Act alluded to may have had, it would be wholly powerless under the new state of things which in all probability will ere long exist.

Your Committee see no reason why the laudable alarm which has always been testified by the inhabitants of Victoria at the idea of the introduction of convicts should be in the least diminished. On the contrary, experience has proved, that the great mass of crime tried in our Courts has been committed by that depraved class. They are far, therefore, from recommending that the slightest relaxation should be permitted in attempting this by every lawful means, and they are sanguine that the objections which have been urged against the existing Law may be avoided, while, at the same time, an enactment more practically efficacious may be passed—such they believe the Bill referred to them to be. It doubtless involves a principle justly disliked by Englishmen as an infringement of their liberty, namely, the introduction of a passport system; but your Committee feel, that in the anomalous position in which this Colony is placed, with the crime of an Empire deposited on one side of Bass's Straits, and the richest Gold Fields in the world on the other, the necessity of the case will induce our fellow-colonists cheerfully to submit to the inconvenience. All laws are more or less restrictive on personal freedom of action; and less than this now proposed your Committee fear will not prove effectual.

The Bill proposes to make no distinction between the holder of a conditional pardon and an expiree; both alike, if unreformed, are excluded under it; either, on giving satisfactory proof of reformation, are admitted under certain conditions. The penalties to enforce compliance with these rules are most stringent, and the means of proof of a breach of them are rendered as facile as possible. That this, or any other Law, will fully meet the urgency of the case, your Committee do not assert. After mature consideration, they have unanimously agreed to recommend the passing of the accompanying Bill, with a few alterations not affecting its principle, which will be submitted in Committee.

Motion made—That this Report be adopted as the Report of the Committee. (*The Attorney General.*)

Question put—Committee divided.

Aye, 1.
The Attorney General.

Noes, 3.
Mr. Fawcner,
Mr. Griffith,
Mr. Nicholson.

Motion made—That the difficulties in the way of carrying out the passport system seem so great, that the Committee cannot recommend the adoption of the Bill referred to them by the Council. (*Mr. Griffith.*)

Question put—Committee divided.

Ayes, 3.
Mr. Fawcner,
Mr. Griffith,
Mr. Nicholson.

No, 1.
The Attorney General.

Report drawn up and agreed to.

Chairman ordered to report.

MINUTES OF EVIDENCE.

WEDNESDAY, 1ST NOVEMBER, 1854.

MEMBERS PRESENT :

The Honorable the Colonial Secretary in the Chair; The Honorable the Attorney General,
Mr. Griffith, Mr. Nicholson.

Captain Andrew Clarke, R.E., a Member of the Council, examined.

1. *By the Chairman.*—You are Surveyor General in this Colony?—Yes.

Capt. A. Clarke,
1st Nov., 1854.

2. What office did you hold in Van Diemen's Land?—I have held two or three; the last was that of Private Secretary to His Excellency the Lieutenant Governor.

3. Have you had any means of knowing the mode in which conditional pardons have been granted by the Government in Van Diemen's Land?—Yes, I know the regulations by which they were guided.

4. Was the practice in accordance with the regulations?—As far as came to my knowledge.

5. What were the regulations?—If a man first came out, without having undergone any imprisonment or punishment at home, he was kept in a Government establishment for a period in relation to his original sentence—what these terms were exactly I do not know. I think a seven years man was kept 18 months; a 14 years man three years; and a life man six years. I am only speaking from memory, and not with great certainty. After that he received a pass into hired service—he was then allowed to remain there for another fixed period, and if his conduct was good, he was allowed to receive a ticket-of-leave, which entitled him to make his own bargain with his employer, to hire himself in certain districts which were pointed out to him, where he was under the surveillance of the police, to whom he was obliged to report himself twice a-year—after holding this also for a further period, without coming under the law in any way, his name and everything connected with his whole history was submitted in a memorial to the Governor—that was then examined by the penal authorities, and it was necessary then to have it certified by the magistrates under whose charge he had come at different times in the district in which he had been serving, and also by his employers, and the whole of those certificates were then submitted to the Secretary of State, with the word "Recommended" or "Not recommended" added by the Governor. No man could get a conditional pardon who had been sentenced by the Supreme Court or a Court of Quarter Sessions during his term—he had to make a fresh departure from that date. A magisterial sentence for disobedience of orders, &c., would put it off either for six months or a year, as advised upon by the convicts' authorities to the Governor.

6. The convict made his application to the Governor, and that was transmitted home?—All those memorials were transmitted home in a schedule. There is transmitted to the Secretary of State every three months a list of the men who had applied for conditional pardons. This list had the crime and the whole history of the man, signed by the Comptroller General of Convicts, and recommended by the Governor to Her Majesty's mercy as deserving Her pardon.

7. Are you aware of any case in which a pardon was recommended by the Governor, which was not granted at home?—There were two or three instances during the time I was there that I can remember of the Secretary of State's attention having been called to a man recommended for pardon, and instructions having been sent out to keep back the pardon until such and such allegations were enquired into.

8. Did the home authorities ever, upon the face of the document purporting to be the man's history, say, "We do not think this man ought to have a conditional pardon?"—Yes, there was one case where an application for a conditional pardon was sent home some three months or so before the ordinary time with other men, and the Secretary of State asked why this man was recommended before the regular time, and instructed His Excellency, if no satisfactory reason were assigned, not to give it. The reason was, that this man had performed some meritorious act which had formed the subject of a different despatch. Whenever a man received a conditional pardon out of the ordinary routine, that was always the subject of a separate despatch.

9. The Secretary of State sends out a schedule of names to whom conditional pardons are to be issued?—There is a warrant, with the Sovereign's signature and seal attached, and every man's name is on that paper.

10. The signature is not to each name, but to the schedule?—Yes, there are a number of names, and the Sovereign's signature and seal at the end.

11. Then the Governor issues to each of the men named in that warrant, a separate pardon, signed in the Queen's name, under that authority?—Yes. When there is an isolated case for meritorious conduct it always forms one warrant by itself, with the Queen's signature, and the Secretary of State's counter-signature.

12. *By Mr. Griffith.*—Is that warrant retained in the archives of the state, or given to the individual named in it?—It is not given to the individual; even with absolute pardons, the originals are retained.

13. *By the Chairman.*—A conditional pardon is never issued in the Colony without this previous reference home?—No.

14. *By Mr. Nicholson.*—What are the conditions in a conditional pardon?—The condition is, that the man holding that pardon is not to return to Great Britain, or to the place where his crime was committed, supposing it to be out of Great Britain.

15. Is that all?—That is the only condition.

16. Supposing a convict to be sent to Van Diemen's Land, and afterwards to be convicted of an offence in Van Diemen's Land, and to get a conditional pardon, what would then be the con-

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continued,
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dition?—He could not hold that conditional pardon and remain in the country; if he chooses to remain there, he must give up his conditional pardon.

17. If he had committed another offence in Van Diemen's Land his conditional pardon would compel him to leave there?—If he takes his conditional pardon he must go.

18. When he gets his conditional pardon, after a second offence, he must leave Van Diemen's Land?—If he is found with that conditional pardon, the conditional pardon is taken from him. At the moment a man gets his conditional pardon in Van Diemen's Land, if his crime was committed out of Van Diemen's Land, he is a free man, and can hold property, &c., like a free man, and he can go anywhere, except to England; but if he has committed another offence in Van Diemen's Land, and claims a conditional pardon, he then must leave Van Diemen's Land on its receipt.

19. *By Mr. Griffith.*—Supposing a man to have committed one crime only, and that in Van Diemen's Land, would the condition of his pardon be different from what it would have been if he had committed a crime in England, and another in Van Diemen's Land, or could he still not go to England?—A man committing a crime in Van Diemen's Land or Port Phillip, or any other colony, gets his conditional pardon on condition of not going to the place where he committed the crime, nor to England.

20. *By the Chairman.*—If any person arriving at Van Diemen's Land free, commits a crime there, what are the conditions of his pardon?—The United Kingdom of Great Britain and Ireland, and Van Diemen's Land, are excepted.

21. Are you aware of any instance of a conditional pardon being granted to a prisoner in Van Diemen's Land for an offence committed in Great Britain, and in that pardon a condition being inserted that he must leave Van Diemen's Land?—No; it is only in cases where men have been tried in the Supreme Court, or in the Court of Quarter Sessions, in Van Diemen's Land, that that condition is inserted. Whatever where the anxiety of the local authorities in Van Diemen's Land to get rid of their convicts under cover of a conditional pardon, it could not be done without the sanction of an Imperial Act, and of the authorities at home.

22. *By Mr. Griffith.*—Is this system of pass holders being employed on private service, in operation now?—Yes: the present system is very similar to the assignment system, except that wages are given instead of clothing. Rations form no part of the agreement.

23. *By the Chairman.*—What is the difference between a pass holder and a ticket-of-leave holder?—A ticket-of-leave holder is hired direct out of the dépôt. If a man offer to take him for £9 a-year, he must go if he cannot do better; but, if there are ten men want him, and one offers £60, the Government allow him to make the best bargain he can. This is only the first class ticket holders; but, I fancy, only pass holders now hire themselves from the dépôt.

24. Did you ever hear it said that a master would not sign a certificate of good conduct, in order to keep the man longer in his service?—Yes: because as soon as he gets his ticket-of-leave he can make a fresh bargain with his master for his services.

25. Do you believe there is any truth in that allegation?—Where a master was not very scrupulous, I do not think it is at all impossible that they would throw an impediment in the way of a good servant getting his freedom.

26. *By the Chairman.*—Do you consider that the holders of conditional pardons are a better or a worse class than the expirees?—The expirees are the worst class, as the probability is, their conduct has deprived them of indulgence as continual breakers of the law. A conditionally pardoned man, as far as his character in the Colony goes, must be a man of good character; he has kept himself out of the way of the law during the time he has been under punishment. The expiree, on the face of it, is a bad man.

27. Is it generally short sentenced men who would obtain conditional pardons?—No: there is a fixed rule for it—4½ years for 7 years, 8 years for 14 years, and 16 years for life.

28. The chances are, the short sentenced man would get his conditional pardon soonest, because there is a greater chance of a long sentenced man committing himself?—I should say, on an average, the 14 years and 21 years men would get the most conditional pardons. Of course, I refer here to home convictions only.

29. Then you think it is the long sentenced men who, practically, get the conditional pardons?—I think so; but I am merely speaking from what I have heard there.

30. Do you know what the proportion of the criminal population is that does obtain freedom by conditional pardons, and the proportion that obtains freedom by servitude?—I should be sorry to make any assertion with regard to that; but I fancy about 13 per cent. of the convicts who came out there, came under magisterial sentences, and 5 per cent. are tried by the Supreme Court of the Colony. I fancy 75 per cent. receive conditional pardons. There are a great number of returns on the subject.

31. *By Mr. Griffith.*—Do you know the number of convicts in Van Diemen's Land?—13,000 not free.

32. *By Mr. Nicholson.*—Not including conditionally pardoned men?—No: I fancy not. There are numbers of conditionally pardoned holders who are now freed by the efflux of their original sentences.

33. In enumerating the convicts in the Colony, would they include the conditionally pardoned man?—They would not call them convicts.

34. Then the number of convicts, if enumerated, would be without reference to the conditionally pardoned man?—Yes.

35. The conditionally pardoned man is looked upon there as a free man?—Yes: he is so, in the eye of the law.