

1882.

WESTERN AUSTRALIA.

MINUTE

BY

HIS EXCELLENCY THE GOVERNOR

ON A

REPORT FROM THE SUPERINTENDENT OF POLICE

ON QUESTIONS ARISING OUT OF THE

TRIAL IN THE SUPREME COURT

OF PERSONS CHARGED WITH

STEALING CLOTH FROM THE POLICE STORES, PERTH:

*Together with the Report of the Commission, and further Minutes  
thereon.*

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*Presented to the Legislative Council by His Excellency's Command.*

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PERTH:

BY AUTHORITY: RICHARD PETHER, GOVERNMENT PRINTER.

1882.



*Minute by His Excellency the Governor on a report from the Superintendent of Police on questions arising out of the Trial in the Supreme Court of persons charged with Stealing Cloth from the Police Stores, Perth: together with the Report of the Commission, and further Minutes thereon.*

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COLONIAL SECRETARY,  
SURVEYOR GENERAL,

I have no doubt, from all I can gather, that we have not got to the bottom of this case yet, but I think that as Regan is certain to have something more to say about it, that an inquiry should now be held into all the circumstances of the case, and I hereby appoint

The Honorable Malcolm Fraser,  
Sep. Burt, Esq., M.L.C.,  
John F. Stone, Esq.,  
Charles Harper, Esq.,

to be a Commission to hold such inquiry, and to report to me in the matter.

The allegations of misconduct on both sides are so clearly set forth, that I need not furnish the Commission with any instructions beyond those which the papers supply.

The material evidence of such witnesses as may be examined should be sent in with the Report.

W. C. F. R.  
23-1-82.

Noted

G., c.s.  
23-1-82.

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WESTERN AUSTRALIA.

SIR,

Perth, 20th March, 1882.

I have the honor to transmit, herewith, the Report of the Commission appointed by Your Excellency to inquire into certain matters directly and indirectly connected with the robbery of cloth from the Police Store at Perth, and with the trial of Hester and Dawes in January last; together with minutes of their proceedings and of evidence taken by them; and also a Report from the Auditor General, made at their request, on the condition of the store books which were kept by the Police Department.

At this time I also return all the papers and other documents which have been from time to time submitted by Your Excellency's orders to the Commission for their instruction or information.

I have, &c.,  
MALCOLM FRASER,  
Chairman.

His Excellency Sir William C. F. Robinson, K.C.M.G.,  
&c., &c., &c.

*Report of the Proceedings of a Commission appointed by His Excellency Sir William Cleaver Francis Robinson, K.C.M.G., &c., &c., to inquire into certain matters directly and indirectly connected with the robbery of cloth from the Police Store at Perth, and with the trial of Hester and Dawes, in January, 1882.*

In compliance with Your Excellency's instructions, conveyed to us by a memorandum dated 21st January last, which reads as follows:—"Colonial Secretary, Surveyor General—I have no doubt from all "I can gather that we have not got to the bottom of this case yet; but I think that as Regan is certain "to have something more to say about it, that an inquiry should now be held into all the circumstances "of the case, and I hereby appoint the Honorable Malcolm Fraser, Sep. Burt, Esq., M.L.C., J. F. Stone, "Esq., J.P., Charles Harper, Esq., J.P., to be a Commission to hold such inquiry, and to report to me in "the matter. The allegations of misconduct on both sides are so clearly set forth that I need not "furnish the Commission with any instructions beyond those which the papers supply. The material "evidence of such witnesses as may be examined should be sent in with the Report.—W.C.F.R.—23-1-82," we have the honor to state that we first carefully perused all the papers put before us. At five lengthy meetings we examined witnesses on the various points of the subject of investigation, and discussed the evidence thus brought before us in connection with the papers submitted to us by Your Excellency, together with other written statements subsequently handed in by Captain Smith on the one part and William Regan on the other.

Before taking the statements of the several witnesses, we decided to direct the investigation chiefly to the following points:—

1. Whether the cloth was handed by William Crogan to George Burkinshaw on the 8th of June, or on any day during the sittings of the Supreme Court in June last?
2. Did William Regan see William Crogan hand a parcel to George Burkinshaw, and George Burkinshaw ride away with it, as sworn to by William Regan in Court?
3. Did William Regan ever inform Senior Sergeant Rowe, or Corporal Cunningham, or any other of the Police Force, that he had seen William Crogan hand to George Burkinshaw a parcel and George Burkinshaw ride away with it?
4. Did Regan leave his house after 7 a.m. on the 4th January last, except to take a message from Mr. Howell to Mr. Dawes?
5. Was the cloth taken from the Police Stores by William Crogan, as he had sworn in Court?
6. Was there negligence on the part of the Police with regard to the care of Police Stores?

The following witnesses were examined by us:—William Crogan, now a prisoner; Johnny, Native Assistant in Police; George Burkinshaw, son of William Burkinshaw; W. A. Stone, Colonial Storekeeper; Charles Raunsley, now a prisoner; Thomas Burkinshaw, storekeeper, who sent in a written statement; William Regan, Caretaker Supreme Court; A. Woodbridge, Gaoler, Perth Prison; John Holland, storekeeper; Senior Sergeant Rowe of Police; William Crogan (re-called); Warder Kenny, Perth Gaol; Lance-Corporal Cunningham of the Police; Lance-Corporal Gerring of the Police; William Woods, living with William Burkinshaw; Captain Smith, Superintendent of Police; Ann Perry, wife of Joseph Perry; Charles Balls, lime burner. We have also had the advantage of perusing the depositions taken in the Police Court, in the case of Hester and Dawes, and also a report of the evidence taken at the trial of these men in the Supreme Court, on the 4th January last, in the *Inquirer* newspaper of the 11th of January. Mr. J. F. Stone also produced, at our request, the records filed in the Comptroller General's Office in connection with the Conditional Pardon granted to William Burkinshaw, in 1880.

*As to the 1st Point.*—We are of opinion that William Crogan was in possession of the cloth on or about the 8th June last. That George Burkinshaw was at the Police Stables on the morning of that or the previous day, and on horseback, and although we have but the evidence of William Crogan on the point, we are inclined to believe his statement, aided somewhat as it is by the fact that the cloth is proved to have been at Burkinshaw's house the same evening, and the absence of any satisfactory evidence to account for its being there.

No evidence of Dawes having ever been seen at the Police Stables was produced.

On this point we would direct Your Excellency's attention to the evidence of William Crogan, William Regan, Native Assistant Johnny, Clinton, the *Inquirer's* report, and George Burkinshaw's evidence. It was attempted to set up an *alibi* on the part of George Burkinshaw, but we feel bound to say that it was not made out to our satisfaction, and to this conclusion we were assisted by the advantage of hearing the oral statements of George Burkinshaw, William Woods, Charles Balls, and Mrs. Perry; neither of whom could fix any date when George Burkinshaw was alleged to have been in the bush, except that it was the day of Jones and Kenworthy's case in the Supreme Court, which case we subsequently ascertained was tried on the 14th June, 1881.

*As to the 2nd Point.*—We are of opinion that William Regan was at the Court House on the morning of the 7th or 8th of June, at the time stated by him, and also by William Crogan, and that George Burkinshaw was at the same time in the neighborhood of the Police Stables; but Regan says he saw William Crogan hand a parcel to George Burkinshaw at the Police Stable Gate, whereas William Crogan states he handed it to him behind the Blacksmith's Shop, consequently we are not satisfied on this point, although we believe William Regan may have seen the boy on horseback with a brown paper parcel. See the evidence of Clinton and Native Assistant Johnny, the latter of whom had taken a message from William Crogan to William Burkinshaw, to come down to the Stables.

We may here mention that we failed to elicit from any of the witnesses on this point the day or date William Crogan is said to have handed the parcel to George Burkinshaw.

*As to the 3rd Point.*—We find that William Regan had a conversation with Senior Sergeant Rowe on the subject, also with Lance-Corporal Gerring. Lance-Corporal Cunningham denies that Regan spoke to him on the matter, but we are inclined to think Cunningham must be in error, for we can see no reason whatever for William Regan mentioning Cunningham as one to whom he spoke on the subject, if he did not do so.

Immediately after the interview between Dawes and William Regan in the prison, William Regan told Gaoler Woodbridge that Dawes had brought to his recollection the circumstance of the handing of the cloth by William Crogan to George Burkinshaw, and Warder Kenny in his evidence explains what took place at that interview. Woodbridge informed Sergeant Rowe of William Regan's statement, and says that Sergeant Rowe took but little notice of it. We are not satisfied, in the face of Sergeant Rowe's denial, that William Regan told him as much about the matter as he subsequently swore to in Court, but we are strongly of opinion that Sergeant Rowe—being in possession of the report made to him on the 9th August, 1881, to the effect that William Burkinshaw had in his possession "in a sack" goods stolen from the Police Stores, and bearing in mind also that Burkinshaw had given him the first information as to the theft from the Police Stores—committed an error in judgment, first in omitting to search William Burkinshaw's premises at the same time that he searched those of Eli Angle, and subsequently in relying on Burkinshaw's evidence in the case of Dawes and Hester, after what he had heard from Gaoler Woodbridge and William Regan.

Sergeant Rowe seems to have been under the impression that the prisoners Dawes and Hester, and their friends, were trying to make a scapegoat of William Burkinshaw. We are strongly inclined to think that William Burkinshaw was hoodwinking Sergeant Rowe, and, under the protecting cloak of an informer, was the active "receiver" in the matter. We think it right here to draw attention to Sergeant Rowe's report on Burkinshaw's character, when he was trying to obtain a Conditional Pardon. Sergeant Rowe supports Burkinshaw's application on the ground that if the Pardon be withheld, Burkinshaw will relapse into his bad ways. We entirely fail to see the force of this recommendation, and are of opinion that it is singular, and betrays some desire on Sergeant Rowe's part that Burkinshaw should succeed in obtaining the Pardon. We are well aware that a Conditional Pardon Holder is virtually outside the control of the police.

*As to the 4th Point.*—William Regan admits that he made a mistake, and so informed His Honor the Chief Justice, on the rising of the Court. We see no reason to believe that William Regan wilfully spoke what was false for any purpose.

*As to the 5th Point.*—William Crogan undoubtedly stole the cloth, and a great quantity of other stores, and the ready way in which he showed us how he obtained access to the store leaves not the slightest doubt in our minds that his statements in this respect are true.

*As to the 6th Point.*—We find that there was great negligence; that a quantity of stores are missing, and the Department unable to account for them. The attempts at stock-taking were absurd. The Auditor General, at our instance, made an examination of the store books, and his report bears out our opinion on this point. Considering the manner in which the store books were kept, as disclosed by an examination of them, it was impossible to take stock or to keep any check on the issues. However, as the stores have lately been handed over to the charge of the Colonial Storekeeper, we make no suggestion as to their future custody, beyond saying that William Crogan placed it beyond doubt that the Police Store room could be entered at pleasure, without touching the door or the Chubb lock which ostentatiously seemed to secure the door and the contents of the building.

In concluding our report, we would draw Your Excellency's attention to the somewhat active part apparently taken by William Regan in the interests of the prisoner Dawes, as disclosed by the papers handed us in the first instance with Your Excellency's instructions. With this is forwarded the minutes of proceedings and evidence taken by us, and also a report from the Auditor General on the condition of the Police Store Accounts when they handed over their stores to the charge of the Colonial Storekeeper.

We trust that our action has been such as was intended when we were appointed. Though we regret that the information elicited from the various sources we had access to has not been so precise as was desirable, to allow on every point definite conclusions being arrived at.

MALCOLM FRASER,  
SEP. BURT,  
JOHN F. STONE,  
CHARLES HARPER.

Perth, 20th March, 1882.

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WESTERN AUSTRALIA.

SIR,

Government House, Rottneet, 28th March, 1882.

I am directed by His Excellency to acknowledge the receipt of your letter forwarding the Report of the Commission, of which you were Chairman, appointed to inquire into certain matters connected with the robbery of cloth from the Police Station at Perth, and with the trial of Hester and Dawes in January last.

I am directed by His Excellency to express to you and your colleagues his thanks for the careful manner in which you have investigated these questions, and for the full and useful Report which you have been so good as to furnish in the matter.

I have, &c.,

E. W. HOWARD,  
Private Secretary.

The Honorable M. Fraser, C.M.G., Surveyor General.

COLONIAL SECRETARY,

It appears from this Report that the evidence given by Regan in the Supreme Court was, in the opinion of the Commission, substantially correct, and, although I notice that Regan made mistakes on some points, and seems to have taken an uncalled-for part in the interests of the prisoner Dawes, I see no reason to dissent from the conclusion arrived at by the Commission or to take any further notice of Regan's proceedings in the matter.

I agree with the Commission that Sergeant Rowe should have taken more notice than he did of the remarks made to him by Regan. I do not think that Regan's statement to Sergeant Rowe was of the definite character which Regan tried to make out that it was when giving his evidence in Court; but still I think that he probably said enough to give a clue to so experienced an officer as Sergeant Rowe, and I agree with the Commission that Sergeant Rowe committed an error in judgment in omitting to search Burkinshaw's premises at the same time that he searched others.

The disclosures which have been made as to the manner in which the Police Stores have been kept reflect no credit on that Department. Although, in consequence of the recent transfer of all stores to the Colonial Storekeeper, it is not now necessary to lay down any rules for the future custody of the Police Stores, it will be only right that Captain Smith should see the Report of the Commission and this Minute, in order that he may bring home the blame to those of his officers who are directly responsible for the losses which have been brought to light, and further, that he may have an opportunity of offering such observations on the general question as he may desire.

W. C. F. R.

28-3-82.

SUPERINTENDENT OF POLICE,

Herewith the Report of the Commission on the "Cloth Stealing Case" for your information and remarks. Be good enough, also, to report what action you intend taking in regard to the officers responsible for the losses.

GIFFORD,

C.S.—1-4-82.

HONORABLE COLONIAL SECRETARY,

I have no desire to offer any lengthy comments on the conclusions arrived at by the Commission. I would only remark that on several points they are certainly of a most indefinite and hesitating nature; compulsorily so, doubtless, from the conflicting and unreliable character of most of the evidence attainable.

I have certainly no reason to be dissatisfied with the result of the inquiries of the Commission, so far as the evidence they have been able to elicit is concerned; as, if I required any confirmation of my

opinion that the man Regan's statement (as to seeing the prisoner Crogan on the morning of the 8th June hand to young Burkinshaw, when on horseback *at the stable gate* or anywhere else, a parcel) was a gross fabrication, that evidence would supply it.

Regan commences by not recollecting or knowing anything whatever of the transaction; then it is interesting to see how, under the gentle tuition of his friend Dawes and perhaps others, his memory is quickened, and one incident after another of the transaction dawns on him; but, unfortunately, on two important points he had not been tutored, or had failed to remember the teachings of his guide, and these were as to the spot where the imaginary transaction took place, and as to the presence of Burkinshaw the elder; but having doubtless seen the boy Burkinshaw on several occasions at or near the stable gate when he came to sell fish, he caps his story by locating the transaction there, and at the same time distinctly denies seeing the elder Burkinshaw there at all, thus to my mind exposing a flagrant imposture, by the glaring discrepancy between his statements and those of the prisoner Crogan, who, moreover, states in one place that the occurrence took place *on the 8th June*, and in another, on the day of Jones and Kenworthy's trial, which the Commission fix *on the 14th June*.

So far as Senior Sergeant Rowe's conduct, which has been brought into question, is concerned, I can safely say, after a careful perusal of the minutes of the proceedings and from an intimate knowledge of the facts of the whole case, that if any error has been committed by that officer, it was, as the Commission have observed, only an error in judgment; for I unhesitatingly say that it would be difficult to find a more assiduous, straightforward, intelligent, and zealous Police Officer than Senior Sergeant Rowe. Being in daily communication with me on Police matters, I feel confident that he would never screen a criminal, and that he felt as sure as I did that Burkinshaw was not the receiver or the thief—an opinion which I see no reason to alter.

As to the custody of the Police Stores, I must admit that there has been great negligence, and although Lance-Corporal Cunningham is so far to blame that he ought certainly to have informed me at once, when he discovered, on taking over the stores from L.C. Gerring, that there were several deficiencies, the principal guilt lies at the door of L.C. Gerring, in whom I unfortunately placed too much confidence, believing him to be a trustworthy and careful man. I have already called on L.C. Gerring for an explanation as to certain deficiencies and have placed him under stoppages, and was awaiting result of Commission's inquiry before reporting. Even in his case many errors were, I feel sure, due to his not entering properly requisitions, memoranda, or verbal orders on which articles were issued.

As to the system of Store Book-keeping, it was by no means a bad one, and while L.C. Cunningham was in charge but few trifling mistakes occurred.

For some time past I felt that it was impossible for me to keep proper care of Police Stores without a regular Storekeeper, hence I have always advocated the necessity of establishing a Store Department.

As to the prisoner Crogan's confession to wholesale robbery from the Stores, I do not believe one word of it.

M. S. SMITH,  
Superintendent of Police.  
8-4-82.

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C. S.,

Before these papers go to the Printer to be printed for the Legislative Council, Captain Smith had better state what steps he has taken to mark the negligence and misconduct of Constables Cunningham and Gerring. On other points I have nothing to add to my Minute of 28-3-82.

W. C. F. R.  
22-5-82.

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Superintendent of Police for report.

G., c. s.  
22-5-82.

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## THE HONORABLE THE COLONIAL SECRETARY,

I have admonished L.C. Cunningham for not having brought under my notice, immediately, the negligent manner in which L.C. Gerring had been looking after the Police Stores during his absence. At the same time it is only due to L.C. Cunningham that I should state that I find he did mention the matter to the Sergeant then in charge of the Station. I pointed out to him that, as the Storekeeper communicated direct with me, he ought to have reported to me.

As for Lance-Corporal Gerring, when I found that certain articles were missing, I placed him under stoppages for them, and stopped his promotion pending the Report of the Commission.

As he has been guilty of gross carelessness and neglect of duty, I now beg to recommend that he be deprived of his Lance Rank of Corporal, and that his promotion be stopped for twelve months from the beginning of the present year.

M. S. SMITH,  
Superintendent of Police.  
25-5-82.

## COLONIAL SECRETARY,

The punishments are light enough, but as the Stores have now been placed in charge of the Government Storekeeper, and no such irregularities on the part of the Police can occur again, the requirements of the case will perhaps be sufficiently met by the above proposal. Were the Stores still in charge of the Police I should feel it my duty to dismiss both Cunningham and Gerring, if only as a warning to others; but under the circumstances I do not know that it is necessary to inflict exemplary punishment, and I therefore feel justified in approving Captain Smith's recommendation.

The papers may now be printed for the Legislative Council.

W. C. F. R.  
29-5-82.