

FRAGMENTS OF LEGAL HISTORY IN QUEENSLAND FROM 1853 ONWARDS

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One hundred and four years ago the first Circuit Court was held in Brisbane, when Mr. Justice Therry, of New South Wales, presided at it. His notable address is recorded in the "Moreton Bay Courier," and portion of his charge to the jury is to be found in William Coote's "History of Queensland." Whilst Moreton Bay was a Penal Settlement, the Superintendent exercised, pursuant to an Imperial Act of 1824 and a later Statute of New South Wales, limited jurisdiction in the punishment of minor offenders. The more serious offences were dealt with at Sydney, and this continued up till May 1850 in the Free Settlement of Moreton Bay, when Mr. Justice Therry held this first Court in the Chapel of the Barracks. We all are acquainted with the period during which Captain Wickham, who resided at Newstead House, was Police Magistrate at Brisbane from November 1842, after the last of the Military Commandants, Lieutenant Gorman, had resigned. Only two men were tried and convicted at the first Circuit Court. They were indicted on the capital charge of murder at Wide Bay, and were executed on July 8, 1850, the necessary apparatus having been borrowed from Sydney. There had been four executions during the Convict Period.

Between 1850 and 1856 Brisbane had Circuit Court Sittings once in each six months, for the trial of civil and criminal causes. Mr. Justice Milford came as Resident Judge in April 1857, under New South Wales legislation, but, returning to Sydney, was succeeded in March 1859 by Mr. Justice Lutwyche as Resident Judge of the Supreme Court at Moreton Bay. Circuit Courts were established at Ipswich, Drayton and Maryborough in October 1859, just before Separation.

Some of Queensland's early history can be written from records reposing in strongrooms in the Treasury Building and other Government Offices. I was employed, through the Attorney-General (Hon. W. Power), in research amongst records in the Depart-

ment of Justice, for a period of ten months after my retirement, in July 1949, from the position of Under Secretary. When Queensland was part of New South Wales, the Crown Solicitors Office at Moreton Bay was the forerunner of the Department of Justice.

When Separation came in December 1859, Queensland imported from the English Bar Chief Justice Sir James Cockle at a salary of £2,000 per annum. Judge Lutwyche was re-commissioned as a Puisne Judge under or with him, at a salary reduced from £2,000 to £1,200 per annum. Judge Lutwyche commenced lengthy correspondence on this personal subject with Premier Herbert in September 1860, on the passage of The Supreme Court Act of that year by the Queensland Parliament. The Government declined to restore the puisne judge's salary, and from Judge Lutwyche's claim arose a libel action. The "Moreton Bay Courier" had strongly criticised the Legislative Council for its resolution, favouring an increase to £2,000 in the salary of Judge Lutwyche, but condemning him for "a political partnership calculated seriously to impair confidence in the administration of justice," and for challenging the validity of the Constitution and Acts of Parliament, "but only after the close of the first Session and when a Supreme Court Bill drawn by Mr. Justice Lutwyche himself, securing certain personal advantages, had not been adopted." The libel action was tried by Judge Lutwyche, and the Jury acquitted Mr. Pugh, Editor of the "Moreton Bay Courier." Attorney-General Ratcliffe Pring was advised in 1862 by the Law Offices in England, in reference to portion of the judgment, that Parliament did not form part of the actual Government of Queensland—the Government being Her Majesty's chosen advisers—but that a libel could be published concerning Parliament.

Whilst Mr. Justice Lutwyche was Resident Judge at Moreton Bay, and for some years after 1859, Mr. Robert Little (who, by the way, built the first Lennon's Hotel) was Crown Solicitor and responsible, up to Separation, to the Attorney-General of New South Wales. Mr. Little was appointed with salary of £200 per annum, and the right of private practice. This increased with the passing years. He took into his business a partner, so that the firm was known as "Little and Browne." It can be understood these gentlemen

had a monopoly of lucrative Crown business. When The Native Birds Protection Bill was before Parliament Hon. B. D. Morehead, M.L.A., repeatedly sought protection for "the lawyer bird." Members knew well the lawyer vine, but none had knowledge of the lawyer bird. Mr. Morehead facetiously explained what this bird was, by describing it as "Little and Browne with a very long bill." He had been, it appears, an unsuccessful litigant in a case in which Messrs. Little and Browne had obtained for their client a verdict against him with fairly substantial costs.

The first entry in the Correspondence Register of the Moreton Bay Crown Solicitor is copy of a letter dated November 26, 1858. It is a polite note beginning: "I do myself the honour to state"; and by it a Mr. Norris is advised of his appointment as Clerk in the Crown Solicitor's Office at £100 yearly. Fifteen days went by before the Crown Solicitor had occasion to write another official letter to anybody. Crown business was slack for the months of November and December 1858, for only two letters appear to have been sent away by Mr. Robert Little. The number had swollen to four by the end of the Court Vacation in February 1859. There was a record outward mail of six small letters on February 16, 1859. They all related to Criminal trials at the next Circuit Court. The custom in those busy days was to abbreviate the word "subpoena" so that it read, "spa," which in our times instantly suggests a mineral water.

The Crown Solicitor by letter dated 16th March 1859, commended Messrs. Henry Herbert and Clement Howley for their adjudication in a minor Court matter. These Justices, no doubt, were flattered by the recognition of their legal talent. The Police Magistrate at Ipswich, where the Court House built in 1859 shows its antiquity in the attractive cedar in the Court Room, asked in April 1859 for service of a "spa" on "a shepherd who had met the prisoners near a hut"—a request indicative of this pastoral period. It is amusing to learn from the records that in Sydney in those days there was a functionary styled "The Civil Crown Solicitor." I wonder if his counterpart was styled "The Criminal Crown Solicitor." The Crown Prosecutor appears to have been an official superior to the Crown Solicitor for

he says in one letter: "The Crown Prosecutor instructs me to state," etc.

The most interesting entry in the Register concerns the erection of the Colony of Queensland in 1859. A whole page is reserved for this entry, which thus records in neat, enduring manuscript the historic event:

"SEPARATION PROCLAIMED SATURDAY,
10th DECEMBER 1859."

This Government Office apparently was not closed on Saturdays, but the general rejoicings and festivities at the grant of responsible Government to the Colony of Queensland had other impact upon the Crown's legal office, for there is no entry in the Register until a week from that date has passed by. The entry is a letter from the Crown Solicitor to the Premier's Office reading: "Separation having rendered the forms hitherto used in my Department useless, I have the honour to request that you will let me know to whom I shall send requisitions for quantities of the forms I require." He was told to obtain them from Mr. Pugh—known to many by his literary work, by his valuable Almanacs and by his public service as a Police Magistrate. Whilst Police Magistrate at Warwick Mr. Pugh lectured on Early Days in Queensland. He recalled having seen two convicts flogged on the day of his arrival in Brisbane. A convict, who was stated to have received during all his penal servitude something between 2,000 and 3,000 lashes, said in reply to a question by Mr. Pugh that his back was not badly scarred. When he knew he was to go to the triangle for flogging, he stripped to the waist, lay on the ground—sandy if possible—and got his fellow convicts to press, by feet and hands, on his chest so as to harden the surface of his back. A copy of Mr. Pugh's printed address is among the Crown records in the Department of Justice. By the way, the Hon. Sir John Douglas, C.M.G., delivered on October 19, 1896, a lecture in the Brisbane School of Arts entitled "A Retrospect," being a review of the principal events of Australian history since 1846 (fifty years). When Mr. Pugh was Police Magistrate at Bundaberg in June 1891, a solicitor complained of a general lack of courtesy on the part of the Bench, but the Attorney-General (Hon. T. J. Byrnes) minuted Mr. Pugh's explanation as "perfectly satisfactory." Part of that explanation reads:

“It would be absurd in me to affirm that my Court is free from the **occasional** acerbities of temper, on the part both of the Bench and of advocates common enough in other and higher Courts. The constant repetition of bald and baseless argument and weary platitude—the positive and sometimes offensive self-assertiveness of a Solicitor who insists that the Bench can put only **one** construction on the evidence—that being his own—and indulgence in long harangues in defence of cases that have no back-bone of evidence whatever—furnish, I respectfully submit, reasonable causes for occasionally derisive utterances from the Bench. To such as these—and to such only—can I plead guilty; and if Mr. T—— has erred more frequently than other practitioners in my Court in these respects—though I do not say that he has—it has been **his misfortune, not my fault.**”

Place names appearing in letters in 1859 are Drayton, Gayndah, Ipswich, Dalby, Maryborough, Gladstone, Taroom, Callandoon, Condamine, Wide Bay, Port Curtis, and Rockhampton.

A letter of January 25, 1860, requests the Colonial Treasurer (Hon. R. R. Mackenzie) to call at the Crown Law Office to enter into a bond for the faithful performance of his official duty. It would be very unusual—and diverting—for an official in these democratic days to ask a Minister of the Crown to go to a subordinate’s desk in a Government or semi-Government office. Public officials, especially those controlling finance, were obliged to give these fidelity bonds.

There is a peremptory order in a letter of 1860 to the Chief Constable at Drayton re “John, a Chinaman.” It runs: “So soon as you receive this let a mounted man start and serve the spa.” Mr. Benjamin Cribb’s encroachment on the Court House grounds, Brisbane, formed the subject of correspondence in that year, and Attorney-General Pring advised on the legal position.

The process of freezing or chilling beef and mutton—for which full credit must be given to Mr. Thomas Mort—was not in vogue in 1860. Therefore we read of a Crown witness: “He is, I am informed, employed at one of the boiling down establishments near Ipswich.” There was a boiling down establishment at Kangaroo Point. It is published that Sir Arthur Hodgson, pioneer

squatter, used to dispose of the carcasses of his sheep at this place, and also that he travelled the tracks or roads of Brisbane with a cart, selling legs of mutton at the extravagant sum of sixpence each. Darling Downs was sparsely settled, for in 1860 the Chief Constable at Warwick states: "The prosecutrix alludes in her evidence to a woman who lives at the next sheep station"—which he does not name.

The Crown Solicitor had a lot of correspondence regarding the property in William Street known as Dr. Lang's Chapel, which the Government purchased from that fiery patriot. An entry in the Register in September 1860 shows that "the bond for the execution by Mr. Petrie and his sureties for erection of refreshment rooms, etc., at Parliament House (Legislative Council Chambers) is ready." It was not until May 4, 1869, that Parliament met for the first time in portion of the present fine building in George Street.

There are letters in the early sixties to the Queensland Steam Navigation Company arranging conveyance of the Northern Mail for a term of years. There are references to the steamers "Yarra Yarra," "Telegraph" and "Clarence." Some records relate to the lease, for the use of Governor Bowen, of Dr. Hobbs' substantial residence in Ann Street, later to be used as the Anglican Diocesan Registry and now the Deanery.

The official relations of the Crown Solicitor and the Auditor-General were cordial, as witness the entry:

"My dear Buckley: Will you authorise a credit of £25 to defray expenses of Crown Witnesses?"

Later Mr. Buckley was prominent in the young Colony's civic life. As Chairman of the Moreton Bay Railway Company he had much correspondence with the Crown Solicitor respecting the Government's purchase of the Company's survey plans.

The records show that on May 8, 1860, the Colonial Secretary and Premier (Hon. R. G. W. Herbert) was concerned about Government Office accommodation. He instructed Mr. Little to prepare a draft lease for five years of Dr. Hugh Bell's premises (where Dr. George Fullerton also had rooms), at the corner of Queen and George Streets. The property had a Queen Street frontage of 31ft. 4in. and a side measurement of 40ft. along George Street. The residence is described as a tenement and dwelling house. The Colonial Treasurer

agreed to pay £260 per annum in equal monthly instalments as rental. Mr. D. F. Roberts was Solicitor for Dr. Bell. One can regret that the Government did not immediately acquire the freehold of this excellent building site. When Chief Justice McCawley was Crown Solicitor in 1910-1917, he discovered that a Deed of Grant had not been issued for the two acres of land upon which the imposing Treasury Building stands. The early records showed the area to be technically known as "waste land" in the occupation of the Military. Mr. McCawley had the defect remedied by the issue of the necessary deed. A similar position arose regarding the Sydney Conservatorium of Music—a former Government House on the Sydney Domain.

The Registrar-General's report of the first Census, dated August 22, 1861, states:

"Only one person in the whole Colony refused to supply the required information; but as it happens he is registered in the Office as a Minister of Religion qualified to celebrate marriages. Therefore, the information he refused to give was easily supplied, and I did not think it was necessary nor expedient to gratify his desire for notoriety, and to raise him to the rank of a martyr by enforcing payment of the legal penalties to which he had rendered himself liable. It certainly does excite some surprise that a Minister of Religion should have been so silly."

The Report pays a tribute to Census Collectors—stressing the fact that the area covered—Brisbane to the Upper Leichhardt and the Kennedy, Taroom and Maranoa districts—had no roads and the bush was intersected by dangerous swamps and treacherous creeks with unpropitious weather and torrents of rain falling for weeks before and after April 8, 1861. The Census Collectors next week will not have these difficulties to contend against.

"In 1860" (says the Editor of *Our First Half Century 1859-1909*) "there was not a mile of railway either open for traffic or under construction, not a mile of electric telegraph wire, nor, save between Brisbane and Ipswich, was there a formed or metalled road, the only avenues of transport being along the bridle path or the teamster's track. The country was destitute of culverts and bridges over water-courses, and the so-called roads were impassable for

days, weeks, or even months in succession after the seasonal rains.”

Queensland's population in 1861 was 30,059. Brisbane had 2,754 people; Ipswich 2,888; Warwick 1,460 and Gayndah 1,234. Brisbane had 364 native born Queenslanders in 1861, with 387 in Ipswich. There were 24 lawyers, 37 doctors, 32 clerics, 273 civil servants and Police, 31 in the Army and Navy, and 249 in the Mercantile Marine.

Down the years the policeman's lot, in the words of Gilbert, has not been a happy one. A Drayton prisoner committed for trial at Toowoomba in 1860 had £8/2/7½ when placed in charge of a Constable escort from Brisbane. The record reads:

“As the sum of £3/12/2 only is now forthcoming the Constable was called upon to account for the disposal of the sum first referred to.”

Attorney-General Pring had ordered a full inquiry. It disclosed that the escort allowed the prisoner to use the money *en route*. No doubt the way was long and thirsty. It is hoped the Constable shared some of the comforts provided by the prisoner's cash at wayside inns. The money, be it told, was part of the price he received for a stolen horse. The prisoner rejoiced in the alias of “Gentleman John.” The owner of the horse was allowed what remained from its sale after deducting the cost of the prisoner's refreshments on his compulsory visit to Brisbane.

Thirty years later—October 2, 1890—a Constable, escorting by steamer, from Maryborough to Brisbane, two prisoners and an insane person, had his portmanteau, containing valuable property of the prisoners, as well as warrants and property forms, quietly stolen. The portmanteau was alright at 1 a.m. but was gone at 4 a.m. There was no result from an immediate search of the ship. The official report states the ship was crowded and that the prisoners and the Constable slept on the floor. The record gently adds: “There were a lot of spielers on the boat.” The Sheriff at Brisbane came to the Constable's rescue with the issue of duplicate warrants.

The lessee of the Toll Bar, Toowoomba, was required by the Crown Solicitor early in 1861 to have a bond and warrant of Attorney. Messrs. Birley and Cox applied at this period for a lease of a piece of ground

near the Custom House, Petrie Bight, for wharfage purposes at a yearly rental of £10. The lessee was under obligation "to erect a stone and cypress pine wharf" and leave same in reasonable repair for the Government.

The Police Magistrate, Ipswich, was requested on January 2, 1862, to have a Constable in readiness to convey the Crown Papers to Toowoomba. He was also to have a strong horse in readiness. Again in May 1862 the Crown Solicitor sent this demand to the Chief Constable, Brisbane:

"The Attorney-General will require an orderly and pack horse to take Crown Papers to Ipswich. Let him be at my private house in George Street, to-morrow, at half-past one o'clock. Robert Little, Crown Solicitor."

The Queen's Messenger spurred forth on his Mission to spend the night at Ipswich. The Chief Constable there was informed by telegram:

"Cosgrove is leaving here with Crown Papers. He will leave them with you to-night and start him early to-morrow."

The road journey on a mere bush track to Toowoomba in 1862, with native fauna and flora, may have been quite pleasant, but evidently the orderly was directed to travel with dispatch.

The Crown Solicitor in 1862 gave certain contractors notice of legal action if they removed any more stone from the Government Quarry at Spring Hill. They then claimed they had the Corporation's authority. Apparently, there were two adjacent quarries.

One of Mr. Little's replies to an official letter is a model of brevity. This reply simply says:

"It is not competent for me to give you the information sought in yours of 12th instant"—that was February 1862. In this year the Crown Solicitor asked the Attorney-General for authority to obtain, *inter alia*, red tape!; and as it was winter (May 1862) a load of firewood, sawn in short lengths, for the office stove.

The records bear the names of early settlers and pastoralists. A letter of 1862 relates to a Power of Attorney from John Alexander Bell to his brother Joshua Peter Bell, later prominent in public life, as was his brilliant son Joshua Thomas Bell.

James Murrells (or Morrell) was a castaway with others on the Queensland coast near Bowen, following the wreck of their vessel, en route to China, in 1847. Murrells, after two or three years, in which a few of the persons from the wrecked ship and he lived with Australian natives, was the sole survivor. Murrells was with the blacks for about seventeen years, and, on his secret return to civilisation in 1863, was scarcely distinguishable from a bush aboriginal. He had retained a smattering of the English language. A station hand near Bowen, seeing Murrells' naked figure at the stockrails about dusk, raised a rifle as if to shoot him. Murrells was barely able to exclaim: "Do not shoot; I am a British **object**."

The C.P.S. at Bowen in 1863, sent to the Attorney-General a copy, authenticated by the C.P.S.'s own signature and that of a J.P., of Murrells' first account of his experiences from the time of the wreck to his reappearance among white people. Also among the files in the Treasury strongroom is an application in the early 'sixties, signed by James ("Duramboi") Davis, for a salary of £100 per annum as Interpreter at Court trials of aboriginals. Davis, on his escape from the convict settlement at Moreton Bay, lived for a number of years with the Durundur, Murrumba and other tribes. Later he kept a shop in George Street, where this respectable citizen was murdered. He left the whole of his estate (over £500) to the Brisbane Hospital, where his name appears as one of the Life Governors of that Institution.

An indictment dated January 17, 1858, shows two aborigines of this time as money-minded. The charge against Johnny, an aboriginal native of Black Snake Creek, was that he did feloniously steal, take and convey money, namely, a bank cheque for the payment of £5, or of the value of £5, the property of one William Holley. Mr. Ratcliffe Pring, the Crown Prosecutor, further informed the Court by the indictment that the said Johnny feloniously did receive one bank cheque for the payment of £5, the property of the said William Holley, he, the said Johnny, then well knowing the same to have been feloniously stolen, taken and carried away.

Johnny under Police guard in the dock must have wondered what all these words meant as the indict-

ment was read aloud in Mr. Justice Milford's Criminal Court on April 27, 1858. A noting on the copy of the indictment made in Mr. Pring's writing shows the jury found Johnny not guilty.

The second native was Jacky. The indictment charged Jacky that on February 27, 1858, at Drayton he did feloniously assault one James Belcher and feloniously and violently steal, take and carry away from the person and against the will of the said James Belcher one money order, the property of the said James Belcher whom he did beat and strike immediately before the robbery. Jacky was found guilty on April 30, 1858, and for this assault and robbery Mr. Justice Milford ordered him to be kept at hard labour on the roads for three years. Let us believe that Jacky's work as a road builder helped to lessen some of the discomforts of travel in Queensland's first years of development.

Admiration for our system of Justice is evoked on reading the papers relating to the revolting crime committed on January 25, 1865, by another aboriginal named Jemmy. He raped a German woman at Bundamba, and was tried at Ipswich in April 1865, before Mr. Justice Lutwyche, "a Judge of the Supreme Court assigned to hear and determine murders, felonies and other evil doings"—as the record states—and by a jury with the following names: Thomas Donaldson, Samuel Duke, W. O. Douyere (Foreman), Patrick Dowling, Coleman Davis, George England, James Chaillie, Patrick Donigan, James Denman, George Dowden, James Champion and John Charles Carter. The Clerk of Arraignment was William Kelson Wright. Jemmy was found guilty and sentenced to death. Jemmy's Counsel, who had been assigned by the Crown for his defence, found after the verdict and sentence that one of the jurors was an alien. There was an appeal to the Supreme Court at Brisbane. The documents indicate that Mr. Justice Lutwyche, "after diligent and mature examination of the record and proceedings decided there were errors by Jemmy and others." Mr. Ratcliffe Pring, Attorney-General and Crown Prosecutor at the trial of Jemmy, argued there was no error, but the prisoner's Counsel successfully contended that the proceedings at Ipswich were void because of the alien's presence on the jury, this being "a manifest error."

Jemmy, in the words of the record, "prayed that he be restored to the Common Law of the Realm and to all things which he hath lost on the present occasion or that from the error a new trial may be ordered." The Appeal Court held on May 22, 1865 — less than one month after the trial and sentence at Ipswich—that there "had been manifest error to the great damage of the said Jemmy as by his complaint we are informed. We being willing (if error there be) that it should in due manner be corrected and full and speedy justice done to the said Jemmy." The Court ordered "the opening of the seals—so that it will have all things before it for a sitting on May 25, 1865." Jemmy got a new trial. Mr. C. F. Chubb was his Solicitor. The result of this trial could not be in doubt. Jemmy had to answer another indictment for a rape at Brisbane a few weeks before his crime at Ipswich, and he had also been committed for trial early in 1865 on a charge of assault. The file contains a parchment writ of habeas corpus (Jemmy, of course, being in custody) signed by Mr. Reginald Ball, Registrar of the Supreme Court. It is good to find that Justice was not denied even to this bad criminal type of black fellow.

When Queensland was erected as a separate Colony on the arrival of Governor Sir George Ferguson Bowen in December 1859, it was necessary to change the Commission issued at Sydney to Mr. Justice Alfred James Peter Lutwyche, the Resident Judge in the Moreton Bay District of the Colony of New South Wales. The draft of the Commission issued to him as a Puisne Judge of the Supreme Court of Queensland is in the handwriting of Mr. Robert Little, Crown Solicitor. This document shows the ravages of time, despite the good quality paper: it is dust-stained and the edges are slightly frayed. The Commission was issued under "The Supreme Court Act of 1860." The Commission appointing Sir James Cockle—then Mr. Cockle, an English barrister and fellow graduate with Premier Herbert—to be a Judge and Chief Justice of the Supreme Court of Queensland was also issued under that Statute. He had been called to the English Bar (Middle Temple) in 1846 and later was Special Pleader of the Midland Circuit. He was Chief Justice of Queensland for seventeen years, retiring on a pension in 1879 when he had returned to England on leave.

After fifteen years' service he was entitled under "The Supreme Court Act of 1860" to a pension representing seven-tenths of his annual salary as Chief Justice. Sir James Cockle died in England in the early 'nineties. His long residence in England on a pension drawn from Queensland was regarded unfavourably by some people here. His name is permanently linked with Queensland by The Sir James Cockle Memorial Prize awarded annually at the Brisbane Grammar School for the best school pass in mathematics. Mr. Frederick William Dickson, many years Crown Prosecutor of District Courts and several times an Acting Judge of both the District Court and the Supreme Court, won the Cockle Memorial Prize twice in succession. He was a son of Sir James R. Dickson, a former Queensland Premier (1898-1899) and Minister for Defence in the first Federal Cabinet in January 1901.

It is of interest to note that Attorney-General Pring inserted in Mr. Little's draft of Justice Lutwyche's Commission the words "our Royal" so that the usual phrase read: "Having taken into our Royal Consideration your loyalty, learning, integrity and ability," etc. The use of "Our Royal" must have been very pleasing to Governor Bowen, who signed the Commission as Her Majesty's Representative. These words have not been in use in similar Commissions issued in the Sovereign's name for very many years.

The Crown Solicitor wrote on February 24, 1864, to Mr. A. Fitzgibbon, Engineer in Chief of Railways, Ipswich, regarding the contract for the building of the first section (twenty miles) from Ipswich to the Little Liverpool Range of the Southern and Western Railway. This was the start of our lengthy railway system, and recalls for us the classical name of Grandchester given by Sir George Bowen to replace the name of Bigge's Camp.

The Register shows that a bond for the contract for building the Brisbane General Hospital at Bowen Bridge Road was entered into in April 1866. Brisbane's first Public Hospital was at North Quay, where the Supreme Court House built by Mr. John Petrie in 1879 now stands.

The Minister for Lands and Works requested the Crown Solicitor in March 1864 to prepare a fifteen years' lease from the Crown to Messrs. G. D. Webb,

George Edmonstone, L. A. Bernays, John Campbell, Henry Buckley and Robert Cribb, directors of and in trust for a Company called "The Brisbane Gas Company," which would supply fuel and lighting gas to the residents of Brisbane. The rental was to be the nominal figure of £5 per annum, and there was to be a right of purchase of the land. A further provision in the draft was that the rental should be equal to 10 per cent. of all gold obtained from the land. This provision, however, was deleted from the draft agreement. The Crown reserved the right to remove all timber, stone, gravel, earth or other materials required for any lawful public purpose. The draft, in accordance with instructions, has a blank space for description of the land. Apparently, the land was adjacent to the Brisbane River at Petrie Bight, just below All Hallows' Convent Hill, and not far from the street in Fortitude Valley named after Sir George Gipps, Governor of New South Wales.

Records in the Department of Justice relative to a libel action contain copy of a letter from a Mr. J. V. Sidney, of Dalby, to the "Moreton Bay Courier," under date December 15, 1860, reading:

"It reminds me of a story of the late Sir George Gipps who upon seeing a map of the first land sale at Brisbane (this would be in or about 1842) cut every acre into two with his pencil—saying the public would give as much for half an acre as they would for a whole one. (Until this time all Town lots were one acre.)"

An entry in the Register, under date December 1864, reminds us of the Bushrangers. It records an inquiry from the Police Magistrate at Rockhampton, on behalf of the New South Wales Government, "for property of Francis Christie, alias Gardiner, alias Clarke," whose betrayal and capture, whilst holding a publican's licence in the Central District, were described in the "Sunday Mail" about thirteen years ago.

It is the duty of the Attorney-General annually to forward to His Excellency the Governor, for the information of the Dominions Office—formerly the Colonial Office—a report upon each Act passed by Parliament in the preceding Session. Sir Charles Lilley, Attorney-General in 1866, wrote this:

“The great increase in the crimes of bushranging and robberies under arms in the neighbouring Colony of New South Wales led to the passing by the Legislature of that Colony of an Act similar in its provisions to the Queensland Act, 30 Victoria, No. 2, now reported upon. It had been quite impossible to repress these crimes by the Criminal Statutes up to that time in force, and the great success which followed the passing of the Act in New South Wales—especially that part of it which deals with those harbouring and abetting the bushrangers—led to the introduction of a similar law in this Colony of Queensland, where outrages of the kind had become but too frequent. It is merely for one year, and has already had a beneficial effect in this Colony.”

Early files show letters addressed to Brisbane Town; just as, a few years later, Normanton was named as Norman Town and Burketown was spelt as two words.

A printed document of the early 'sixties bears the address: “To His Excellency Sir George Ferguson Bowen, Knight Grand Cross of Saint Michael and Saint George, Captain General and Governor in Chief of the Colony of Queensland and its Dependencies, and Vice-Admiral of the same.”

It is not difficult to imagine the strength of the Colony's land and sea forces at that date!

Another formal document was presented on June 27, 1865, to “His Excellency The Honourable Maurice Charles O'Connell, by Her Majesty's Royal License, a Knight Commander of Isabella The Catholic, Knight of the Second Class of San Fernando, and a Knight Extraordinary of Charles Third of Spain, President of the Legislative Council of the Colony of Queensland, and Administrator of the Government thereof.”

Sir Maurice O'Connell had been a soldier in Spain.

A link with the American Civil War is in the Crown Solicitor's Register of Correspondence in the year 1867. The American Civil War had given impetus to cotton growing at Ipswich and other centres. A patentee obtained from the Crown Solicitor in 1867 letters of registration of a means of improving the baling of cotton.

There is much of interest and of pathos in the records relating to the Administration of Justice. These documents—readily available—cover the period

from 1857—that is for nearly 100 years. There are almost countless folios of depositions taken at Inquests or Magisterial Inquiries into the causes and circumstances surrounding a very great number of deaths in Queensland, accidental, sudden or suspicious. Many a human tragedy and many an act of courage are here recorded; and the varied causes of death indicate the changes along the way from the hard pioneering stage of Queensland to its present stage of development.

There are in the earliest times the accounts of murders by natives, the deaths from snake venom, from accident and from disease, the deaths from heat stroke—all incidental to pioneer life. Loss of human life from crocodiles in the Central and Northern portions of Queensland was fairly frequent. The Inquest depositions record the tragedies of the bush: fatal accidents with stock, deaths from exposure, thirst and starvation when men were lost in trackless areas of field and forest and scrub; drownings in flood and other waters; deaths through lack of medical care in dangerous illnesses, and deaths from other perils inseparable from pioneering in a young land of magnificent distances and, for the major part, not inhabited except by nomad tribes of natives.

Then, too, there are the records of crimes, great and small—some of much notoriety. The earliest Criminal Register in the Treasury Building strongroom bears date 1861-1865 and is one of a large number of volumes containing hundreds, nay, thousands of names, and references to a wide diversity of crime. The advent of Polynesian labour brought an added quota of grave offences against morality and life. Tied up in neat bundles in the Department of Justice strongroom are depositions sixty to ninety years old. Even a cursory glance at some of the pages in the Criminal Register shows the distressing number of capital crimes by natives against white females. Murders of blacks were frequent, and Chinese—especially on the Palmer Goldfield area—were often the victims of murder by blacks. There is abundant evidence of very long and irksome journeys by doctors, police and witnesses. Frequently it was necessary to bury dead human bodies days before the surgeon could reach the isolated scene or place of a fatality, a sudden, natural death or of a murder; and post mortem examinations after exhumation in

such cases, under primitive and crude conditions, must have been distinctly unpleasant and—as the records reveal—often inconclusive.

The difficulty of travel in 1870 is apparent from a letter dated March 28, 1870, from Mr. Henry J. Edkins, of Burke Town, from which outpost he had gone by steamer to Norman Town in January 1870. He had proposed to go on horseback from Norman Town to Rockhampton, where he was a Crown witness in a murder case Queen versus Ah Sam, Ah Foo and James Shaw, all of Burke Town. Flooded country kept him at Norman (as this Gulf centre was then also named) from early in January of that year and no sea travel to Rockhampton was available. Mr. Edkins said that when the flood waters subsided it was impossible to travel so as to reach Rockhampton for the Court, the roads and watercourses being passable only by an expert swimmer.

“I have travelled (he wrote to the Attorney-General) in and out the last two years in the month of February, but this year from December up to the present time (March 28) no mail has been able to travel between Bowen, Norman and Burke Town.”

Mr. William Finucane, Recording Clerk and C.P.S., Norman, certified that Mr. Edkins had been unable to leave the district from the beginning of the year, as “communication by land has, consequent upon the floods, been stopped during the above period and there has been no opportunity of travelling by sea.”

Not long after this Mr. Scott, of Taroom, asks that his wife be excused from attendance as a Crown witness at a Charleville Circuit Court. He points out that she and her young children are ill; that she is nursing a baby a few weeks old; and that the long journeys to and from the Court must be on horseback with her infant. The pioneer's life was not easy. And here is an extract from the “Courier-Mail” of May 13, 1953:

“Pioneering hardships of the Far North were recalled yesterday by some of the leading personalities attending at Innisfail the Queensland Country Women's Association Annual Conference. Tucked with her brothers and sisters into wooden cases slung on either side of pack horses is the first form of transport remembered by Mrs. E. M. Eldridge, President of the Cooktown Branch of the Q.C.W.A. Mrs. Eldridge, who

will be sixty-two next week, has lived all her life in the Cooktown district. She was one of seven children, and her father, who owned tin mines, used this unusual method for taking his family from one mine to another in the early days. Often Mrs. Eldridge did not see, after her marriage to another tin miner, a white woman for two and a half years at a time.

On September 20, 1865, the Attorney-General (Hon. Charles Lilley, Q.C.) wrote as under to Mr. Edmund Sheppard, Barrister at Law, Sydney:

“I wish to know if you would entertain an offer of our Metropolitan District Judgeship.

“A copy of the Act recently passed is forwarded herewith. The law, except as modified by this Act, is identical with that of New South Wales under 22 Vic., No. 18. The provisions of our several amending Acts have been incorporated and a Criminal and Quarter Sessions Appellate Jurisdiction added.

“The salary of the Judge is to be £1,000 a year. The Sittings of the Metropolitan Court would be held at Brisbane; Ipswich—25 miles; Toowoomba—70 miles; Dalby—120 miles; Warwick—70 miles; and from Toowoomba—40 miles.

“The distances are reckoned from Brisbane unless otherwise mentioned. Ipswich can be reached in three or four hours by coach or steamer, and to other places railways are being rapidly constructed which will probably reach the extensive limits of the jurisdiction by the end of 1867. An answer by telegram will oblige, as time presses.”

On September 29, 1865, Mr. Lilley acknowledged receipt of a telegram from Mr. Sheppard accepting the offer. The Attorney-General said the Courts would “be proclaimed as soon as possible after the return of the Governor and other Ministers from the North and your Commission will be prepared so as to be ready for you immediately after your arrival in Brisbane as expected on or about December 1 next. In the meantime permit me respectfully to draw your attention to the duties specially appertaining to your Office on the establishment of Courts for the first time under the Act 22 Vic. No. 18 and our enactment 29 Vic. No. 10, which I sent to you with my former letter—I mean the Rules and other matters which I need not particularise.”

Mr. Lilley, in asking the Colonial Secretary (Mr. Herbert) and the Surveyor-General in 1865 for descriptions of the proposed districts, stated:

“The three districts—each of them to be distinct—must embrace the whole Colony; and the boundaries must be defined so as to show in the plainest possible way the jurisdiction of each Court and the separation of the one from the other by boundaries easily traceable. Give descriptions for popular information apart from the technical ones to be embodied in the Proclamation. Any suggestions for re-arranging the Districts on the proclamation of additional Courts will be useful regard being had to the progress of our railway works and the probable rise of new towns, etc.”

Dalby was taken from the proposed Metropolitan District and placed in the proposed Western District with Condamine and Roma. Clermont and Gayndah were placed in the Northern Division and Springsure was omitted.

Mr. Charles William Blakeney, a Brisbane barrister, was appointed Judge of the Western District; and Mr. Sheppard, of course, took up duty at Brisbane following his appointment in 1865. Mr. T. George Long Innes, a member of the Sydney bar, to which he soon returned, was made Northern District Court Judge at Bowen. Three District Court Crown Prosecutors were appointed—namely, Mr. John Gore Jones for the Metropolitan District; Mr. William Henry Abbott Hirst—afterwards Judge—for the Northern District; and Mr. John Killeen Handy, for the Western District. Mr. Henry Alexander Elliott became Registrar at Brisbane; Mr. Frank Newell Bedek, C.P.S., Rockhampton, was appointed Registrar for the Northern District and Mr. Gustavus Birch, C.P.S., Ipswich, was made Registrar there for the Metropolitan District.

This is the final allotment of Courts proclaimed on November 1, 1865:

For Metropolitan District, at The City of Brisbane (Brisbane was no longer a Town); Ipswich; Toowoomba; and Warwick.

For Northern District, at Rockhampton; Gladstone; Clermont; Bowen; Maryborough; and Gayndah.

For Western District, at Dalby; Condamine; and Roma.

Judge Blakeney appears to have had Condamine as his headquarters. It then had a Police Magistrate (Mr. Lukin) whose son, Mr. Justice Lionel Oscar Lukin, was born there. The only hotel now at Condamine looks very old, the trough in its well-worn cypress pine step outside the public entrance indicating extensive patronage over the years. Judge Blakeney felt the call of the city lamp lights in 1867. Having prolonged a visit to Brisbane, he was requested by the Attorney-General on March 9, 1867, to return to his District.

Preliminary arrangements for the functioning of District Courts did not go smoothly. Police Magistrates and Benches of Magistrates had the right—freely exercised—to address the Honourable the Attorney-General direct on official matters, and he replied personally to this correspondence, but he did not communicate directly with Clerks of Petty Sessions. Mr. Lilley was enthusiastic about the establishment of the District Courts, which accounts for his departure from the rule, still obtaining, when he wrote a stinging reply on November 24, 1865, to a letter Mr. Wilkie, Secretary, Crown Law Office, had received from a querulous, critical C.P.S.:

“The instructions forwarded to you on the 13th November from this Office were perfectly clear and correct.

“They were not sent to induce you to enter into a correspondence with this Department and to display your **inability** to understand the District Courts Act, under which you have been appointed a Registrar, for a time, and the Jury Acts in force in the Colony

“If you do not peruse the Acts and comprehend your duty with greater accuracy I shall be compelled to take steps at an earlier period than I intend to appoint a Registrar charged with the duties of that Office only in the Northern District.”

A few years later this official was found, owing to family misfortune and low rate of salary, to have substantial shortages in his official moneys, and his exit from the Civil Service ended all his worries about the District Courts or Jury Acts. The Attorney-General (Mr. Bramston) showed him the greatest consideration, even giving him time to collect a large sum for restitution. Sad to relate, two of the highest officials

in the Civil Service were prosecuted for peculation of public funds not long after Queensland was set up as a separate Colony. But there was a humorous instance of cash shortages at Gladstone in 1869, when the defaulting Sub-Collector of Customs wrongfully accused the visiting Audit Inspector of having abstracted and stolen from the office safe the amount of the shortage in the Customs revenue there. The audit inspector, who was arrested on the official's complaint, but promptly discharged from custody, had made the serious error of accepting from the Sub-Collector the keys of the safe and of opening it, whilst that official was designedly absent from the office to keep an appointment with a lady. The Sub-Collector was committed for trial at the District Court, Rockhampton, and was acquitted on one of three charges of fraudulent appropriation of public moneys. It appears evidence required by the Crown Prosecutor was not forthcoming, so he withdrew the charge. Attorney-General Pring advised the Colonial Treasurer that, because of peculiar circumstances, no criminal charge could be laid or established against the Customs Officer. Each sub-collector had been authorised by the Treasury to retire all Treasury notes presented to him for that purpose out of moneys—Customs revenue—he might have in hand. The Gladstone Sub-Collector said he drew O.H.M.S. cheques in favour of persons to whom he was privately indebted instead of paying them by Treasury notes, which Treasury notes must ultimately have been retired by him by a like sum out of Consolidated Revenue. Mr. Pring referred to "conduct of a highly suspicious character—irregular and subject to severest censure, but it would not form the ground of a criminal charge. However, the day after he gave this advice, the Attorney-General read correspondence from the Sub-Collector and directed the Crown Prosecutor at Rockhampton to file indictments. The record is silent as to the result of these trials.

Not long after this a District Court Judge at Rockhampton gave judgment in his own Court against himself in three claims by his creditors. The Attorney-General (Hon. S. W. Griffith) obtained a report from him and the Judge, at his express request, was permitted to address the Governor in Council in person at

Brisbane. He failed in his pleas and was obliged to relinquish office.

There were in these early times no postal notes nor money orders, but bank drafts could be obtained—at a cost. The records show one method of remitting moneys was to cut Treasury notes in half and post the halves in separate mails!

The case of Thomas John Griffin, who poisoned and then fatally shot at the Mackenzie River in November 1867 the two Police troopers accompanying him as the Gold Escort from the Union Bank at Rockhampton is well known. Newspaper articles have been written about it and a novel (“Lost for Gold”) has the crime as its chief incident. Griffin, by reason of his education, handsome appearance and good manners had easy entree to Brisbane society and he was an invited guest at Government House. Fast living and loose habits at Claremont (now Clermont), where he was Gold Receiver and Gold Commissioner, depleted his private and official cash. Pressed by some Chinese to restore to them gold entrusted to his custody, he yielded to temptation to murder and rob his unfortunate Police companions of the Gold Escort. He was convicted of this crime, and hanged at Rockhampton in 1868. Records of his trial, as well as letters in his fine handwriting, are in the Department of Justice strongroom. Griffin had lain for less than a week in his grave when it was surreptitiously broken up and his head removed. Popular rumour said a Rockhampton surgeon had Griffin’s skull for years.

The Department holds records of the riotous days in September 1866 when about 500 unpaid Government workers assembled in Brisbane to enforce their just claims. William Eves, Henry Parker and John Murray felt the heavy hand of the Authorities, and received on their conviction for participation in the disturbances sentences of imprisonment ranging respectively from three months to twelve months. The indictment drafted and prosecuted by Attorney-General Lilley is long and contains quaint, if not fearsome phraseology. The Crown called ten witnesses at the trial, including Mr. D. T. Seymour, who had been A.D.C. to Governor Bowen for two years before becoming on January 1, 1863, the first Commissioner of Police in Queensland; and also Mr. H. H. Massie, later Under Colonial Secre-

tary. He succeeded Mr. Manning after the latter had been savagely attacked in his office with a tomahawk, his assailant being a half-demented C.P.S. Under special legislation Mr. Manning drew a pension of £300 per annum for several years and on his demise half this sum was paid yearly to his widow.

To-night, I am forced by considerations of time to omit many things and to concentrate on a limited period only in Queensland legal history. Many eminent men have been responsible in this State for the due administration of Justice, and documents of historic significance came to them for perusal and advice. I have left at the Department of Justice an extended narrative which embodies the results of a ten months' survey of records.

Decades of years have elapsed since the hands—now turned to dust—made the entries in the early Registers of Correspondence and penned the letters in the official files, but those records of distant days are as legible as when they were written. The handwriting is good; the ink has not faded; and, except for some small damage by flooding, the documents are well preserved.

There are treasures in Government strongrooms safe from moths and rust and placed where thieves cannot break in and steal. These documents will bring pleasure to some future historian seeking original material in the State archives. He will be fascinated by research and discovery even in the dank atmosphere of basement strongrooms. Queensland should not delay in following the recent example of Western Australia in collating and co-ordinating and preserving its valuable State records.