The image shows the front cover of a book. The cover is decorated with a traditional marbled paper pattern, often called a 'stone' or 'shell' pattern. This pattern consists of irregular, rounded shapes in shades of blue, grey, and yellow, set against a dark, almost black background. The marbling is dense and intricate. The spine of the book, visible on the left, and the corners, which are reinforced with black material, are not marbled. A white rectangular label is affixed to the lower-left portion of the marbled area.

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Colonial Government
and
Magistrates



THE CASE

OF

[E. W. LANDOR, Esq., J.P.,

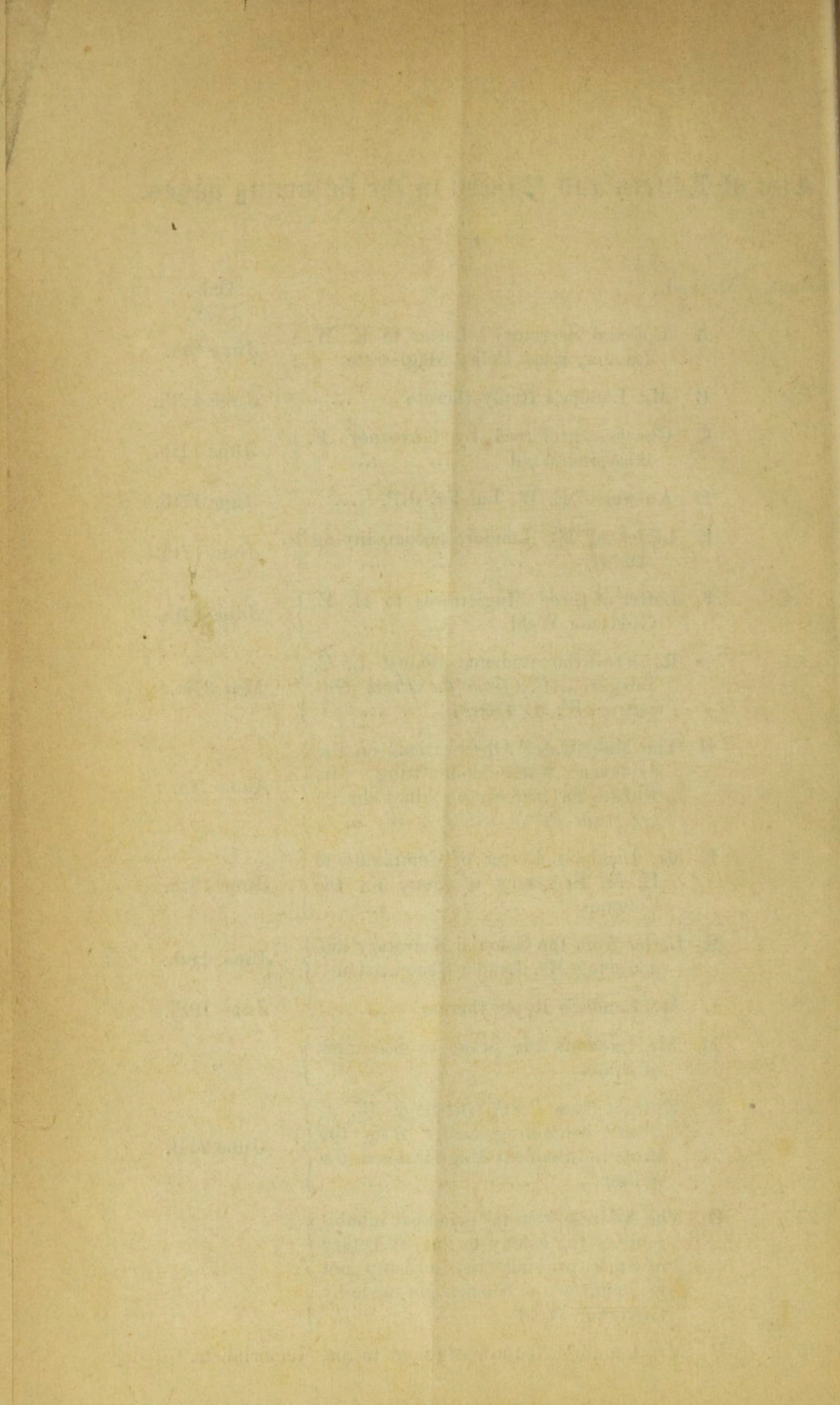
POLICE MAGISTRATE,

WESTERN AUSTRALIA:



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15	H The Magistrates' Observations on the evidence when committing Mr. Burges for trial on the minor charge (from the Perth Gazette & W. A. T.) }	June 7th.
18	I Mr. Landor's Letter of Complaint to H. M. Secretary of State for the Colonies ... }	June 17th.
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23	N Extract from Perth Gazette & W. A. Times containing Letter from the three independent Magistrates to the Editor ... }	June 21st.
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CASE OF

E. W. LANDOR, Esq., J.P.,

POLICE MAGISTRATE,

WESTERN AUSTRALIA.

MR. E. W. LANDOR, Police Magistrate, Perth, a gentleman advanced in years, and highly esteemed and respected throughout the Colony, has recently been suspended from office by His Excellency FREDERICK ALOYSIUS WELD, the Governor of the Colony, for the following alleged offence.

Mr. Landor, in conjunction with three other Magistrates, of the highest position in the Colony, and of unimpeachable honor, committed a gentleman, who was charged before them at the instance of the Government with unlawfully shooting a wild Native in an unsettled district for trial upon the minor charge of shooting with intent to do bodily harm, instead of with intent to murder, (a capital offence here,) as the Prosecutor demanded. But which would not prevent the Crown from indicting him for murder, or any other offence. In fact, Mr. Landor had a few days before, committed a man named James Reid for trial on a charge of wounding with intent to do grievous bodily harm; and the Attorney General indicted him for wounding with intent to kill and murder. The jury at the same Sessions at which Mr. Burges was also committed for trial, returned a verdict against Reid of *Guilty* on the minor charge.

And in fact, as a rule, a prisoner is committed for trial on such a charge as the Magistrate thinks is likely to

be proved—leaving it to other authorities who may think differently to act as to them appears proper.

It is alleged by Governor Weld that the Police Magistrate in committing Mr. Burges on the minor charge was instigated by motives of partiality towards the accused—with whom, however, (as will be seen) Mr. Landor had no personal acquaintance.

Mr Landor's friends do not wish to enter into the case of the accused person at all; their only object being to shew that in whatever Mr. Landor did he at least was not actuated by any unworthy motives.

The case has excited very great public interest, and very great interest has been manifested in it on the part of the Government.

Mr. Landor having been suddenly suspended from Office and receipt of all Salary, has appealed home to Her Majesty's Principal Secretary of State for the Colonies.

The three independent Magistrates have all resigned their Commissions of the Peace, alleging that they fully identify themselves with Mr. Landor, and are therefore obnoxious to the same criticism and censure. [See their letter of June 14, page 9.]

The whole correspondence has been published in the Colonial papers, "Inquirer" July 3, "Perth Gazette & W. A. Times" July 5, and "Herald" July 6.

The Colonial Secretary in a letter dated 18th June, in reply to the Magistrates' letter of June 14th, observes that "the Governor sees a marked distinction between your position and that of Mr. Landor, and he has consequently hitherto refrained from removing you from the Commission of the Peace, but at the same time should you be deliberately of opinion that in the execution of the unpleasant duty which has devolved upon him, he has reflected dishonor on you, he is ready to accept your resignation of that office."

The three independent Magistrates, Messrs. W. L. Brockman, M.L.C., Henry Ashton, A.C.G., (half pay,) and Captain Hamilton Burke, 68th Regiment, (H.P.,) thereupon sent in their resignations, which were accepted in the following letter, which concludes the published correspondence :—

“Colonial Secretary’s Office,—Perth, June 25, 1872.

“Sir,—His Excellency the Governor has directed me to acknowledge the receipt of your letter of yesterday’s date, and entirely concurring in the course you have adopted in tendering your resignation as a Magistrate, has no hesitation in accepting it.—I have, &c.,
 FRED. P. BARLEE. To W. L. Brockman, Esq., Herne Hill.” “H. Ashton, Esq.” “Captain B. H. Burke.”

The public have energetically taken the part of the Magistrates, believing them to be wholly incapable of shewing favor from personal bias towards the accused, who was admitted to bail on the minor charge, but immediately afterwards again arrested on the capital charge, at the instance of the Government, upon a Bench Warrant granted by Chief Justice Burt, on the application of the Public Prosecutor, Mr. R. J. Walcott, Attorney General, who acting as Grand Jury, immediately found a true Bill against the accused. [See Newspaper Report, page 18.]

In this Colony we have no Grand Jury. The Attorney General acts in the twofold capacity of Public Prosecutor and Grand Jury. The Magistracy therefore are naturally looked upon by the people as the outer-bulwarks of public safety, and in all cases tinged with any political or party coloring, they are expected to act with more than ordinary jealousy. In fact if it should happen that the Governor and the Chief Justice (our only Judge) act together, the people are entirely helpless—as appeared in November, 1870, when three newspaper Editors were imprisoned, and one of them also fined £100, for an alleged contempt of Court—a proceeding that caused great scandal and considerable sensation throughout all the Australian Colonies. It is therefore of real consequence to the community that the Magistrates should not be mere cyphers; and whether Stipendiary Magistrates when sitting on the Bench have less liberty of judgment than independent Magistrates is a question of deep interest to the public.

An Address to the Secretary of State, praying for the reinstatement of Mr. Landor, has been speedily got up and signed by all the influential settlers

throughout the colony, who could communicate with the Capital in the very short space of time before the departure of the Mail. [See page 25.]

The helplessness of Englishmen in this Colony in cases of official injustice, must surely give some claim upon the notice of their countrymen more fortunately circumstanced ; and may be considered some excuse for what would otherwise be merely an impertinent intrusion in thus thrusting this case before them.

N.B.—The publication of this correspondence is made by the Committee of Mr. Landor's friends, by whom his case is conducted.

FRAS. LOCHEE,
Hon. Secretary.

Perth, Western Australia, }
July 15, 1872. }

(Copies are forwarded to the Secretary of the ROYAL COLONIAL
INSTITUTE, No. 15, West Strand, London.)

ADDENDUM TO PREFACE.

The Charges against Mr. Landor may be resolved into two. The first, is stated in Letter A, page 1:— that he ought to have committed Mr. Burges for trial on the capital charge instead of the minor one. It is urged against him that a man who pursues a supposed thief (whether White or Red) for the purpose of catching him, or of driving him to a certain spot, is doing an unlawful act, and therefore if the pursued party resists the capture and is killed, it may amount, in the eye of the law, to murder. But Mr. Landor and his brother Magistrates, taking into consideration the remoteness of the spot, far from civilization and all legal protection, thought that Mr. Burges might plead that the only mode of catching the thief was to do it himself, and that he being a Magistrate was justified in trying to recapture him when he had escaped out of custody. They thought it right to commit him on the minor charge, leaving it to the Attorney General to indict for the capital offence, if he should think proper.

The other charge is, that Mr. Landor and the three other Magistrates gave their reasons in writing for the course they pursued, and commented upon the evidence, contrary to the usual practice.

The other Magistrates published their reasons for taking this course. [See post, p. 24.]

It is urged that the public mind might have been influenced by this course, and possibly Jurymen biased.

But the committing Magistrate cannot always maintain silence. The Counsel on both sides contest every point, and the Magistrate must give his opinion, based on the evidence. There are reporters and a crowded audience, and the public and future Jury are quite as likely to be influenced by the Counsel's arguments as by the Magistrate's remarks. The Jury, also, at the trial are warned to decide solely by the evidence before them, and not from previous statements; and the expressions of the Magistrate would not weigh much against the direction of the Judge.

The Colonial Secretary of Western Australia to E. W. Landor, Esq., J.P. A.

Western Australia.

Colonial Secretary's Office,

Perth, 6th June, 1872.

SIR,—I am directed by His Excellency the Governor to say that he has been informed that on Monday last, the 3rd instant, you dismissed a charge preferred against Mr. Lockier Clare Burges for wounding with intent to kill; at the same time, and on the same evidence, committing him upon a minor charge. If the evidence were sufficient to enable you to commit him on the one charge, His Excellency after considering that evidence is of opinion that it was sufficient also for the other; in this conclusion, he is supported by the opinion of the Attorney-General.

His Excellency cannot but fear that there are grounds for an impression which is abroad, that the course taken by you in this case has in more than in one respect differed from that which would have been pursued, had the accused (instead of being a member of an influential and respected family,) been friendless and of humble station, or had the case been reversed, and a mounted native had pursued and shot Mr. Burges under the circumstances in which, setting aside all other evidence, Mr. Burges in his journal admits having pursued and shot a native.

His Excellency feels that it would be highly improper for him to anticipate or express any opinion upon the question which will now come before a jury, but he is fully at liberty, without prejudice to the case itself, to express his decided conviction that the charge of wounding with intent to murder, is a case for the decision of a jury, and that the dismissal of that capital charge by you was an act calculated to impair all confidence in your ability or your impartiality, or both, and to bring the law into contempt.

His Excellency, however, before taking any further steps, will receive and carefully consider any explanation that you may think fit to make regarding your proceedings in this case. And should he after receiving such explanation, find it necessary to take further steps, you will be duly informed, and every proper facility will be given you for your defence.

I have the honor to be, sir,

Your obedient servant,

FRED. P. BARLEE.

E. W. Landor, Esq., Police Magistrate.

Mr. E. W. Landor, J.P., to the Hon. the Colonial Secretary.

Perth, Western Australia,

June 10th, 1872.

B.

SIR,—I have the honor to acknowledge the receipt of your letter of the 6th inst., relative to the commitment of Mr. Lockier Clare Burges on the 3rd instant by myself and three other Magistrates for trial on a charge of shooting a native with intent to do him bodily harm, instead of for wounding with intent to murder. You say that "if the evidence were sufficient to enable me to commit him on the one charge, His Excellency, after considering that evidence, is of opinion that it was sufficient also for the other."

The case engaged the most anxious consideration for many hours, and even days, not only of myself but of three other Magistrates of unimpeachable honor, namely; Messrs. W. L. Brockman, Henry Ashton, and Captain Hamilton-Burke; and I may refer to the statement of their opinion delivered on the Bench, as reported in the Perth newspapers. All of us most conscientiously considered that there was not, in our opinion, sufficient reliable evidence to justify us in charging Mr. Burges with a deliberate intent to murder the native, or with wounding him with that intent. As he had himself stated in his journal that he had shot a native under certain circumstances, we considered that we ought not to dismiss the case summarily, but ought to send it before a jury to determine whether he was at all, or to what extent, justified in what he did. I myself conceived that this would not prevent the Crown from indicting Mr. Burges for an intent to murder, if so determined. When the Crown Solicitor opened the case he said that he would make no specific charge, but would leave it to the Bench, after hearing the witnesses, to commit on such a charge as they might think was disclosed. On being pressed to lay some positive charge he said, "Well! I charge him with murder," and this was therefore entered in the depositions. On the day of committal he told the Bench that he withdrew that charge and charged the prisoner with "wounding with intent to murder." The Bench however could not agree with him. It was at one time my own intention to commit the prisoner on that charge, but ultimately, after anxious deliberation and consultation, we all (the other Magistrates and myself) decided that, in our opinion, the fairest course was to prefer the minor charge.

You add that "His Excellency cannot but fear that there are grounds for an impression which is abroad, that the course taken by me has in more than one respect differed from that which would have been pursued had the accused instead of being a member of an influential and respected family, been friendless and of humble station."

I am happy to say, and I do so with the most profound respect for His Excellency, that I have no fear that any such impression will get abroad respecting me. My character has been too long established, and is too well known to allow of any such imputation being extensively believed in. I was appointed to my present post by the Right Honorable _____, who had good grounds for considering me a man of honor and integrity, and fully qualified to perform all the duties of the office. I shall never consciously do discredit to his

kindness and confidence. Certainly not, by acting on the Bench with the unworthy motives imputed to me.

I have endeavored in this, as in all other cases, to act with the purest impartiality and uprightness; and I have always believed it my duty as a Magistrate not to be swayed by any other influences whatever. Nor would I hold the post for a day under any other circumstances. If in the discharge of my functions, I have ever had the misfortune to do anything contrary to the wishes or opinions of the Governor, it is the occasion of very great pain to me; for I can have no greater pleasure than in meeting and furthering his views at all times; but I should be unworthy to fill the office I hold were I to act at variance with my own conscience and convictions; and I feel assured that the Governor is the last person who would expect me to do so.

I have the honor to be, sir,

E. W. LANDOR, J.P.,
Police Magistrate.

The Hon. the Colonial Secretary.

The Colonial Secretary to E. W. Landor, Esq., J.P.

Western Australia.

Colonial Secretary's Office,
Perth, 11th June, 1872.

SIR,—I am directed by His Excellency the Governor to inform you that he is unable to consider the explanation contained in your letter of yesterday's date as in any way satisfactory, and that it becomes his painful duty to bring your conduct before the Executive Council, with a view to your removal from the office you hold.

For this purpose I enclose herewith certain charges, to which I am to request your answer in writing on or before Monday next, the 17th instant.

I am, sir,

Your obedient servant,
FRED. P. BARLEE.

CHARGES

Preferred by His Excellency the Governor in Executive Council, against Edward Wilson Landor, Esquire, Police Magistrate at Perth, Western Australia.

1.—That on the 29th day of April, 1872, Police Sergeant Dale brought an aboriginal native named Chum Chum before you, who took his information, but instead of at once issuing your warrant against Mr. L. C. Burges, asked for instructions from the Government, expressing yourself in conversation with the Governor, the Attorney General, and the Superintendent of Police, to the effect that it was a most extraordinary thing to commit a white man on a capital charge on the evidence of a native, arguing against the propriety of apprehending Mr. Burges, and endeavouring to show why you ought not to be expected to act on your responsibility as a Magistrate. That you thereby acted in an unusual manner, and showed an evident unwillingness to do your duty or assume your proper responsibility, and caused delays which might have defeated the ends of justice.

2.—That ultimately you acted by taking a fresh information in open Court, (a most unusual proceeding,) thereby giving an opportunity to the friends of the accused to warn him of his danger, and to the accused to effect his escape; that, after taking the information, you delayed some hours before you issued your warrant, and then only issued it after pressure from the Attorney General as detailed in the accompanying copy of a letter addressed by that officer to the Colonial Secretary, dated 11th June, 1872, and marked A; you at the time well knowing, that it was of the utmost importance in capital cases that no time should be lost in making the arrest.

3.—That you, upon issuing your warrant, and prior to hearing the evidence to be adduced, informed the Attorney General and the Superintendent of Police that you would admit Mr. Burges to bail when brought before you—himself in £1000, and two sureties in £500 each.

4.—That in this, you expressed your intention to deviate from the usual course adopted in all felonies of any enormity.

5.—That when the accused was brought before you, there is reason to believe you called in the assistance of other Magistrates who do not usually assist you in the performance of your duties, although commitals are the individual acts of one Magistrate and not of a Bench, and the responsibility is individual and not collective. That in this also, you appear to have evaded your proper responsibility.

6.—That you, acting in concert with other three Magistrates, dismissed the capital charge against Mr. Lockier Clare Burges, and committed him on the minor charge, admitting him to bail in the amount you had predetermined to take before the Warrant was in the hands of an officer for execution, although the evidence in support of the capital charge was identical with that in support of the minor charge, and, that in the eye of the law, an armed mounted man who pursues an unarmed man on foot (or one armed with a hunting club or stick only) and shoots him, leaving him for dead, if the evidence is to be believed, it is clear that he is guilty, if not of murder, at least of shooting with intent to murder, and that if the evidence is to be disbelieved, he is not guilty. You therefore are charged with either from want of ordinary knowledge or ability to act in a Magisterial capacity, or with partiality in the execution of your office, or with both, for it appears evident that you either were guilty of malversation in dismissing the capital charge against Mr. L. C. Burges, or of gross injustice to Mr. L. C. Burges, in committing him at all.

7.—That you took an unusual course in making in the name of yourself and three other Magistrates such a public statement as the one put forth by you of the reasons which led you to dismiss the capital charge and to commit on the minor one.

8.—That it is highly indecent and improper in a Magistrate (as was done by you) to hand to the Advocate for the accused, for publication, a document commenting adversely upon the evidence for the prosecution, and discrediting the witnesses upon whose depositions you had just committed a prisoner for trial.

9.—That the reasons put forth by you are founded upon an unfair analysis of the evidence for the prosecution, and evince an animus to screen the accused, as is shown in the endeavor to discredit the wit-

nesses, as well as by the reference to the statement in the journal of Mt. L. C. Burges, which in itself was sufficient evidence to make the capital charge a case to be enquired into by a jury. That in allowing this document to be published you thereby adopted a course having a tendency to prejudice a case sub judice, a course from which even the Press have refrained.

(*Annexed to above.*)

A.

Perth, 11th June, 1872.

SIR,—In accordance with His Excellency's desire I send a statement of the substance of a conversation which I had with Mr. Landor in the presence of the Superintendent of Police.

Mr. Landor in the office at the Police Court told me that he had taken an information charging Mr. Burges with shooting an aboriginal native, and that he was about to issue a summons to Mr. Burges which would be sent by the next post. [Our conversation took place on a Thursday or Friday afternoon.] I told Mr. Landor that a summons where the charge involved the life of the accused, could be looked upon in no other light than a warning to the accused to make his escape. And that if he persisted in sending a summons instead of issuing a warrant I should so advise the Governor. Upon this Mr. Landor took out of his pocket a warrant which he signed. After signing the warrant, Mr. Landor then said that he would accept bail when Mr. Burges was brought up—himself in £1000 and two sureties in £500 each. I told Mr. Landor that on that point I would not advise him, that undoubtedly it was within his competency to take or withhold bail, and that he must exercise his own discretion, and take the responsibility upon himself.

I have, &c.,

R. J. WALCOTT.

To the Hon. the Colonial Secretary, &c., &c.

Answer of Mr. E. W. Landor, Police Magistrate, Perth, Western Australia, to the charges brought against him by H. E. the Governor on 11th June, 1872.

D.

1.—The first charge commences with a mis-statement. On the 29th April, 1872, I had the first intimation of any charge against Mr. Lockier Clare Burges, J.P., from Captain Smith, Superintendent of Police, who came on to the Bench in the Police Court and said he wished to speak to me. I took him into the adjoining room where he showed me a Report of Sergeant Piesse containing the statements of several persons that Mr. Burges had told them he had shot a native. He said that Chum-Chum was the only eye-witness, and he, Captain Smith, said he did not know what to make of it. I said I could not read the report then, and perhaps it would be well if I examined Chum-Chum myself at my private office, and tried to learn the particulars of the case, and I asked him to send Chum-Chum to my office after I should have read the report. I saw a memorandum on the Report by the Attorney General to the effect that "he considered there was only hearsay evidence against Burges and he did not recommend his arrest." He of course changed his opinion subsequently. There was no intro-

information then laid before me. Chum-Chum was brought to my office and his statement was taken down by me. Knowing that as a rule the natives will say whatever they think likely to please the querist I did not think much more of the case than the Attorney General had at one time done—especially as Chum Chum had been for three or four months in the hands of the Police (he was soon afterwards permanently engaged on the Force) and I saw on the Report orders from the Governor* that Chum Chum was to be offered a reward if he would tell the truth. Also when I asked him, for the purpose of testing him further, if Mr. Burges was his enemy? he replied "No." I then said, Do you think that he will be pleased by what you are saying? He burst into a loud laugh, and said "No! but Gubernor be pleased." I then annexed the evidence of Chum-Chum to the Report of Sergeant Piesse, and sent it to the Superintendent of Police, who immediately laid it before the Governor. I carefully abstained from mentioning the above to the Magistrates, wishing them to judge solely by the evidence at the hearing.

I must say I was surprised at the unusual course taken in imposing upon me the duty of investigating this charge, as it would properly be the duty of the Resident Magistrate of the Champion Bay District in which Mr. Burges resides, and where the magisterial investigation would in ordinary cases be held. On May 2nd, Captain Smith again called on me with the Report, and said that Chum-Chum was to lay an information against Mr. Burges, charging him with murder. I was surprised to read across the first page in the Governor's hand-writing, words to this effect: He should expect the Police Magistrate to do his duty, and if he granted a warrant against Mr. Burges merely on a charge of shooting with intent to do bodily harm, he must forward to the Governor a full statement of his reasons for so doing, as the Governor would probably lay the whole matter before the Secretary of State. Not understanding what could be meant by this remark, I waited upon the Governor, who kindly said that as I had not issued a warrant immediately he conceived that I had some reason for not doing so. I said the charge was so serious that I should be glad if the conduct of it was placed in the hands of the Crown Solicitor. It was not that I cared for or felt any responsibility, but I thought that the Crown Solicitor would best get up the evidence, which seemed so imperfect.

2.—There was only one information taken, and Chum-Chum was brought by the Police to the Court to lay it, where it was taken in the usual way on Friday, May 3rd. I certainly felt great hesitation about granting a warrant on the statement of a native, who knew nothing about an oath; and without any feeling as to Mr. Burges personally

* I have been told that His Excellency declares that no such order, either from himself or the Superintendent of Police, appears upon the Report. Nevertheless when I waited upon the Governor, as mentioned lower down, in expressing my hesitation to grant a warrant upon the sole evidence of Chum Chum against a man some hundred miles away, in another magisterial district, I remarked that I had noticed that His Excellency had directed Chum Chum should be rewarded if he told the truth about this matter; and I could not help hinting that this might have a bad effect. His Excellency rejoined that of course he meant that the native would be rewarded if he told the whole truth; not if he told lies. Within an hour afterwards I saw the Attorney General at his own house, and I expressed the same hesitation to him, and I also told him that the Police had been ordered to reward Chum Chum (or to tell him that he would be rewarded) if he told the truth. I added "I hope the other side won't get hold of this."

(with whom I was scarcely acquainted at all) I thought I might be doing very great injustice and hardship in bringing a gentleman and magistrate in the custody of the Police from a distance involving ten or twelve days' journey, upon a charge so doubtfully supported. I however made out the warrant and put it in my pocket, intending to ask the Attorney General whether he thought a summons would do in the first instance, as I was well convinced there was no chance of his escaping out of the colony, and no likelihood of his attempting it. Whilst going to the Attorney General, I met him and Captain Smith in the street, and we all repaired to the Police-court office.

3.—I then asked the Attorney General about a summons in the first instance, but he laughed at the idea, and said that only a warrant would do. It is not the fact, as alleged by the Attorney General in his letter appended to the charges, that I told him "I was about to issue a summons." I had not prepared any summons, but had prepared a warrant, as shown by himself. I observed that the evidence, to my mind, was of a very doubtful nature. He remarked, "of course we shall not get a conviction from a jury." I then said that under the circumstances it would be very hard to keep him in jail for two or three months before trial, and that he might be let out on bail to a high amount. The Attorney General again laughed in an offensive way, which annoyed me, and I said I should be disposed to take bail in £1000 and two sureties in £500 each.

4.—The Colonial Ordinance 14 V. 4, s. 14 authorises Justices to take bail in all felonies, if they think proper so to do.

5.—Far from calling in the assistance of other Magistrates, both Mr. Brockman and Mr. Ashton asked me separately if I had any objection to their sitting? I replied "Certainly not;" but I certainly did ask Captain Burke, H.P., 68th Regiment and Staff Officer of Pensioners, to join the others, and I am quite unable to see that there could be anything wrong or irregular in this. As to evading responsibility no such idea occurred to me.

6.—All the Magistrates considered the evidence so extremely doubtful and unsatisfactory, as related to the charge of shooting with intent to murder, (the only witnesses besides Chum-Chum proving simply that Mr. Burges had told them he had shot a native, which was freely admitted by himself), that we thought we should be doing a great wrong to justice if we committed the prisoner on the capital charge. We therefore committed him on the charge of wounding with intent to do bodily harm; but conceived he might still be indicted for murder or anything else if the Attorney General deemed it necessary. The latter part of paragraph 6 is not a charge but an argument. As to my "want of ordinary knowledge or ability to act in a magisterial capacity," my professional experience of thirty years in England, and the testimony of all the lawyers who practise in my Civil and Criminal Courts will afford a sufficient answer.

7.—Some of the Magistrates considering and insisting that the case ought to be summarily dismissed, and I not being able to agree with them, inasmuch as it was in my opinion the province of a jury to decide whether the accused was justified in what he did, it was after long discussion, agreed that he should be committed on the minor charge; and

that the Magistrates should for their own satisfaction, and for that of the Governor, and the public, give their reasons in writing for adopting this course ; more especially as Mr. Brockman (who lives at some distance from Perth) could not be present on the day of commitment.

8.—There was at least one newspaper reporter in Court, who might have reported verbally the whole evidence. The statement made in this charge that I gave a copy of the Magistrate's decision to the prisoner's Advocate for publication, is not the fact.

9.—I cannot agree with the argument contained in this paragraph. I protest against the charge of having made an unfair analysis of the evidence, and that the reasons put forth evince any "animus" in favor of the accused. However I may have erred it has been from no desire to mislead. I have no interest in Mr. L. C. Burges or his relatives, and no motive but a desire to do justice. He does not reside in this neighborhood, and I believe I have never exchanged twenty words with him since his arrival in the colony. I have once drawn a Conveyance to him from instructions laid before me as Counsel by his Attorney and Agent. It is entirely my interest to support the views of the Governor and not to oppose them ; and although not agreeing with the assumption that there is perfect equality between an English gentleman and Magistrate when beyond the outskirts of legal protection, and a wild savage, I should be among the first to punish any wanton cruelty inflicted upon the latter.

I have often advocated the cause of the natives, and have been complimented by the Aborigines Protection Society for so doing.

E. W. LANDOR, J.P.,
Perth, W.A.

E.

Mr. E. W. Landor to the Colonial Secretary.

Perth, Western Australia,

June 17, 1872.

SIR,—I learn with regret from your letter of June 11th that the Governor is unable to consider the explanation in mine of the previous day as in any way satisfactory.

I feel therefore assured that nothing I could add to it would be more so. My case is evidently already judged. Unfortunately I have not had the honor of any intimate personal acquaintance with the Governor, and therefore His Excellency can have but a most imperfect knowledge of the tone of mind and guiding principles by which I am actuated.

I cannot but fear that the Governor's opinion of me has been to some extent derived from some prejudiced and hostile source.

I feel it an indignity to be compelled to answer charges of such a nature as those brought against me.

I am charged with having evinced "an animus to screen the accused." This is certainly not the fact ; but may it not be fairly inferred that an animus, and a very strong one, exists against myself ?

I am aware that it is the duty of officials to bear with patience many rebuffs of no measured kind ; but I think I have some right to complain when I am told in your letter of June 6th that I—an old and experienced Magistrate, a Barrister of the Supreme Court, and now in the

decline of life (upwards of 60) after an honourable and unstained career, am guilty of favoring a prisoner merely because he is a "member of an influential and respected family," and not "friendless and of humble station," and because (see same letter) I committed him for trial on a minor charge instead of the capital one, although His Excellency "after considering the evidence" was of a different opinion—and therefore I have been guilty of "an act calculated to impair all confidence in my ability or impartiality."

With respect to the decision of the Magistrates signed by them and reported in the public newspapers, I have explained their reasons for this course in my answer to charge 7, viz., that they could not all be present on the day of committal, but particularly wished, in a case of such public interest, to make known the reasons by which they were guided.

There seems now no course open to me but to appeal to the justice and protection of Her Majesty's Secretary of State; and I therefore have now the honor to forward my complaint, together with copies of all the letters, reports, and other documents, to His Excellency the Governor, with a request that he will be so good as to transmit them by the outgoing Mail.

I shall also forward similar copies through another channel, and also to several gentlemen who have the honor of Lord Kimberley's acquaintance, and to whom my character is not unknown, in the hope that I may not be thus dishonoured without the opportunity of a voice being raised in my behalf.

I will also venture to ask the Governor to request of Lord Kimberley (to whom I will also appeal myself) that he will be so good as to delay returning any decision upon my case until at least the mail but one after receiving the papers, in order that (as the time is so short before the departure of the outgoing mail) I may have a little more time to obtain materials which are necessary to the completion of my case.

I have the honor to be, sir,
Your obedient servant,

E. W. LANDOR, J.P.,
Police Magistrate.

The Hon. the Colonial Secretary.

From the Magistrates to the Colonial Secretary.

Western Australia, Perth, June 14, 1872.

F.

SIR,—As forming part of the Bench of Magistrates who heard the case against Mr. L. C. Burges, we cannot but feel deeply hurt by the reflections cast upon the decision by His Excellency the Governor in a letter addressed by you to Mr. Landor, dated the 6th instant, and which that gentleman considered it his duty to shew us.

Fully identifying ourselves, as we do, with Mr. Landor in the decision arrived at, after long and impartial consideration of the case in all its bearings, we cannot but feel that the reflections made in your letter apply most painfully to ourselves.

We now beg most respectfully, but emphatically, to protest against criticism which reflects discredit and dishonour upon us all.

We have the honor to be, Sir,

Your most obedient servants,

W. L. BROCKMAN, J.P.,

HENRY ASHTON, J.P.,

B. HAMILTON BURKE, J.P.

The Hon. the Colonial Secretary.

Extract from the Perth Gazette & W. A. Times, May 31, 1872.

G.

POLICE COURT.

Before E. W. Landor, H. Ashton, B. H. Burke, and W. L. Brockman, Esquires, Justices of the Peace.

TUESDAY, 28TH MAY, 1872.

Regina v. L. C. Burges.—Lockier Clare Burges was again brought up on the charge of murder of a native, unknown, at or near Mr. Hooley's Well, on the 12th October last.

The Crown Solicitor prosecuted; Mr. E. A. Stone and Mr. S. H. Parker appeared for the Defence.

John Fitzgerald, sworn—I am a shepherd, in the service of Mr. Alfred Pead at Champion Bay; I know Mr. L. C. Burges; I was in his service close on two years, from the latter part of 1870 till a couple of months ago; I was with him at Nickol Bay, at Jones' Creek, and at the house; Mr. Burges lived at Andover, Nickol Bay; left Nickol Bay with sheep in July, 1871; we drove the sheep overland to Mr. Burges' station on the Bowes; Carroll and Robert Withnell were with me when we started; there were three natives—Woolamgarry, Mosquito, and Judy, and a native boy named Baldwin started with us; Farrell overtook us the next day and a native named Jimmy, a Bunbury native; we went to a place called Yaatamarra, about 60 miles from Andover; we remained there about four weeks before Mr. Burges came up; he had two-horse teams and some loose horses and the rations for the party with him; Murphy and Alfred Smith were with him and a native called Suggary, and another named Chum Chum; the former belongs to Nickol Bay, and the latter to Perth; we arrived at Mr. Burges', on the Bowes, sometime in November last; we lost a saddle about a day's journey the other side of Hooley's Well; I recollect the loss of a dog, it generally accompanied Farrell, who was my mate on the journey; the dog was lost three or four days; three natives brought it to us some time in the afternoon; they were natives that he overtook them, and that they had some belonging to the Lyons, and we could not make them understand us or understand them; this was two days before we got to Hooley's Well, the natives might have been armed; I was with the leading flock and did not see them when they came up; they stayed at the camp until late at night; I saw no spears with any of the natives; I saw they had douarks; I did not see how many; they are from two inches to two feet long; I believe they went away in the night; I don't think we had any other wild natives in the camp that night: next morning I heard there was a saddle missing; the saddles and harness were usually in charge of

Murphy ; that morning I saw Mr. Burges ; I first saw him at the cart ; nobody was with me ; this was about 7 o'clock ; he was on foot ; he did not say anything to me then ; I started with the sheep, &c. ; Mr. Burges overtook me, riding, about 10 o'clock ; he told me he had been after three niggers who had stolen a saddle ; they had part of the saddle with them ; he was bringing them back to the cart ; one of them had run away and the second made an attempt to run ; he struck him with the butt end of his revolver on his forehead and knocked him down ; he was not down a second before he was up and ran away ; the third made an attempt to run, and he put a ball through him ; he dropped and never kicked ; I was the leading shepherd, Farrell was the next behind me, and generally about a quarter of a mile in the rear ; the flocks of sheep were four ; Carrol was third, and Withnell fourth. Mr. Burges did not say anything about the natives having spears ; he said the reason why he struck the native with the revolver was because he was going to throw him off his horse ; he did not say anything as to the other native, except that the reason he shot him was for running away ; never saw Mr. Burges on the journey without a revolver ; we had not been molested at all by the blacks ; we had seen a good few at different places ; when we started from this place a native accompanied us to Hooley's Well ; he was one of the three that brought us the dog ; I saw him at the well, but not before ; I think this was in September.

Cross-examined by Mr. Stone—I have been with Alfred Pead till I left to come down here ; I arrived in Fremantle last Wednesday.

By Mr. Landor—I was *alone* when Mr. Burges 'had' this conversation with me : he said Chum Chum was with him at the time they overtook the natives.

James Murphy, stonemason and cook, in company with Chas. Fisher at the Greenough Flats—I was in the service of Mr. Burges for about five months, up to the 10th November ; I was with him at Nickol Bay ; recollect leaving with Smith and Chum Chum ; we had two teams with us ; Mr. Burges went to Roebourne with us, and left us there and joined us two days afterwards ; one man came into the Fortescue for rations, we joined the rest of the party there—Carroll, Farrell, and Withnell ; we had natives—Nickol Bay natives—Suggary, Traveller, Judy, Palpin, and Mosquito ; Jimmy was with the sheep ; I know a place called Hooley's Well ; from the time we left Nicol Bay till we got there we were never molested ; we met numbers of natives, and they were always quiet and willing to show Mr. Burges where water was ; recollect a saddle being lost ; this was the night before we got to Hooley's Well ; Suggary, Traveller, or myself used that saddle ; I last saw that saddle the night the natives came to the camp with the dog ; this was the night we got to Hooley's Well ; it was missed next morning ; I put it under a tree near the camp side of Mr. Burges' saddle ; Mr. Burges missed the saddle next morning ; he told me to drive the horses that day, as he went to saddle his horse ; he said, "I say those natives have taken that saddle ;" he referred to the three natives who came to the camp the night before ; they brought a dog that had been lost, and had with some douaks and wommeras ; I saw no spears with them ; they came to camp about

sundown ; they went away as we were going to bed back on the road we had come ; when Mr. Burges spoke about the natives having taken the saddle, the drays were close to the trees and the horses were harnessed ; he got on his horse and told Chum Chum to go with him ; Chum Chum started away with him ; I saw them start ; nobody else went with them ; Chum Chum rode on a horse ; I did not see Mr. Burges with a revolver when he started ; but I saw him with one when he came back with a native ; I have often seen him load it ; Chum Chum had a single barrel gun called a repeater ; it fired eight charges ; they were away about one hour or a little better ; recollect their returning ; a native came with them ; I saw the native four or five days before ; he was one of the three who brought in the dog the night before ; he had one of the flaps of the saddle—part leather and part flannel ; the stuffing was taken out to make a bag ; there was a stirrup iron and leather and an old towel in this bag ; the towel went at the same time as the saddle ; when they returned Carroll and Traveller were close to me ; Smith had unharnessed the horses and hobbled them, and had gone away with a gun, duck-shooting ; Mr. Burges said, “ Who unharnessed the horses ? ” and I said, “ Smith,” and he said, “ Get them in again ; ” he seemed to be in a very flurried state ; Chum Chum, Carroll, and I harnessed up the horses ; the native was sitting down on the ground and Mr. Burges sitting in front of him ; Mr. Burges’ revolver was on the ground near him ; Mr. Burges said, “ Well, I’ve dropped one of them ; I let go at one of them and he dropped and never kicked ; ” Carroll must have heard him ; Alfred Smith was away, and had not returned ; he, Mr. Burges, told Chum Chum and Traveller to go and find the saddle, as he knew it could not be far away ; they were away about twenty minutes or half an hour ; they brought back the saddle ; all the padding was torn off and the stirrups ; Carroll was close by ; Smith had not returned ; Mr. Burges said he had paid 30s. for having it repaired in Roebourne, and aside, “ it was hardly worth while for the sake of 30s. ; ” as if speaking to himself ; Mr. Burges directed me to stow it away in the dray ; Smith came in just about that time ; I never heard Mr. Burges say anything more about shooting the native ; he never said why he did it ; he said one of the three held up the left arm—I think it was the left—and he thought he was going to pull him off the saddle, and he hit him on the forehead and dropped him ; he said he hardly lay there a second before he was up on his feet and off like a shot out of a gun ; he said one of the others started to run after the native that had gone away, and “ I let go at him and he dropped and never kicked ; ” Carroll and Traveller and Chum Chum were there and heard him say this ; Smith was away shooting ; Smith did not return till some time after ; Smith was away about an hour altogether ; I can’t say how long after he came up ; Mr. Burges ordered the native into the cart, and told him to get up also, and gave me a gun, and told me to drop him if he tried to get away ; we kept the native on the dray till about 3 o’clock, when we met a lot of natives at Hooley’s Well, where this native joined them ; we could not understand the natives at all, not even the Nickol Bay natives ; this was about the middle of September last ; the native who sat himself alongside me used to tap himself and say “ Boorai mool ; ” I don’t know the names of any of them.

Cross-examined by Mr. Stone—Recollect coming up to FitzGerald, and Mr. Burges took us to him with the dray; I don't remember whether Farrell or Withnell were there; I have been working for Mr. J. S. Davis for 14 days, and was three weeks at Mr. Redhead's; I was assisting Fisher to build a stable for three days; I was seven weeks in the hospital with rheumatics; I was living at Champion Bay, ill, at Turner's boarding-house, after I came out of hospital; for 14 days I paid him with money I got from Davis and Redhead; I was doing a job for a pensioner named John Folon; was three weeks there, getting pay all the time; I was knocking down a partition and putting up a doorway; this was prior to my going to Bell's; I left Mr. Bell's place cr. the Greenough to come down here; recollect seeing Mr. Burges and Timperley coming through there; I am on very good terms with Mr. Burges; I brought a charge against him of assault, and it was dismissed.

John Carrol—I am a Pensioner on the Enrolled Force at Fremantle; I know Mr. Burges, and was in his service at Nickol Bay; recollect leaving there with sheep; FitzGerald was also with me; Farrell joined the following evening; we travelled to Champion Bay; Mr. Burges joined us at the Fortescue. Recollect the party arriving at Hooley's Well, I think in the month of September; I remember the loss of a saddle, and I think it was missed either the night before or the night after we got to Hooley's Well. I recollect two or three natives bringing up a dog, and it was about the same time the saddle was lost; the natives had their wommeras and douarks with them; the saddle was one usually used by Murphy. The morning after it was taken Mr. Burges became aware of it; I saw Mr. Burges come back from somewhere on horseback; Chum Chum came shortly afterwards. Mr. Burges brought a bush native with him; I believe he was one of those who were at the camp the night before; I don't know his name, and did not understand his language. Mr. Burges spoke to me when I came up to the cart to him; he said one of the natives had stuck him up, and he was obliged to use his revolver on him. He did not say how the native had stuck him up or how he used his revolver. He sent me away to Smith, who was out with his gun fowling. I think Murphy was present on the cart, loading it. I think I asked him if he had shot the native, and he replied "yes." I did not see Mr. Burges with any arms there. I can't say whether we got to Hooley's Well the day before or the day after; I heard of no other native being shot on the way down from Nickol Bay to the Bowes.

Cross-examined by Mr. Stone—Recollect hearing after Mr. Burges came up; we went in and passed Farrell and Fitzgerald about 10 or 11. Mr. Burges was not with us when we came up to them; Mr. Burges had gone on to look for water. Mr. Burges was present when Farrell passed with the sheep. I did not hear them speak to him; Murphy rode on the cart that morning. Carrol was near me when Mr. Burges returned, and Traveller was; I never heard Mr. Burges say to any one "I dropped one of them and he never kicked;" when Mr. Burges came up and spoke to me he was on horseback and I was on one side, Mr. Burges on the other, and Murphy was on one of the carts just in front; the only words I remember Mr. Burges saying were, "one of the natives had stuck him up, and he was forced to use

his revolver on him ;" I saw him come up, and these were the first words he spoke. I then went on to get Smith, and when I returned with him, about half an hour afterwards, I think he was still on horseback. I don't remember Mr. Burges ever saying anything to me about shooting a native in the presence of Murphy and Traveller ; Murphy was not on good terms with Mr. Burges on the way down.

By the Bench—There were only two or three natives who brought the dog, but six or seven other bush natives came in that night. I think the native was one who brought in the dog, but I don't know. I heard no report of firearms.

Chum Chum, an aboriginal native—I know Mr. Burges. Lived with him at Nickol Bay, stock-hunting. Came away with him from Nickol Bay after the races. Came overland with him with carts. Sheep on ahead, with Carroll, Fitzgerald, Bob Withnell, and Farrell. Six other natives were with them—Judy, Traveller, Baldwin, Musquito, Jimmy, and Suggary. Went to Hooley's Well, and remember saddle being lost same morning. Native came in the night and stole saddle, Mr. Burges missed saddle, and next evening went after him on horseback, and had revolver with him. He went alone. He sent Suggary to meet me, and I went after him in about an hour. When I got to him a native was pulling him about. I did not see it ; Mr. Burges told me. Mr. Burges cut one of the natives across the face with a revolver. I see it. I think Mr. Burges was on the ground. The native was on the ground. The native was carrying a piece of the saddle. Mr. Burges was driving him to camp. He hit him because he could not manage to fetch him to camp. The natives were scattered and running away. He went after them on horse, but could not get them all, but two. He drove these two across to camp, to flog them. One of them began to run. Mr. Burges went after him on horseback, and he pulled out his revolver and shot the native as he was running. I saw this. The native did not do anything before he shot him. He fell on the ground after he shot him. He shot him in the back. Mr. Burges then drove one man to the cart. I was with him. Mr. Burges' revolver was loaded, I know, because the man would not have laid down without a ball. I heard a report and saw smoke. I have seen Mr. Burges load his revolver with cartridge. Mr. Burges was within 40 or 50 yards from the native when he fired. I did not go and look at the native. He would not be alive when he lay like that. I don't know his name. Mr. Burges said he had hit him across the back with a ball. We started same day to Hooley's Well.

By the Bench—Mr. Burges told me he shot him in the back when he came back to me. I could not see him. I was about 40 or 50 yards from Mr. Burges when he fired, and when I saw the native tumble he was as far as from here to the street from me. He was the other side of the bush, but I could see, because I was on horseback. There was a thicket on the right, and clear on the left. There were bushes between me and wheee the native was lying. Mr. Burges told other people that he had shot a native. I tell people after he tell. He told Murphy he had shot him in the back. When the native run away Mr. Burges go after him in a straight line. I was behind. Mr. Burges came straight back to me after he fired the shot. He said,

“Chum Chum, we’ll take this native to the cart,” and we went away at once. These were the first words he said. I did not look for native to see if he was there when we went away. He told me he hit him in the back. Native walked in front of Mr. Burges and myself. Mr. Burges rode close to me to camp, and never said anything to me all the way. Native did not try to run away. It was about a mile to camp. Native had a piece of a saddle under his arm. Mr. Burges said he wanted to take him to the cart. He said nothing else. We did not talk at all. Sure he never said “he shot him in the back” to me. Murphy began to talk about it. Murphy began to talk as soon as we got to Wanerenooka Mines. The natives had douarks and wommeras.

William Henry Timperley—I am Inspector of Police, stationed in Perth. I arrested Mr. L. C. Burges at Geraldton. He made a statement to me voluntarily. I read the warrant. He said “I never have, and never will deny that I shot the native;” that he expected there would be an investigation as Sub-Inspector Piesse had been questioning his men; that he never expected to be arrested on a charge of murder. I said “it is not murder, but shooting with intent.” He said it was done in self-defence; that one night, while travelling from Nickol Bay some natives stole a saddle from his camp; on the following morning he went after them, and came across seven or eight of them; one of them had part of the saddle-flap in his possession; he tried to drive them back in the direction of the camp, so that they should shew him where the rest of the saddle was; he took especial charge of the native with part of the saddle, as the others began to run away, and he was determined to stick to this man, so that he could shew him the rest of the saddle; that he (the native) had tried to lift him out of the saddle by laying hold of his feet and lifting him out of the saddle, and he hit him with the butt end of his revolver over the head; that they all got away but two, one he had seen Chum Chum had; his man tried to get away from him again, and when he arrested him he had again tried to knock him off his horse, and he then shot him in self-defence, as he considered his life in danger; and further, that he had all this entered in a journal, which he would shew witness. On the Monday I took him to Oakabella, he showed me the journal, and the entry I now see is the one he shewed me respecting the occurrence, and is exactly in the same state. I read the entry.

Cross-examined by Mr. Stone—I recollect Mr. Burges saying that a native had thrown, or attempted to throw, a stone at him.

The case was then remanded for eight days, to enable the Crown Solicitor to consult with the Attorney General whether he should produce Farrell, who was supposed to be at present at Shark’s Bay.

[We understand that no further evidence will be produced on behalf of the Crown, and that Mr. Burges will be brought before the Police Court again on Monday next.—Ed.]

Extract from the Perth Gazette and W. A. Times, June 7, 1872.

PERTH POLICE COURT.

Before E. W. Landor, Esq., P.M., H. Ashton, Esq., J.P., and Captain B. H. Burke, J.P.

H.

MONDAY, JUNE 3, 1872.

Lockier Clare Burges, on remand, was again brought up charged with the murder of a native, name unknown, at Hooley's Well, on the 7th October last.

The Crown Solicitor appeared to prosecute; Mr. E. A. Stone and Mr. S. H. Parker for the defence.

The prisoner, it will be remembered, had been remanded in order to enable the Crown Solicitor to consult with the Attorney General as to the desirability of adducing further evidence on the part of the prosecution. On the reassembling of the Court this morning,

The Crown Solicitor intimated that it was not intended, on the part of the Crown, to produce any additional evidence, and that the capital charge of the murder had been abandoned,—merely upon the ground of the technical difficulty of adducing any absolute proof of the actual death of the deceased. He understood it was not the intention of the prisoner's counsel to call any evidence, and he would therefore ask their Worships to commit him on the charge of wounding with intent to murder. Taking into consideration the enormity of the offence with which the prisoner was charged, he must again oppose any application to admit him to bail.

Mr. Parker contended that the case was one in dealing with which the Bench was fully empowered to grant bail, and he maintained it was one especially calling that bail be granted.

Mr. Landor then read the following document, signed by himself Messrs. W. L. Brockman, H. Ashton, and Captain Burke, J.P.'s:—
 "Every member of this Bench has felt the greatest anxiety in considering this case. We have wished most anxiously to do impartial justice without regard to difference of races. We have had to consider whether the evidence adduced is sufficient to warrant our committing the prisoner for trial on the charge of doing a felonious act, or whether we ought to discharge him for want of sufficient proof that he acted feloniously. We all agree that he did not go from the camp on the 7th October for the purpose of shooting natives, but that he went in order to recover his saddle, and also to capture some of the thieves and bring them into camp. He did not shoot them as soon as he fell in with them, but tried to drive them towards his carts, which were several miles distant. When one of them tries to escape he knocks him down, and does not shoot him. When the others, seen by Chum Chum, were running away, he (the prisoner) did not fire at them, and we believe he did not fire at this native *merely* because he was running away. The two who remained prisoners he drove towards the carts, and one of them tried to escape, and he set off in pursuit with the intention of heading him back towards the carts. According to the evidence of Chum Chum, he fired at him whilst running and hit him in the back, and he immediately fell flat on the ground. We hesitate a good deal as to the weight to be attached to this evidence, both because it appears to us that Mr. Burges did not pursue with an intent to shoot, and because probably the witness Chum Chum had enough to do to guard the other native, and therefore had not his eyes wholly fixed upon the chase. Moreover, there were bushes in the way. Chum Chum said that Mr. Burges was on foot when he knocked one of the natives down. This is evidently

not true, for Mr. Burges was trying, according to the same witness, to drive the party towards the camp. Thus when he says that Mr. Burges fired and hit the native in the back, and he immediately fell flat down, in the way exhibited in Court, the circumstance appears to us almost physically impossible, for the impetus with which the man was running would have carried him on for some distance after he was hit (if he was hit) before he fell; and even if struck on the spine with so small a bullet he would have run forward for some space and not have fallen instantly. This leads us to infer that the man, before he was shot, had ceased running, and was standing still, and was shot (if hit at all) not in the back but in front; when he would probably have dropped at once, as described. This is consistent with the statement in Mr. Burges' journal, that the man was in the act of throwing his douark when he fired. This is also, to some extent, corroborated by the witness Carroll, who was the first person who saw Mr. Burges on his return to the camp, and who was then immediately told by Mr. Burges that he had chased the parties who had stolen the saddle, and that one of them had stuck him up, and he was obliged to use his revolver. The other witnesses are Fitzgerald and Murphy, the shepherds. Murphy was at enmity with Burges, having had a scuffle or fight with him not long before this event, and he continued hostile on the journey; for immediately on arriving in Champion Bay he charged him with an assault; and as he gets no satisfaction by this step his good feeling towards his late master is probably not improved. But though he charged him with an assault he never thought of charging him with a murder, until reminded of the incident by the Police long afterwards. Now, it is scarcely likely that Mr. Burges would have made a confidant of this man, or have spoken to him like an associate, and told him that he had "let go at the native, who dropped, and never kicked." It is also remarkable that Fitzgerald, who says that Mr. Burges told him the story, makes use of exactly the same terms. Whether they talked the matter over together does not appear; at any rate they only state what Burges does not deny—that he shot a native. But under what circumstances? They therefore prove nothing, or next to nothing. There is a difference of opinion among the magistrates as to the course that should be pursued. Some of the Bench doubt whether there is sufficient proof of a felonious intent to warrant sending the case to a jury. But ultimately it has been resolved to send the case to a jury for decision as to whether, under the circumstances described by Mr. Burges himself, he was justified in using the pistol in the way he did. The prisoner is therefore committed for trial upon a charge of shooting a native (name unknown) with intent to do bodily harm. And it is further resolved that he be admitted to bail.

The prisoner, on the application of his counsel, was thereupon admitted to bail in his own recognizance of £1000, and two sureties in the sum of £500 each.

E. W. LANDOR, J.P.,
 W. L. BROCKMAN, J.P.,
 HENRY ASHTON, J.P.,
 B. HAMILTON BURKE, J.P.

The prisoner was bound to appear at the July Criminal Sittings of the Supreme Court.

SUPREME COURT.

(Before His Honor the Chief Justice.)

Wednesday, the 5th June, 1872.

Regina against Lockier Clare Burges.—The Attorney General, as soon as the Court was opened, filed an Information against Mr. Burges. It contained nine counts, and charged him, amongst other things, with shooting at a native, unknown, on the 7th October last, with intent to kill and murder him.

The defendant not being present, the Attorney General procured a certificate from the Clerk of the Peace that he had not attended and pleaded to the indictment, and then addressed the Court making a motion for a warrant for defendant's arrest.

The Crown Solicitor followed on the same side, and argued that under the 14th Vict. No. 4 His Honor had full power to grant such warrant.

His Honor said that the Court had a common-law right, upon a bill being filed by the Attorney General, who here *represented* the GRAND JURY, to grant a warrant for the arrest of the accused if he did not appear and plead to such indictment. The warrant was then immediately issued.

His Excellency the Governor's Private Secretary, as well as his honorary Aide-de-camp, were present during the argument.

Mr. Burges was shortly after arrested by Sergeant Dale, and was taken before His Honor in Chambers. Mr. S. H. Parker, one of the defendant's counsel, accompanied him there.

The Crown Solicitor moved His Honor to commit the prisoner to gaol until he should be delivered by due course of law.

Mr. Parker asked His Honor to grant bail.

His Honor said he could not take the matter of bail into consideration then, having no affidavits before him; but if the prisoner was so advised, he could be brought up on a Writ of Habeas Corpus, and the matter of bail then considered. His Honor then granted a warrant in accordance with the Crown Solicitor's motion.

Mr. Burges was then escorted to the lock-up.

Mr. Landor to the Secretary of State for the Colonies.

Perth, Western Australia,

June 17th, 1872.

I.

MY LORD,—It is my painful duty to have to lay before your Lordship the circumstances of a case which has placed me as Police Magistrate and Chairman of the Bench here, in the unfortunate position of having to act at variance with the wishes of His Excellency the Governor, or to violate my duty as a Magistrate by acting against my own convictions, when in concurrence with those of three of the most honorable Magistrates of the colony, viz.:—W. L. Brockman, Esq., late M.L.C. and a settler of 40 years' standing; Henry Ashton, Esq., Assistant Commissary General, half pay, and Captain Hamilton Burke, H.P. 68th Light Infantry, and Staff Officer of Pensioners.

2.—Mr. Lockier Clare Burges, J.P., in August, 1871, started from Nickol Bay with sheep and carts to Champion Bay, some three months'

journey, through an unsettled country, where the natives are the wildest savages (some of the tribes cannibals) and speak languages unknown to the natives of the settled districts. About half way, six or seven natives entered their camp, shewing a friendly disposition, and bringing in a dog which had strayed.

During the night they stole a saddle and went off. In the morning Mr. Burges set off on horseback with one of his own native assistants with the avowed intention of finding his saddle and driving the thieves into the camp, in order to flog them as a warning to others.

He encountered several parties of natives, and tried to drive some of them into camp, but they ran away. He shewed no intention of firing at them, as was shewn by his own native, Chum-Chum.

Unfortunately one of two savages whom he had captured tried to escape; he galloped after him, and the man was fired at, and either killed or wounded. Mr. Burges' journal of same date, October 7th, records the fact, but says that the native was about to throw something at him when he fired and shot him; Chum Chum on the contrary says that Mr. Burges fired at him as he was running away. From his description that he tumbled flat on the spot, stone dead, this seemed incredible. Mr. Burges seems to have made no secret of the fact, and by degrees it reached the ears of the Resident Magistrate at Champion Bay, and of His Excellency, who ordered that the Police should make searching inquiries. Chum Chum was sent down to Perth and taken possession of by the Police, and soon afterwards made an assistant officer or tracker.

3.—The Governor took up the case most warmly, being apparently possessed with the conviction, that the native was murdered deliberately and wantonly. After three months' investigation by the Police the Governor directed the Superintendent to cause an Information to be laid before me, the Police Magistrate of Perth, and not before Mr. Eliot the Resident Magistrate of Champion Bay, where Mr. Burges resided, and three hundred miles nearer to the scene of the event.

4.—It will be seen by my answer to charge No. 1 and hereto annexed (marked "D") that having read the Police Sergeant's report I could learn only that several persons had heard Mr. Burges say he had shot a native, but not under what circumstances. I then examined Chum Chum privately, to see if I could get the facts out of him; but though he said he had seen Mr. Burges shoot whilst the native was running away, I could not help feeling great doubt and suspicion, both because he had been so long in the hands of the Police, who had been told by the Governor (as appeared in the Report) to offer him a reward if he would speak the truth, and because he said he should "please the Gubernor" by what he was saying. [See Answer D to charge 1—page 5.] To issue a warrant for the arrest of a Magistrate and gentleman, who would have to be brought in custody on a ten days' journey, to the ruin of his business, upon the evidence merely of a native who knew nothing of an oath, seemed to me to be rather a hasty proceeding, and I asked the Attorney General if he did not think a summons would answer the purpose? (See the answer to No. 1-D.) After a little delay, and upon pressure of the Governor and Attorney General, I granted a warrant charging Burges with shooting with intent to kill—which is, in this convict colony, a capital offence.

This reluctance of mine is attributed by the Governor to a desire of giving the accused time to escape; His Excellency appearing fully convinced if not of his guilt, at least that he ought to be treated as a murderer until tried by a jury. I felt no personal interest in the accused, and had never exchanged twenty words with him.

5.—Before being brought up on the warrant Messrs. Brockman and Ashton asked if I had any objection to their sitting on the Bench? I replied, "certainly not." I then, thinking that perhaps they might have some feeling for the prisoner (though they really had none) asked Captain Burke to sit also, who being lately arrived in the colony and a military officer, and a Roman Catholic, I thought would be acceptable to the Governor, and I felt sure he could not be biased towards the prisoner. I carefully abstained from telling them my doubts about Chum Chum's veracity, in order that they might hear the evidence without any prejudice.

6.—The Crown Solicitor, who prosecuted, first told us he would leave the charge open, leaving us to define the offence when we had heard the evidence. This we objected to, and he then laid a charge of murder. The evidence did not prove this. (See Report in "Perth Gazette" marked "G," page 10.)

7.—The prisoner was remanded for some days, during which time the Magistrates met, and for nearly a whole day debated upon their duty in the case. Some of them contended and insisted that the case should be dismissed, as in their opinion the evidence did not justify them in subjecting any man to the risk of being hanged, when they did not think the evidence warranted their so acting; but ultimately they consented to a committal on the minor charge, believing it was the province of a jury to decide whether the prisoner was justified in acting as he did. But they thought that for their own satisfaction and for that of the Governor and the public, they ought to explain their reasons in writing for adopting this course. This was no doubt an unusual course, and perhaps I was to blame in adopting it; but the great interest felt by the public, the little weight to be attached to the evidence, and the great hardship of keeping the accused in a cell for five weeks, if committed for the capital offence, on which there was no likelihood of a conviction, made us think we should better meet the real justice of the case by acting as we proposed, although possibly laying ourselves open to censure, than by committing him for trial as if he were one of our Convict population to whom imprisonment is a common and slight hardship,

8.—On the day of remand the Crown Solicitor said he withdrew the charge of murder, and charged him with wounding with intent to murder (also a capital offence) and should oppose bail. As the Magistrates had decided on their course, and were not all present, the Bench would not change its views, and I read their reasons for committing on the minor charge. Afterwards the prisoner was admitted to bail in £1000, and two sureties of £500 each. It was conceived that this did not prevent an indictment being framed for the capital offence, should the Crown think it necessary.

9.—As soon as possible after this admittance to bail, the Attorney General (acting as Grand Jury) found a true Bill for wounding with

intent to murder, and applied to His Honor the Chief Justice, whilst sitting in Court on a day appointed for trial of Civil Causes, to grant a Warrant of Arrest. This being done, Mr. Burges was again forthwith arrested. As there was no probability whatever of any attempt at escape, and as the solvency of the bail could not be questioned, the Magistrates felt somewhat surprised at this course.

10.—Shortly afterwards I received a letter from the Hon. the Colonial Secretary, dated June 6th (see copy annexed marked "A") acquainting me that I was charged by His Excellency with breach of duty in committing the accused on the minor charge, and reproaching me with want of ability, partiality, and of bringing the law into contempt.

11.—My reply to that letter was dated June 10th (see copy annexed marked B.)

12.—Feeling that the honor of the independent Magistrates who had sat with me was affected no less than my own by the Governor's strictures, I laid the Colonial Secretary's letter before them; and they addressed a letter on the subject to the Colonial Secretary (a copy of which is annexed marked F.)

13.—On June 11th I received a statement from the Colonial Secretary's Office of nine charges preferred against me by the Governor, with a letter prefixed, stating that His Excellency considered it "his painful duty to bring my conduct before the Executive Council with a view to my removal from office." (See copy annexed marked "C.")

14.—Had His Excellency done me the honor in the first instance to have ordered my attendance upon him, and given me an opportunity of explaining my reasons for the course adopted, and especially for discrediting the testimony of Chum Chum, the painful necessity for imputing dishonorable motives to me might perhaps have been avoided. If a Magistrate, because he is a Stipendiary, is to have less latitude when sitting on the Bench than independent Magistrates, when acting according to his convictions, I fear it will certainly be impossible for me any longer to occupy the position.

15.—If your Lordship will do me the kindness and justice to suspend your decision until the departure of at least the next mail but one after receiving these papers, I feel confident that the colony as a body will come forward and testify to the high character I have always maintained, and to their confidence in my entire fitness for the duties I have so long and honorably discharged.

16.—[*This paragraph refers to testimonials to my character from gentlemen in England of high position.*]

17.—Not being conscious of any wilful wrong-doing my only offence being, so far as I can understand, that I committed a man for trial upon a minor charge instead of upon a capital one—the testimony against him not warranting the latter course (so far as I and my brother Magistrates could judge)—I look with trustful hope to your Lordship to do me justice and afford me protection.

I have the honor to be, my Lord,

Your Lordship's humble servant,

E. W. LANDOR, J.P.

Western Australia.

Colonial Secretary's Office,
Perth, 18th June, 1872.

K.

SIR,—His Excellency the Governor in Executive Council has this day taken into very careful consideration your letter of yesterday's date and the accompanying replies to the charges preferred against you and forwarded with my letter of the 11th instant, No. 53 | 530.

It is with deep regret and pain that His Excellency in Council has come to the conclusion that the defiant and improper tone which pervades both your letter and the replies to the charges, coupled with the insinuations personally levelled against the Governor and the Members of his Council would probably in themselves be quite sufficient (were it not unnecessary to consider them) to warrant His Excellency in recommending to Her Majesty's Secretary of State for the Colonies that you are an unfit and improper person to remain in the Civil Service of the colony.

With regard to the charges, His Excellency in Council is reluctantly driven to the conclusion that no one of them is satisfactorily answered and they are therefore considered as clearly proved.

It becomes therefore my duty to state that His Excellency the Governor in Council has decided to suspend you from the office you hold, and to recommend to Her Majesty's Secretary of State that such suspension be confirmed.

From the date of receipt of this letter you will therefore understand that you are suspended from office and salary, pending the decision of the Secretary of State.

I am, Sir,

Your obedient servant,

FRED. P. BARLEE.

E. W. Landor, Esq., J.P., Perth.

L.

Perth, Western Australia,
June 19th, 1872.

SIR,—I beg to acknowledge the receipt of your letter of yesterday's date announcing my suspension from office from that day.

I deeply regret that His Excellency should be impressed with the feeling that a "defiant and improper tone" pervades my letter of the 17th instant, as well as my answer to the charges.

Some feeling of indignation at being charged with dishonorable motives may naturally have mingled with the deep sorrow I feel; that His Excellency should regard me in the light he does. But certainly I did not intend to express myself in a defiant or improper spirit.

I have not consciously levelled "insinuations against the Governor and the members of his Council," but I cannot bow to the justice of the statement that I am "an unfit and improper person to remain in the Civil Service of the colony."

It becomes necessary to add a supplemental letter to the Secretary of State for the Colonies, which I trust the Governor will be so good as to forward to His Lordship, together with that already handed in for transmission.

I enclose three copies of the letters, and also of the "Inquirer" newspaper of this day's date for transmission by the outgoing mail.

I have the honor to be, sir,

Your obedient servant,

E. W. LANDOR.

The Hon. the Colonial Secretary.

Perth, Western Australia,

June 19, 1872.

M.

MY LORD,—Since forwarding to His Excellency the Governor for transmission to your Lordship my letters of the 17th June inst. on the subject of my conduct in the case of Mr. L. C. Burges, charged with having committed a capital offence, I have received an intimation from His Excellency that he has deemed it necessary to suspend me from my offices of Police Magistrate and Magistrate (or Judge) of the Local Court of the District; and that it will be his duty to recommend your Lordship to confirm my removal. (See copy annexed K, and of my reply of this date marked L.)

As the charge against me is that I, in conjunction with independent Magistrates of the highest character and honor, viz., Mr. W. L. Brockman, late M.L.C., Henry Ashton, Esq., Assistant Commissary General (half pay) and Captain Hamilton Burke, H.P. 68th Light Infantry and Staff Officer of Pensioners, committed Mr. Burges on the minor charge instead of on the capital one, and imputing to me the most unworthy motives for so acting. I trust, as I have already said in my former letter, your Lordship will do me the justice to suspend your opinion until receiving further materials on which to ground it, and which I trust will be transmitted by the July mail.

I hope at any rate to be able to satisfy your Lordship as to my character for uprightness and integrity.

In the "Inquirer" of this morning appears a letter signed by the three independent Magistrates who sat with me upon the Bench, and were I not a partial Judge in my own case I should almost feel confident that their testimony exonerates me from being obnoxious to the charge of improper conduct in this painful matter.

I have addressed copies of the "Inquirer" of this date to your Lordship, and forwarded them through His Excellency the Governor by this mail.

I have the honor to be, my Lord,

Your Lordship's humble servant,

E. W. LANDOR, J.P.

To the Right Hon. the Earl of Kimberley, Secretary of State for the Colonies.

Extract from Perth Gazette & W. A. Times of June 21, 1872.

SUSPENSION OF E. W. LANDOR, ESQ., P.M.

N.

Subjoined is the explanation of the Magistrates composing the Bench that admitted L. C. Burges to bail on the charge of shooting at an aboriginal with intent to do bodily harm.

The charge preferred by the Government against Mr. Landor, P.M.,

and incidentally the other Magistrates in a higher degree—they being for dismissing the charge altogether—is that of favoritism. We cannot but think that the explanation relieves all, but especially Mr. Landor, from the charge of being actuated by *base* motives. Whether the Bench exceeded their legitimate powers is now a question for the English Crown lawyers to decide. We have heard that on his arrival at the Bowes in October last the accused wrote to the Colonial Secretary informing him of what had occurred, but it did not appear to the Magistrates that any steps had been taken to obtain evidence as to the death of the aboriginal.

The greatest sympathy is being expressed in all quarters for Mr. Landor, and we have even reason to believe that a memorial, numerous and influentially signed, will be forwarded by next month's mail, bearing testimony to the purity of his private, and the integrity of his public life, as well as to the ability with which he has for many years discharged his magisterial duties, and deprecating his removal as a serious public loss.

EXPLANATION.

To the Editor.

SIR,—It appears to us, from remarks in the *Herald* of last week that there is some misapprehension as to the cause which induced us to adopt the, *perhaps*, unusual course of stating in writing our reasons for committing Mr. L. C. Burges on the minor charge, instead of the capital one. We therefore wish it to be clearly understood, that it was because of a difference of opinion amongst us, some being strongly persuaded that the case should be dismissed altogether; but when Mr. Landor pointed out that it was the province of a jury to determine whether the prisoner was justified in what he had done, we consented to a committal on the minor charge, and considered that for our own satisfaction, as well as that of the Government and the public, we ought at once to make known our reasons for so doing, and that in a manner that could not admit of being garbled, misrepresented, or misunderstood.

We are, sir,

Your obedient servants,

W. L. BROCKMAN, J.P.,

H. ASHTON, J.P.,

B. HAMILTON-BURKE, J.P.

THE SUSPENSION OF MR. LANDOR.

(From the *W. A. "Herald,"* June 29, 1872.)

We have very much pleasure in publishing the following Memorial, addressed to Earl Kimberley, in defence of Mr. Landor, who has been suspended from office, charged, most unwarrantably we think, with being actuated by improper motives in adopting the course he (in conjunction with three other Justices) did with regard to the committal of Mr. L. C. Burges, who was accused at the instance of the Crown with a capital offence. That the Bench acted unwisely and irregularly in drawing up and signing a document commenting upon the value of evidence that would subsequently be a subject for the consideration of

a jury, cannot be denied, but so well and widely known is Mr. Landor, so deeply is he respected, and so strong is the faith of the public generally in his honor, impartiality and integrity, that we are certain there are not ten men in the colony, unconnected with the Government, who will credit the assumption that Mr. Landor has been guilty of the grave offence against society with which he has been charged. We will venture to say, that the character of Mr. Landor for righteous impartiality and incorruptibility stands as high among the people of this colony as that of the Chief Justice of England. The loss of office, great as that is, is not we feel sure the cause of so much pain and sorrow, as the stain the charge reflects upon his honor, which has ever been dear to him as his life's blood :—

To the Right Honorable the Earl of Kimberley, Her Majesty's Principal Secretary of State for the Colonies.

The humble Petition of the undersigned, Magistrates, Merchants, and others, inhabitants of the Colony of Western Australia,

SHEWETH,—

That Mr. E. W. Landor has been, by order of His Excellency Governor Weld, removed from his office of Police Magistrate in Perth upon a charge of alleged improper performance of his duty in having, in conjunction with three other Magistrates, committed an accused person for trial on the minor charge of shooting at an aboriginal native with intent to do bodily harm, instead of on the capital charge of shooting with intent to murder, as urged by the Crown Prosecutor; it being further charged against Mr. Landor that he was led to adopt this course from the unworthy motive of an improper bias in favor of such accused person.

That your Memorialists, while refraining from discussing the question of the proper form of committal, are anxious to convey to Your Lordship their firm conviction that Mr. Landor, a highly accomplished and honest English gentleman, is not open to the charge of favoritism and personal bias, and that he is incapable of being actuated by any unworthy motives; this conviction being based on their knowledge of Mr. Landor, who has resided among them for many years, and whose character and conduct have gained him the universal respect of all classes of the community.

That your Memorialists and the public generally, who have had such experience of the professional ability and integrity of Mr. Landor, and who have felt such confidence in his love of justice, view his suspension from office with sorrow and alarm, and would look upon the confirmation of it by Your Lordship as seriously affecting the public interests. The community cannot afford to lose the services of such a man, and they humbly trust that, in considering the case, Your Lordship will be able to find sufficient grounds for reversing the decision that has been come to, and for restoring Mr. Landor to the position he has so long filled with honor to himself and advantage to the public.

And your Memorialists will ever pray, &c.

[Signed by ten out of the twelve elected members of the Legislative Council—the two others, at Champion Bay and King George's Sound, being too far distant to have had time to forward their signatures; and by all the Gentry, Land-owners, and Independent Magistrates (with scarcely an exception) within reach.]

P. *To the Magistrates, Landowners, Merchants, and other Inhabitants of Western Australia, who have signed the Memorial in my behalf to Her Majesty's Secretary of State for the Colonies.*

GENTLEMEN,—

I do not thank you so much for your kind sympathy thus warmly expressed, as for your generous, manly, English spirit in coming forward spontaneously to give your testimony to the truth and uprightness of my character, which with that of three independent Magistrates, has been so unexpectedly assailed.

I am not what is commonly called a popular man. I am not naturally demonstrative. I am not a public speaker, and always feel out of place in crowds and popular assemblies, and live almost exclusively in the little world of my own home.

But I am known to you all as an old Colonist and quiet neighbor; as a lover of freedom of thought and action; as a hater of every kind of injustice and oppression; and as one accustomed to speak his mind honestly and openly.

These indeed are traits which, as society is constituted, have often proved to be great drawbacks and disqualifications; but I have ever preferred my own self-respect to any other opinion.

A man without some enemies may not be worth much, but as I have always felt good-will towards all I cannot but be deeply pained at knowing there are at least one or two men who regard me with bitter personal ill-feeling.

I have not consciously incurred their enmity by anything more than once or twice differing from them in opinion, and perhaps too freely expressing my own—which is sometimes an unpardonable offence.

But if I have found some enemies, I have in the time of trial discovered that I possess many friends upon whom I had not reckoned; friends who are not ashamed or afraid to stand forth and testify that in the performance of my duties as a Magistrate, I have never known any distinction between different classes, but have dealt equal justice to all men according to the best of my ability. For in truth, the love of justice, without any respect of persons, has been (as I think you believe) the animating principle of my life.

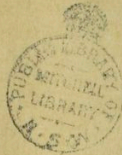
I have, I know, often made mistakes; but I have never found anybody infallible. If errors were pointed out to me in a kindly spirit, no one would more frankly and freely acknowledge them. When driven into a corner, and assailed with keen weapons and strong language, I presume even a Quaker would shew fight. Therefore I am compelled most unwillingly to appear in a hostile attitude, when it would be more in accordance with my spirit and feelings to be on friendly terms with every one. Even with your honorable testimony to back my cause, there may not be a successful issue to your kind and generous advocacy. But this is of minor importance. My experience of office has not led me to consider it the *summum bonum* of human life. But what is of importance to me, is the outspoken expression by my fellow-colonists of their confidence in my truth and honesty of purpose. This is indeed grateful to me, for it repels the stigma which is attempted to be cast upon my reputation.

It is you, my friends, who thus coming forward, enable me to hand down to my children (unimpaired) that good name which I received from my forefathers. For, like them (I can truly say) it has been my aim through life "TO DO JUSTLY, TO LOVE MERCY, AND TO WALK HUMBLY WITH MY GOD."

With every grateful sentiment,

I subscribe myself

Your obliged servant and humble friend,
E. W. LANDOR.

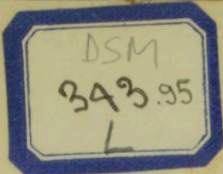


I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the matter of the
 (I am sorry to hear that you have been unable to obtain the information you desire, and to
 regret that I am unable to be of more service to you in the premises.)

Very respectfully,
 Wm. W. Loring
 Secy. of the Board of Commissioners
 of the District of Columbia



an: 4550948



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The Case of E.W. Landor,
Esq., J.P., police
magistrate, Western
Australia.

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