Annexation, Administration and Finance

Again, in December 1884, the same Law Officers advised that legal jurisdiction over persons other than British subjects could not, under the circumstances (there being no native Power capable of ceding to the Queen jurisdiction over the natives, or, in fact, over any one), be acquired within the protected area in question unless it became British soil. In August 1885 the then Attorney- and Solicitor-General (Sir Richard Webster and Sir John Gorst) used the following words: 'That, in our opinion, neither the native African Chiefs nor any of the bodies of freebooters settled in Bechuanaland could, either by Treaty or sufferance, confer upon Her Majesty jurisdiction over the subjects of any civilized Power other than Great Britain'. The effect of the duly promulgated Order in Council of the 27th January, 1885, is to enable the High Commissioner to constitute Tribunals in Bechuanaland having jurisdiction over British subjects and protected natives, but not over the subjects of other civilized States. The Bestuur, or any other establishments in Stellaland which Sir Charles Warren has created or sanctioned, so far as they are consistent with the Order in Council, may be regarded as the particular methods by which he has thought fit to exercise his jurisdiction over British subjects and protected natives in Stellaland. In this sense, but in no other, they have a legal status. The subjects of the other civilized States who are in Stellaland cannot be interfered with by the Bestuur, or any Tribunals that may be instituted under its authority, without the consent of their own Governments.

And finally, in April 1886, other Law Officers (Sir Charles Russell and Sir Horace Davey) expressed their opinion 'as against the Chiefs (assuming that they have sovereign territorial authority, and do not merely exercise tribal personal authority as Chiefs) Her Majesty can lawfully acquire by Treaty with them the right to exercise civil and criminal jurisdiction over subjects of civilized Powers other than Great Britain within the territories of the Chiefs; but as against the subjects of other civilized Powers, we think that the jurisdiction (whatever may be its theoretical limits) should be exercised with, and cannot safely be exercised without, the assent of the Power concerned, given generally or in the particular case.'

We entirely concur in the advice which has been given to Her Majesty's Government by our predecessors in office for the guidance in its action in reference to territories over which this Government exercises a Protectorate, and we are of opinion that the German Government should be notified that the claim to exclusive jurisdiction over British subjects in territories with respect to which it only exercises a Consular Protectorate is not one which Her Majesty's Government can admit.

We have the honour to be etc.

RICHARD E. WEBSTER
EDWARD CLARKE


6This is the Report of 11 December 1884, on New Guinea, printed supra.

7Their successors changed their tune in 1895, substantially admitting the validity of the German view: McNair, op. cit., pp. 54-55

BRITISH NEW GUINEA: ANNEXATION, ADMINISTRATION AND FINANCE: DOCUMENTS D47 to D57

It became apparent by the start of 1885, that if an effective administration was to be established in British New Guinea, then its Protectorate status must be brought to an end, and the territory annexed. This involved the assertion of British sovereignty and territorial title over British New Guinea, neither of which rights being derived from its Protectorate status. (D44)

Nevertheless, the Colonial Office, which remained consistently reluctant to burden itself with the administration of New Guinea on a long term basis, was unwilling to take the decisive step of annexation before the Australians had committed themselves to permanently underwrite the costs of the administration of the new Possession. (D48) For their part, the Australians wanted a say in the administration they were paying for.

However, the Australian Governments were not yet federated, and had no power to conduct external relations or administer dependent territories. Obviously the administration had to be primarily in the hands of the Colonial Office, and performed in the name of the British Government, but if it was to be paid for by the Australians then some formula had to be worked out whereby the Colonial politicians could

1Law Officer's Report, 11 December 1884, supra

2Colonial Office to Agent General for New South Wales, 4 February 1885, C-4273, op. cit., p. 151

3This was eventually achieved following the 1887 Colonial Conference in London: see The British New Guinea (Queensland) Act of 1887
Rough eye-Sketch of
GRANVILLE
and its surroundings
PORT MORESBY
BRITISH NEW GUINEA
by
Walter R. Cuthbertson
25th August 1886

Plate 76: The first survey plan of Port Moresby made by W.R. Cuthbertson in 1886
The Reginald Gallop Papers, Mitchell Library, Uncat. MSS. Set 488
feel they had a say in what was being done in New Guinea. Such a compromise did not emerge until 1887,\textsuperscript{4} (D49) and annexation did not take place until 1888. Even then, legal difficulties dogged the new administration for a time.\textsuperscript{5} (D56; D57)

\textsuperscript{4}At the Colonial Conference held in London in that year

\textbf{D47  The Colonial Office Announces its Decision to Annex}

The Law Officers’ Report of 11 December 1884,\textsuperscript{1} pointing out that British New Guinea would need to be annexed before jurisdiction could be lawfully exercised over all persons within its boundaries, was not immediately communicated to the Australasian Colonial governments. On 20 January 1885 the Agent General for New South Wales in London pointed out to the Colonial Office that his government was uncertain as to the way in which British jurisdiction in the Protectorate was to be exercised, and could not commit itself to consider the payment of an increased contribution towards its administration until this uncertainty had been removed.\textsuperscript{2}

The following letter, dated 23 January 1885, and signed by Sir Robert Herbert, the Permanent Under Secretary of State for the Colonies, was written to the Agent-General for New South Wales in reply to his communication of 20 January 1885. It seems that, by this time, the Colonial Office had decided to accept the Law Officers’ advice to annex British New Guinea.

The other Australasian governments were told of the decision to annex New Guinea only after learning unofficially of the contents of Herbert’s letter.\textsuperscript{3}

The Acts 6 and 7 Vict. cap. 13 and 23 and 24 Vict. cap. 121, which were mentioned in Herbert’s letter, dealt with the exercise of jurisdiction in British Settlements. They were repealed by the \textit{British Settlements Acts, 1887}, which extended the powers of the Crown over British Settlements.

\textbf{Sir,}

In reply to your letter of the 20th instant, forwarding a copy of a telegram from your Government respecting the mode in which British jurisdiction is to be exercised in New Guinea, I am directed by the Earl of Derby to inform you that, after consultation with the Law Officers of the Crown, Her Majesty’s Government have decided that the territory and islands over which Her Majesty’s Protectorate has been proclaimed shall be declared subject to the Queen’s sovereignty, and part of Her dominions. When this has been accomplished it will then be competent to Her Majesty, in pursuance of the Acts 6 and 7 Vict. cap. 13 and 23 and 24 Vict. cap. 121, to proceed by Order in Council to provide for the civil government and administration of justice in these places. The jurisdiction over all persons, whether British subjects, the subjects of other civilised powers, or natives, will thus be complete and effective.

Until Her Majesty’s Government have learnt the actual point to which the Protectorate extends on the south-east coast of New Guinea, which will probably be at Huon Gulf,\textsuperscript{4} it is not possible to define the limit inland of British sovereignty; and the details of administration to be effected by the first Order in Council will require further consideration before they can be announced. I am, however, to state that the effectiveness of the administration will in great measure depend upon the amount of contributions which the Australasian Colonies may desire to provide, and Lord Derby is glad to know that General Scratchley is now in communication with the Government of New South Wales on this subject.

I am, &c.

Signed ROBERT G.W. HERBERT.

\textbf{SOURCE Further Correspondence Respecting New Guinea And Other Islands in The Western Pacific Ocean, C-4273, London, 1885, pp. 116-7}

\textsuperscript{1}Supra
\textsuperscript{2}C-4273, op. cit., p. 114
\textsuperscript{3}E.g. Agent-General for Victoria to Colonial Office, 30 January 1885, C-4273, op. cit., p. 131

\textbf{D48  Annexation and the Financial Hurdle}

The following letter, dated 4 February 1885, and signed by Sir Robert Herbert, was written in reply to a letter of 29 January 1885 from the Agent General for New South Wales to the Colonial Office, forwarding a copy of a telegram received from his government. The telegram referred to the position of General Scratchley, and to the misconception on part of Imperial Government that the cost of this establishment is to be exclusively borne by Australian Colonies. . . .\textsuperscript{1}

After the telegram from New South Wales was received in the Colonial Office; it was realized that

\textsuperscript{1}C-4273, op. cit., pp. 128-129
should the annexation of British New Guinea precede a firm undertaking from all or some of the Australasian Colonies to pay for its administration, the British Government might be left lamenting the addition of another unprofitable colony to the Empire, and a further burden on the British taxpayer.

At this stage, financial considerations seem to have displaced the concern for the legalities and the honouring of Gladstone’s undertaking to establish effective jurisdiction over all persons in British New Guinea, which had previously influenced Colonial Office thinking on this subject.

It was generally considered at this time that a Protectorate entailed fewer obligations than a colony, as far as its internal administration was concerned; and, in particular, the inhabitants of British Protectorates in the latter part of the nineteenth century were often left to govern themselves, as far as their relations inter se were concerned. Moreover, the Colonial Office view was that an unwanted Protectorate could be abandoned by the Crown without the intervention of the Legislature, whilst a colony could not.

Sir,

I am directed by the Earl of Derby to acknowledge the receipt of your letter of the 29th ultimo, enclosing a copy of a telegram which you had received from your Government relating to the position of General Scratchley in connexion with the administration of New Guinea.

The suggestion contained in this telegram that this country should bear part of the expense connected with the administration of New Guinea, had not been expected by Her Majesty’s Government, and places the whole question in a new aspect.

It has at every stage of the proceedings connected with the acquisition of New Guinea been distinctly understood by Her Majesty’s Government, and they have never doubted that the same was the understanding of the Convention at Sydney and of all the Governments of the Australasian Colonies, that the Colonies, or some of them, were pledged to bear the whole cost of any action that might be taken in connexion with New Guinea in pursuance of the wishes of the Colonies.

It has, therefore, become necessary for Her Majesty’s Government to reconsider the subject, more particularly with regard to the contemplated proclamation of British sovereignty in New Guinea, as that step, once taken, would entail greater and more permanent obligations than those of a Protectorate, and the suggestion of your Government shall receive immediate attention.

I am, &c.

Signed ROBERT G.W. HERBERT.

SOURCE Further Correspondence Respecting New Guinea And Other Islands In The Western Pacific Ocean, C-4273, London, 1885, p.151

D49 The British New Guinea (Queensland) Act of 1887 (51 Vic., No. 9)

Agreement as to the financial and administrative arrangements for the government of British New Guinea was not finally reached until 1887, and the carrying out of the various legislative formalities involved delayed annexation until 1888. The Queensland Premier, Griffith, played a major part in the various negotiations held in Australia and England, and there are indications that the eventual plan adopted for the administration of British New Guinea was largely of his devising.1

Although all the Australasian Colonies, including Fiji, contributed at one time or another to the finances of the Protectorate administration, agreement in Australasia on the financing of the administration after annexation was confined to the governments of Queensland, New South Wales, and Victoria. Their proposals of 28 April 1886 are recorded in the First Schedule to The British New Guinea (Queensland) Act of 1887.

These proposals were discussed at the 1887 Colonial Conference held in London, attended by representatives of all the Australasian governments other than Fiji. The agreement reached at this Conference, which differs in a number of respects from the original proposals made by Queensland, New South Wales and Victoria, is contained in the Second Schedule of the Act.

The Settlement reached at the 1887 Colonial Conference was a compromise between Imperial and Australian—or, more specifically, Queensland—aims. Queensland had the main financial responsibility for the day to day administration of the possession, but relied on New South Wales and Victoria to contribute their shares. The Imperial Government did not, however, ultimately stand aloof from the finan-

1 C.O. 422-3 (film 2686, 282 et. seq., and 321 et. seq.)
The British New Guinea Act

1 This Act shall commence and take effect so soon as Her Majesty shall have assumed sovereignty over the territory aforesaid, and such assumption of sovereignty shall have been proclaimed in the Colony of Queensland.

2 There shall be issued and paid to Her Majesty, out of the Consolidated Revenue of Queensland, in each of the ten years next succeeding the commencement of this Act, a sum not exceeding £15,000, for and in respect of the necessary expenses of the administration of the government of the said territory in accordance with the conditions of the aforesaid Amended Proposals or such other conditions as may be mutually agreed to by Your Majesty’s Imperial Government and the Government of the Colony of Queensland.

3 The Colonial Treasurer shall issue and pay the amount of such contribution to such person and in such manner as the Governor by any warrant or order under his hand shall direct.

4 The Colonial Treasurer shall, in his accounts, from time to time, be allowed credit for any sum or sums of money paid by him in pursuance of any such warrant or order, and the receipt or receipts of the person to whom the same shall be so paid shall be a full and valid discharge to him in passing his accounts for any such sum or sums as shall be therein mentioned, and he shall receive credit for the same accordingly.

5 The New Guinea and Pacific Jurisdiction Contribution Act of 1884 is hereby repealed, except as to any obligations already incurred under that Act.

6 This Act may be cited as The British New Guinea (Queensland) Act of 1887.

THE FIRST SCHEDULE

Draft Proposals for the future Administration of British New Guinea agreed to by the Government of the Colonies of New South Wales, Queensland, and Victoria, at Sydney, on the 28th of April, 1886.

(I) The Colony of Queensland to undertake by a permanent Appropriation Act to defray the cost of the administration of the Government of British New Guinea to an extent not exceeding £15,000 per annum for the term of five years, subject to the following conditions:

(II) The colonies of New South Wales and Victoria to undertake by similar permanent Appropriation Acts to bear equally with Queensland any amount which the latter colony may be called upon to pay under Article (I.), so that each colony shall be liable for one-third of the whole expenditure to an extent not exceeding £5,000.

(III) Any contribution made by the Governments of any of the other Australasian colonies to be applied in reduction of the amount which the colonies may be called upon to pay under Articles (I.) and (II.)

(IV) Any revenue raised by the Government of New Guinea to be similarly applied in reduction of the amount which the colonies may be called upon to pay under Articles (I.) and (II.), unless in the event of a larger annual expenditure than £15,000 being agreed to, as provided in Article (XVI.), in which case the excess is to be provided from the revenue.

(V) The Imperial Government to make a reasonable contribution (by way of loan or otherwise) towards the cost of efficiently starting the Government, and the necessary Government buildings, ac.

(VI.) Upon the proposed guarantee being given by Queensland, Her Majesty to assume Sovereignty over the Protectorate.

2 Article 5 of the Second Schedule to the following Act
(VII.) An Administrator of the Government to be appointed with that title, to whom, with two or more other persons, legislative powers are to be delegated under the Imperial Acts 6 and 7 Victoria, c.13 and 23, and 24 Victoria, c.121.

(VIII.) The colonies, recognising the necessity for a small Civil List, propose the following as probably sufficient for the first initiation of the Government:

<table>
<thead>
<tr>
<th>Position</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrator</td>
<td>£1,500</td>
</tr>
<tr>
<td>Private Secretary</td>
<td>300</td>
</tr>
<tr>
<td>Judicial Officer</td>
<td>1,000</td>
</tr>
<tr>
<td>Secretary to Government</td>
<td>500</td>
</tr>
</tbody>
</table>

(IX.) No purchase of land to be allowed to be made by private persons, except from the Government or purchasers from it.

(X.) No deportation of natives to be allowed either from one part of the colony to another, or to places beyond the colony, except under ordinances reserved for Her Majesty's assent and assented to by Her Majesty.

(XI.) Trading with the natives in arms, ammunition, explosives, and intoxicants to be prohibited, except under ordinances reserved and assented to in like manner.

(XII.) No differential duties to be imposed in favour of any of the guaranteeing colonies, or any other colony or country.

(XIII.) The foregoing four Articles to be made part of the Constitution of the colony; preferably by Orders in Council made contemporaneously with the assumption of Sovereignty, or else by ordinances to be passed immediately afterwards under instructions to the Administrator from Her Majesty's Imperial Government. Standing instructions to be given to the Governor of Queensland and to the Administrator of British New Guinea to observe the conditions of these Articles.

(XIV.) An appeal to lie to the Supreme Court of Queensland, at Brisbane, in all civil cases involving an amount of over £100, and in all criminal cases involving a punishment greater than three months' imprisonment.

(XV.) An estimate of revenue and expenditure to be submitted by the Administrator to the Governor of Queensland, and approved by him before the passing of any Appropriation Ordinance. The Governor of Queensland to have power to disallow any item of proposed expenditure.

(XVI.) Any appropriation beyond the amount of £15,000 for any one year to be agreed to by each of the three guaranteeing colonies.

(XVII.) All accounts of receipts and expenditure to be audited by officers of the Queensland Government.

(XVIII.) The Administrator, in the exercise of his legislative and administrative functions, to be subject to the instructions of the Governor of Queensland (subject of course to Her Majesty's power of disallowance of proposed laws).

(XIX.) The Governor of Queensland to be directed to consult his Executive Council upon all matters relating to British New Guinea.

(XX.) The Government of Queensland to consult the Governments of the other contributing colonies in all matters other than those of ordinary administration, and to report to them all action taken.

(XXI.) An annual report to be furnished by the Administrator to the Governor of Queensland of the proceedings of the Government (Legislative and Administrative), and copies of such report, together with any observations which the Governor of Queensland may think fit to make thereon, to be forwarded to the Secretary of State, and to each of the contributing colonies.

**THE SECOND SCHEDULE**

**AMENDED PROPOSALS FOR THE ADMINISTRATION OF BRITISH NEW GUINEA**

1 The Colony of Queensland to undertake by a special Act to defray the cost of the administration of the Government of British New Guinea to an extent not exceeding £15,000 per annum for the term of ten years, subject to the following conditions:

2 The colonies of New South Wales and Victoria to undertake by similar Acts to bear equally with Queensland any amount which the latter colony may be called upon to pay under Article 1, so that each colony shall be liable for one-third of the whole expenditure to an extent not exceeding £5,000.

3 Any contribution made by the Governments of any of the other Australasian Colonies to be applied in reduction of the amount which the Colonies may be called upon to pay under Articles 1 and 2.

4 Any revenue raised by the Government of New Guinea to be similarly applied in reduction of the amount which the colonies may be called upon to pay under Articles 1 and 2, unless in the event of a larger annual expenditure than £15,000 being agreed to, as provided in Article 16, in which case the excess is to be provided from the revenue.

5 Her Majesty's Imperial Government to contribute a suitable steam-vessel for the service of the Territory, at a cost not exceeding £18,500, with the cost of its maintenance during the first three years estimated at about £3,500 a year.

6 Upon the passing of the above-mentioned Special Act, Her Majesty to assume Sovereignty over the Protectorate.

7 An Administrator of the Government to be appointed, to whom, with two or more other persons, legislative powers are to be delegated by Letters Patent under the Imperial Acts 6 and 7 Vic. cap. 13, and 23 and 24 Vic. cap. 121.

8 The following sums to be reserved in the Letters Patent by way of Civil List:

<table>
<thead>
<tr>
<th>Position</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrator</td>
<td>£1,500</td>
</tr>
<tr>
<td>Private Secretary</td>
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</tr>
<tr>
<td>Judicial Officer</td>
<td>1,000</td>
</tr>
<tr>
<td>Secretary to Government</td>
<td>500</td>
</tr>
</tbody>
</table>

9 No purchase of land to be allowed to be made by private persons, except from the Government or purchasers from it.

10 No deportation of natives to be allowed either from one part of the Territory to another or to places beyond the Territory, except under Ordinances reserved for Her Majesty's assent and assented to by Her Majesty.

11 Trading with the natives in arms, ammunition, explosives, and intoxicants to be prohibited, except under Ordinances reserved and assented to in like manner.

12 No differential duties to be imposed in favour of any of the Guaranteeing Colonies, or any other colony or country.

13 The foregoing four Articles to be embodied in the Letters Patent as part of the constitution of the Territory.

14 An appeal to lie to the Supreme Court of Queensland, at Brisbane, in all civil cases involving an amount of over £100, and in all criminal cases involving a punishment greater than three months' imprisonment. The necessary legislation for this purpose to be proposed to the Imperial and Queensland Parliaments.

15 An estimate of revenue and expenditure to be submitted by the Administrator to the Governor of Queens-
The British Settlements Act

land, and approved by him before the passing of any Appropriation Ordinance. The Governor of Queensland to have power to disallow any item of proposed expenditure.

16 Any appropriation beyond the amount of £15,000 for any one year to be agreed to by each of the three Guaranteeing Colonies.

17 All accounts of receipts and expenditure to be audited by officers of the Queensland Government.

18 The Administrator, in the exercise of his legislative and administrative functions, to be guided by the instructions of the Governor of Queensland (subject to Her Majesty's power of disallowance of proposed laws).

19 The Governor of Queensland to be directed to consult his Executive Council upon all matters relating to British New Guinea.

20 The Government of Queensland to consult the Governments of the other contributing colonies in all matters other than those of ordinary administration, and to report to them all action taken.

21 The Administrator to be instructed to furnish to the Governor of Queensland an annual report of the proceedings of the Government (Legislative and Administrative), and copies of such report, together with any observations which the Governor of Queensland may think fit to make thereon, to be forwarded to the Secretary of State, and to each of the contributing colonies.

MEMORANDUM

It is understood that Queensland is to have a first charge upon any surplus revenue of British New Guinea for any amount which the Colony may be called upon to pay under the Special Act beyond the agreed proportion of one-third.

SOURCE British New Guinea, Report For The Year 1887, by Her Majesty’s Special Commissioner for the Protected Territory, Victoria, Parliamentary Papers, 1888, Government Printer, Melbourne

D50 A Minute for a New Act

The Law Officers of the Crown thought that existing Imperial legislation did not allow for provision to be made by Order in Council for appeals from judicial decisions in British New Guinea to be heard by the Supreme Court of Queensland. In the following Minute, written on 27 April 1887, John Bramston, then Assistant Under Secretary of State in the Colonial Office, explains their reasons to the Permanent Under Secretary of State, Sir Robert Herbert. As it was intended that appeals from British New Guinea should be heard in Queensland, it was decided to amend and consolidate the existing legislation dealing with the government of British Settlements, so that the Queensland Supreme Court could be given the necessary jurisdiction.

The Act 6 and 7 Vic. c.13, mentioned in the Minute, was entitled ‘An Act to enable Her Majesty to provide for the government of her Settlements on the Coast of Africa and in the Falkland Islands.’ The Act 23 and 24 Vic. c.121 amended it.

An Act of Parliament will be necessary to enable appeals to be carried from New Guinea to the Supreme Court of Queensland: the Law Officers have advised that the power of legislating by Order in Council given by the Acts 6 and 7 Vic. c.13 and 23 and 24 Vic. c.121 relates only to matters within the Settlement: ...

But an Act specifically relating to New Guinea would, I incline to think, make a further Act necessary before sovereignty over it could be abandoned, should such a course become desirable in consequence of the Colonies stopping their payment of expense of Government: for when Parliament has legislated for any British Territory a cession of that territory would require the authority of Parliament to make it effective.

This difficulty could apparently be avoided by giving to Her Majesty the general power of sending appeals from a Settlement to the Courts of any Colony or any other Settlement: and this power might be obtained by an amendment of the Act 6 and 7 Vic. c.13: which might well be amended in another small particular.

The Queen is authorised to delegate legislative powers only by ‘Commission’ under the Great Seal: but the permanent Letters Patent creating the office of Governor are not strictly speaking Commissions—and Governors’ Commissions are now under the Sgn. Manual and Signet: and so it makes it awkward in drafting to carry out the Act. If ‘Commission’ were changed into ‘any instrument’ there would be no difficulty.

Probably a new Act taking the place of the two existing ones would be the best course ...

SOURCE C.O. 422-3, (film 2685, at 322-3)

D51 The British Settlements Act 1887 (50 and 51 Vic., c. 54)

The jurisdiction of the Crown in British New Guinea, after its annexation, was derived from the British Settlements Act, 1887. This Act is the Crown's source of authority in all those possessions not acquired by
cession or conquest, and not within the jurisdiction of the legislature of another British possession. At common law, the Crown could not, by its prerogative, establish a non-representative legislature in a British settlement, but could only establish a representative legislature. This inability of the Crown to impose a non-representative legislature led to difficulties in some settled colonies where the British population was very small, and where the inhabitants were considered to be too little educated, such as the Falkland Islands, and some colonies on the west coast of Africa, such as the Gambia. As the Crown could not, by its prerogative, establish a non-representative legislature in such circumstances, parliament intervened to provide statutory authority for such a course. It passed Acts in 1843 and 1860, which were ultimately repealed and replaced by the 1887 Act. This enabled the Crown to establish a non-representative legislative council in British New Guinea, composed entirely of officials. This it could not have done by virtue of its common law prerogative.

However, although a legislature could be set up in a British Settlement under Section 3 of the 1887 Act, the same provision allowed the Crown a concurrent right of direct legislation by Order in Council.

Section 4 implemented the recommendations contained in Bramston's Minute of 27 April 1887, and provided the general authority for the passing of an Order in Council allowing for appeals from British New Guinea to be heard in Queenslnd.

Bramston's procedural recommendation was implemented in Section 3.

Section 6 defines a British Settlement in such a way as to make the actual presence of British Settlers irrelevant in determining whether or not a possession is a British Settlement.

An Act to enable Her Majesty to provide for the Government of Her Possessions acquired by Settlement.

[16th September, 1887]

Whereas divers of Her Majesty's subjects have resorted to and settled in, and may hereafter resort to and settle in, divers places where there is no civilised government, and such settlements have become or may hereafter become possessions of Her Majesty, and it is expedient to extend the power of Her Majesty to provide for the government of such settlements, and for that purpose to repeal and re-enact with amendments the existing Acts enabling Her Majesty to provide for such government.

Be it therefore enacted, etc.: 1

1 This Act may be cited as the British Settlements Act, 1887.

2 It shall be lawful for Her Majesty the Queen in Council from time to time to establish all such laws and institutions, and constitute such courts and officers, and make such provisions and regulations for the proceedings in the said courts and for the administration of justice, as may appear to Her Majesty in Council to be necessary for the peace, order, and good government of Her Majesty's subjects and others within any British settlement.

3 It shall be lawful for Her Majesty the Queen from time to time, by any instrument passed under the Great Seal of the United Kingdom, or by any instructions under Her Majesty's Royal Sign Manual referred to in such instrument as made or to be made, as respects any British settlement, to delegate to any three or more persons within the settlement all or any of the powers conferred by this Act on Her Majesty in Council, either absolutely or subject to such conditions, provisions, and limitations as may be specified in such instrument or instructions.

Provided that, notwithstanding any such delegation, the Queen in Council may exercise all or any of the powers under this Act: Provided always, that every such instrument or instruction as aforesaid shall be laid before both Houses of Parliament as soon as conveniently may be after the making and enactment thereof respectively.

4 It shall be lawful for Her Majesty the Queen in Council to confer on any court in any British possession any such jurisdiction, civil or criminal, original or appellate, in respect of matters occurring or arising in any British settlement as might be conferred by virtue of this Act upon a court in the settlement, and to make such provisions and regulations as Her Majesty in Council may think fit respecting the exercise of the jurisdiction conferred under this section on any court, and respecting the enforcement and execution of the judgments, decrees, orders, and sentences of such court, and respecting appeals therefrom, and every Order of Her Majesty in Council under this section shall be effectual to vest in the court the jurisdiction expressed to be thereby conferred, and the court shall exercise the same in accordance with and subject to the said provisions and regulations: Provided always, that every Order in Council made in pursuance of this Act shall be laid before both Houses of Parliament as soon as conveniently may be after the making thereof.

5 It shall be lawful for Her Majesty the Queen in Council from time to time to make, and when made to alter and revoke, Orders for the purposes of this Act.

6 For the purpose of this Act, the expression 'British possession' means any part of Her Majesty's possessions out of the United Kingdom, and the expression 'British settlement' means any British possession which has not been acquired by cession or conquest, and is not for the time being within the jurisdiction of the Legislature, constituted otherwise than by virtue of this Act or of any Act repealed by this Act, of any British possession.

7 The Acts mentioned in the schedule to this Act are hereby repealed: ...
The following account of the ceremony of annexation of British New Guinea was written by Anthony Musgrave, son of a Governor of Queensland, and Government Secretary of British New Guinea under MacGregor and several of his successors. The ceremony took place on 4 September 1888, and Musgrave’s account is dated the same day. Deputy Commissioner Hugh Romilly was temporarily in charge of affairs in Port Moresby when MacGregor arrived, and MacGregor’s unannounced appearance was as much a surprise to him as was Erskine’s four years before. On this occasion, however, Romilly did not preclude the official flag raising with a ceremony of his own.

The effect of annexation was to make the area formerly comprised in the protectorate, British territory. In terms of British constitutional law, British authority and jurisdiction are intimately associated with the concept of sovereignty over territory. Therefore, on territorial sovereignty being established in British New Guinea on 4 September 1888, British jurisdiction automatically extended, lawfully for the first time, to the people of Papua, as well as to all foreigners living in the Territory. Prior to that time British New Guinea, as a protectorate, legally remained foreign territory, an area in which Great Britain exercised a limited jurisdiction—confined to her own subjects—but where British sovereignty was not paramount.

There does not seem to have been much effort made to obtain the agreement of the Papuan people to the annexation, although the people around Port Moresby were asked to attend the ceremony. There was no suggestion that the Papuan people might be asked to cede their territory either formally or informally to Great Britain, though it seems to have been generally assumed that annexation was very much in their interests.

H.M.S. ‘Opal,’ with William McGregor Esq., M. D., C. M. G., the Administrator (designate) for British New Guinea on board, came to anchor in Port Moresby about half past ten of the clock (10.30 a.m.) on the forenoon of this day. The members of the Administrator’s suite accompanying him from Cooktown were—Mr Anthony Musgrave, Mr Bingham Arbuthnot Hely, and Mr John George Allen, respectively designated as Secretary to the Government, ‘Acting Chief Judicial Officer,’ and Government Printer for the Possession.

Flags were flying in welcome from the London Missionary Society’s and Mr Goldie’s flagstaffs, and the ‘Union Jack’ as usual at Government House.

The Resident Deputy Commissioner, Mr H. H. Romilly, at once communicated with the ‘Opal,’ and the Administrator without delay caused a public notice to be issued to the residents in the township of Granville, a special invitation to the several members of the London Missionary Society, and the natives to be duly summoned by an officer visiting the three local villages, in respect of the ceremony to take place at 4 p.m., at Government House, for declaring Her Majesty’s Sovereignty.

Mr Musgrave was landed immediately after the arrival of the ‘Opal,’ to superintend preliminary arrangements. At 2.30 p.m. His Excellency the Administrator came ashore unofficially (not having yet been formally appointed to his new office) with Mr Hely, and at once proceeded to Government House.

By a quarter before four o’clock (4 p.m.) the several arrangements were completed, and the scene from Government House veranda, one hundred and fifty feet above the sea and commanding a full view of the harbour and surroundings, was interesting and attractive. To the right and northerly the mission flagstaff ‘dressed’ for the ceremony was a triangle of lively colour. In the foreground H.M.S. ‘Opal,’ the L.M.S. schooner ‘Ellangowan,’ and the Government cutter ‘Maino’ were also decorated with bunting blowing out freely in the strong south-east trade wind. From the oval plateau covered with fine shingle in front of the building, the Government flagstaff with its white shaft and crossstrees showed in clear outline against the blue background of the harbour, while a single ‘Union Jack’ flew from it as the Resident Deputy Commissioner’s symbol of authority. At the end of the plateau beyond the mast and about its base, the local natives—men, women, and children—grouped themselves in a semi-circle of some 200 or more. This was a remarkably good gathering, for, although the three villages mentioned contain over 1,000 souls, a large number were inland for the last hunt of the season. In the middle of the group the mission students and wives in clean cotton clothing of different hues presented a strong and pleasing contrast to their nude and shock-headed relations. On the north side of the platform the guard of honour—‘blue jackets’ and ‘marines,’ under charge of Command-er Field, R. N., and Lieutenant Basil Hall, R. N.—was placed with a drum-and-fife band fronting them, thus forming three sides of a square about the flag-mast; two signalmen from the ‘Opal’ were also stationed at this point to attend to the flags appropriate to the ceremony.

Assembled on the veranda were the following persons, viz.:—Captain Day H. Bosanquet, R. N. (H. M. Senior Officer for the Northern Division of the Australian Station), all officers of H.M.S. ‘Opal,’ with the exception of one or two on duty in the vessel, Hugh Hastings Romilly, Esq., C.M.G. (H. M. Deputy Commissioner for the Western Pacific and Resident Commissioner at Port Moresby), A. Musgrave, Esq. (H.M.’s Deputy Commissioner for British New Guinea), the Reverend W.G. Lawes (Senior Missionary of the London Missionary Society), Mrs Lawes, Bingham Arbuthnot Hely, Esq. (Accountant for the Protectorate of British New Guinea), Frank E. Lawes, Esq. (Clerical Assistant, Acting Postmaster and Harbour-master, &c., at Port Moresby).

1 Romilly, op. cit., p. 331
2 Jenkyns, op. cit., p. 123
3 Law Officers’ Report of 11 December 1884, supra
George Hunter, Esq. (Government Officer, Rigo Station), Andrew Goldie, Esq. (Collector, Explorer, and Storekeeper in British New Guinea since 1875), Ruoataka (Raratongan L.M.S. Teacher, resident at Port Moresby since 1873); certain other Government employees, South Sea Island boatmen, ac. made up the assembly. A table covered with the Union Jack stood in front in the centre of the veranda. His Excellency, being informed by Captain Bosanquet that everything was ready, took a position near to the table, and, bowing to those assembled, stated briefly that he had the honour of being deputed by the Queen to declare Her Majesty's Sovereignty over this Protectorate. His Excellency then read the Proclamation to that effect, and immediately afterwards the Imperial Letters Patent which provide a Constitution for the new Territory, addressing those present as follows:

‘Gentlemen, The legal forms and requirements necessary to constitute this Territory a Possession and Dependency of the British Crown have now been complied with, and from this day the history of British New Guinea as part of the Queen’s Dominions will take its commencement.

“So much still remains to be made known in regard to the capabilities of this great country, that at present no human eye can see far into its future. But we know well, from a rich experience gained elsewhere, that the material, the economic, development of British New Guinea can safely be left to the energy, the industry, and perseverance of our own race, when their inherent qualities can fairly be brought to bear on the task. And the Queen’s Sovereignty here will be a guarantee that every effort will be made to educate the native race, to impart to them the great and sublime truths of the Christian religion; to teach them to value and respect law and order, and to appreciate justice.

May God grant that our Sovereign’s rule in British New Guinea may secure the prosperity, happiness, and contentment of the Queen’s subjects here, both old and new, and that the people of this land, now declared a British Possession, may for all time look up with true loyalty and devotion to that flag which we are now to salute.’

On the conclusion of this speech, at a signal from Captain Bosanquet, the Royal Standard rose gently to the mast-head while the guard presented arms and the band played the National Anthems. As the flag floated out the first report of a Royal salute of twenty-one guns was heard from the ‘Opal.’ The standard slowly descended, and the ‘Union Jack’ (to be flown on shore by the Administrator according to Regulations) was again hoisted. His Excellency thereupon read the Queen’s Commission, appointing him to be Administrator of British New Guinea. All these documents and His Excellency’s address were listened to with the closest attention. The Senior Officer having administered the oath of allegiance and oath of office to His Excellency, the guard fired a feu-de-joi.

Captain Bosanquet advanced and called for three cheers for the Queen, to which a loyal response was returned, immediately after which the mission students and their friends sang a verse of ‘God Save the Queen.’ With this the proceedings terminated on shore.

On board the ‘Opal,’ however, the Administrator’s sea-going flag was hoisted at the ‘fore’ and the salute due to his office fired in his honour.

A. Musgrave, Jr.

Source MacGregor to Governor of Queensland, 5 September 1888, Enclosure 1.

D53 MacGregor’s Proclamation

There follows the Proclamation annexing New Guinea, read by MacGregor at Port Moresby on 4 September 1888.

On behalf of Her Most Gracious Majesty VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India, &c., &c.

To all to whom these Presents shall come Greeting: In pursuance of instructions received by me from Her Majesty’s Secretary of State for the Colonies, I, WILLIAM MACGREGOR, Doctor of Medicine, and Companion of the Most Distinguished Order of St. Michael and St. George, do hereby declare that the Territory and Islands hitherto known as the Protected Territory of New Guinea, that is to say, the southern and south-eastern shores of New Guinea from the 141st meridian of east longitude eastward as far as East Cape, and thence north-westward as far as the 8th parallel of south latitude in the neighbourhood of Mitre Rock, together with the territory lying south of a line from Mitre Rock, proceeding along the said 8th parallel to the 147th degree of east longitude, then in a straight line in a north-westerly direction to the point of intersection of the 6th parallel of south latitude and of the 144th degree of east longitude, and continuing in a west-north-westerly direction to the point of intersection of the 5th parallel of south latitude and of the 141st degree of east longitude, together with the Trobriand, Woodlark, D’Entrecasteaux, and Louisiade Groups of Islands, and all other islands lying between the 8th and 12th parallels of south latitude, and between the 141st and the 155th degrees of east longitude, and not forming part of the Colony of Queensland, and, furthermore, including all islands and reefs lying in the Gulf of Papua to the northward of the 8th parallel of south latitude, and which are now under Her Majesty’s protection, shall henceforth become and be and do hereby become and are part of the Queen’s Dominions.

Given under my Hand and Seal, at Government House, Granville, Port Moresby, this fourth day of September in the year of our Lord one thousand eight hundred and eighty-eight, and in the fifty-second year of Her Majesty’s reign.

By Command,

W.M. MacGregor

Source Queensland, Votes And Proceedings of the Legislative Assembly, 1898, Volume III, p. 290
Letters Patent Passed Under the Great Seal of the United Kingdom for Erecting Certain British Territory in New Guinea and the Adjacent Islands into a Separate Possession, and Providing for the Government Thereof

These Letters Patent dated 8 June, 1888, and published in the British New Guinea Government Gazette Extraordinary, Vol. I, No. 2, of 4 September 1888, provided for the establishment of the government of British New Guinea, when it became British territory on annexation. The Letters Patent came into effect, therefore, when the Proclamation of Annexation was read at the ceremony at Port Moresby on 4 September 1888.

As well as authorizing the appointment of the Administrator, assisted by an Executive and Legislative Council, these Letters Patent provided some guarantee for the preservation of the rights of the Papuan people by enacting, as part of the Constitution of the Possession, Items 9-13 of the proposals agreed at the 1887 Colonial Conference, and contained in the Second Schedule to The British New Guinea (Queensland) Act of 1887.

In the light of the legal problems that subsequently arose concerning the power of the Queensland Government to supervise the government of British New Guinea, it is of some interest that those proposals agreed to at the 1887 Colonial Conference dealing with this point are omitted from the Letters Patent. They are, however, dealt with in MacGregor’s Commission and Instructions.

Possession Constituted and Erected
Now, therefore, We do, by these Our Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, as and when the same shall become part of Our Dominions, constitute and erect the said Territory and Islands as above described into a separate Possession and Government by the name of British New Guinea.

Office of Administrator constituted
(II.) We do hereby order and declare that there shall be in and over British New Guinea aforesaid (which is hereinafter called the Possession) an Officer charged with the duty of administering the Government thereof in Our name and on Our behalf, and that such Officer shall, in the first instance, be styled the Administrator, and that appointments to the said office shall be made by Commission under Our Sign Manual and Signet.

Administrator’s powers and authorities
(IV.) We do hereby authorize, empower, and command the Administrator to do and execute all things that belong to his said office, according to the tenor of these Our Letters Patent and of such Commission as may be issued to him under Our Sign Manual and Signet, and according to such instructions as may from time to time be given to him under Our Sign Manual and Signet, or by Our Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and to such Laws as are now or shall hereafter be in force in the Possession...

Executive Council
(VIII.) There shall be an Executive Council for the Possession to advise and assist the Administrator, and the said Council shall consist of such persons as We shall direct by any Instructions under Our Sign Manual and Signet, and all such persons shall hold their places in the said Council during Our pleasure.

Legislative Council
(IX.) There shall be a Legislative Council of the Possession, and the said Council shall consist of the Administrator and such persons, not being less than two at any time, as We shall direct by any Instructions under Our Sign Manual and Signet, and all such persons shall hold their places in the said Council during Our pleasure...

Prohibiting the enactment of differential duties
(XI.) The said Legislative Council shall not have power to establish any Law whereby duties may be imposed upon the importation into the Possession of any article, the produce or manufacture of, or imported from, any particular country or place, which shall not be equally imposed on the importation of the like article, the produce or manufacture of, or imported from, all other countries and places whatsoever.

Providing against the purchase of land except through the Government
(XII.) The said Legislative Council is hereby required to establish a law providing that no purchase of land within the Possession be allowed to be made by private persons, except from the Administrator, or other authorised officer of the Government, or from purchasers from him.

Restricting the deportation of natives, and trading with natives in arms, explosives or intoxicants
(XIII.) The said Legislative Council is hereby further required to establish Laws providing—

1. That no deportation of natives be allowed either from one part of the Possession to another, or to any place beyond the Possession,

2. That no trading with natives be allowed in any firearm, ammunition, explosive, intoxicating liquors, or opium;

except under such conditions as may be established by Order of Ourselves in our Privy Council, or by some law of the Possession which has been reserved for the signification of Our pleasure, and assented to Ourselves in Our Privy Council...
MacGregor's Commission by deleting the words in Article II requiring him to carry out the instructions of the Governor of Queensland. A fresh Commission amended in this way and superseding the original Commission, was issued on 31 January 1889. It was published on 20 April 1889 in Volume II, No. 4 of the British New Guinea Government Gazette.

MacGregor's relationship with the Governor of Queensland, and the implementation of the arrangement reached at the 1887 Colonial Conference, thus depended primarily on Article II of the Royal Instructions dated 8 June 1888, requiring MacGregor, among other things to correspond with and make reports to, the Governor of Queensland, and to apply to him for instructions.

The Law Officers were not specifically asked to advise as to the legality of Article II of MacGregor's Instructions, and refrained from commenting directly on this topic. Nevertheless, the same objection might well have been levelled at Article II of his Instructions, as at MacGregor's Commission, namely, that the British Settlements Act, 1887, as the statutory source of British jurisdiction in British New Guinea, did not allow the Governor of Queensland to take any part in the administration of the new possession.

My Lord,

We were honoured with Your Lordship's commands signified in Mr Bramston's letter of the 4th ultimo stating that, with reference to our Report of the 14th November on the subject of the instruments for regulating the Government of British New Guinea, on further consideration, Your Lordship saw much objection to legislation on that subject in the Imperial Parliament, and had reason to apprehend that the suggested measure might meet with inconvenient opposition during its passage through the House of Commons, and that Your Lordship would therefore be glad, if possible, to find some other mode of dealing with the difficulty which had arisen.

That your Lordship was disposed to think that you might properly advise Her Majesty to issue to Dr McGregor a fresh Commission omitting the words 'or as you shall receive from the Governor of Our Colony of Queensland for the time being, or from the Officer for the time being administering the Government of our said Colony'. That the relation of the Administrator to the Governor would then rest upon the direction contained in the 2nd Article of the Royal Instructions requiring the Administrator to correspond with the Governor, and to apply to him for all such instructions as he might require for his guidance in the discharge of his office; and upon the further directions contained in Your Lordship's two despatches of 20th June 1888, No. 11 to the Administrator, and No. 31 to the Governor of Queensland.

That it was quite understood that any action taken by the Administrator, in pursuance of instructions from the Governor of Queensland, could not subject the latter Officer to legal proceedings at the suit of a person who might consider himself aggrieved, because the Act complained of would be that of the Administrator alone and not of the Governor, who, as it appeared to Your Lordship, could, as matters stood, neither of himself act in any way within the Possession, nor enforce his instructions if disregarded by the Administrator.

That Her Majesty's Government in accepting the 18th Article of the Agreement, 2 did not contemplate making, and did not in fact make the Administrator of New Guinea a subordinate officer of the Governor of Queensland, but that as that Colony had made itself financially responsible for carrying on the Government of the Possession, it was desired to give to the Colony, through its Governor, a voice in the disposal of the money, and with that object to require the Administrator to seek instructions from the Governor, for his guidance, as to the manner in which he should exercise the administrative and legislative functions which he alone would be legally competent to discharge; and for the due discharge of which he would be responsible to Her Majesty's Government, the Governor on his part consulting his Executive Council before issuing instructions.

That it was recognized that the Legislature of Queensland would have no authority in New Guinea, and that the Governor and Executive Council of Queensland would occupy the position of a Board of Advice, rather than that of a superior controlling body, and that if the Administrator should not carry out the advice, or instructions, which he received, it would be open to the Governor in Executive Council to apply to the Secretary of State to remove the Administrator from his office, but that his actions would be valid if consistent with the laws of the Possession; and that that was understood to be the position under the present instruments.

That it seemed to Your Lordship that that state of affairs would not be altered by placing the Administrator, by Act of Parliament, under the control or guidance of the Governor of Queensland, unless, at the same time, power were given to the Legislature of the Colony to make laws for the possession, and to make the Administrator an Executive Officer of that Colony, removable by the Ministry of the day, without reference to the Secretary of State—a course which could not be taken into consideration, as it would be beyond the terms of the Agreements and would meet with strong opposition in the House of Commons.

That Mr Bramson was further to suggest that the powers conferred by section 2 of the British Settlements Act 1887, and capable of being delegated under section 3, would seem to be limited to the exercise of legislative authority, and to the creation and regulation of Courts of Justice, and to the appointment of Judicial and other officers for carrying on the administration of justice; and that these sections did not refer to the ordinary administration of Government.

That should that view be correct it was suggested that it might be consistent with that Act for Her Majesty to require the Administrator to obey the Governor in general matters of administration, as not being matters which the Act allowed to be delegated only to three or more persons.

That Mr Bramson was accordingly to ask us to take the accompanying papers into consideration, and to advise Your Lordship whether the issue of a fresh Commission amended by omitting the words above quoted, would be free from the objection pointed out in our Report of the 14th of November, and sufficiently meet the requirements of the present case without having recourse to legislation.

2 Article 18 of the Second Schedule to The British New Guinea (Queensland) Act of 1887
That Mr Bramston was also to state that Your Lordship would be much obliged if we would favour you with any other observations which might be of assistance to Your Lordship in dealing with the matter.

We were also honoured with a letter from Sir Robert Herbert, dated 17th ultimo, on the same subject, stating that he was directed by Your Lordship to request that we would favour Your Lordship with our opinion on the further question whether the words in the 3rd section of the 'British Settlements Act 1887'—"either absolutely or subject to such conditions, provisions, and limitations as may be specified in such instrument or instruments"—did not directly and fully answer the opinion of Sir Thomas McIlwraith and his colleagues, as expressed in the late Sir Anthony Musgrave's despatch No. 77 of the 1st of September, that Imperial legislation was necessary in order to enable the Administrator to carry out the provisions of the Agreement between Her Majesty's Government and Queensland.

We have taken the matter into our consideration and have the honour to Report:

That in our opinion a Commission amended by omitting the words quoted would not be open to the objections which have been suggested, and would, in our judgment, sufficiently meet the requirements of the case, inasmuch as the matter must be dealt with promptly, and the delay and possible opposition occasioned by an attempt to legislate thereon might give rise to serious inconvenience.

We think it right to add that we do not think the proposed mode of dealing with this matter altogether satisfactory, and we are unable to concur in the opinion suggested to us as to the limited effect of section 3 of the British Settlements Act 1887. That section relates to all the powers which are conferred by the Act upon Her Majesty in Council, and we see no reason to modify the terms of our previous Report.

In reference to the further question contained in the letter of the 17th ultimo, we are of opinion that the powers conferred by the British Settlements Act 1887, on Her Majesty in Council, can only be delegated to any three or more persons within the Settlement, and the words 'conditions, provisions, and limitations' were only inserted in section 3 to enable the Letters Patent and Instructions to be so modified as to suit the particular exigencies of the place to which they are to apply, but not to enlarge, or derogate from, the main provision of that section.

We have the honour to be,

My Lord

Your Lordship's most obedient humble Servants,

Richard Webster

Edward Clarke

SOURCE C.O. 422-5 (film 2687, at 625-633)