at reasonable Salaries such persons as are fitted for the duties of Peace officers. Every week's Gazette contains a List of changes, which the Magistrates are obliged to make in the Constabulary through breaches of duty. Without the aid of the mounted Police, who are all Soldiers stimulated by extra pay and rewards to great exertions, the Country would be utterly untenable. These reasons have before led me strongly to urge upon H.M.'s Government the necessity of an addition to the Military stationed in this Colony, which, instead of increasing with the increase of the Colony, has actually been diminished by the detachment lately ordered of two Companies to Swan River. You will have already received my Despatch of 27th June, 1833, No. 53, with the enclosed Copy of a Letter to the Military Secretary of the Commander in Chief on this important subject. Should an additional Regiment be furnished, I should be enabled to carry on with efficiency that branch of Convict Punishment, which is connected with the Roads and Public Works. This might lead likewise, independently of any such contribution on the part of the Colonists as I have before suggested, to some part of the present expensive superintendence over Ironed Gangs being spared by the appointment of Subaltern and non Commissioned officers to the duties of Superintendents and constables at a lower rate of Salary than is now paid to the latter. I am the more anxious to impress upon you the necessity of augmenting the Military in this Colony, as you do not seem to consider that the new system of Classification renders such Augmentation indispensible. Upon the subject of this increase (though without reference to the peculiarly pressing reasons which I am now urging), I had the honor to communicate with Lord Goderich, previous to my leaving England to take charge of this Government; and you may perceive, in the minute of Instructions taken down in the Colonial Office in June, 1831, and which is recorded there, that Lord Goderich expressed his opinion that no further increase ought to be made to the number of male Convicts in N. S. Wales without an augmentation of the military force in the Colony. It has, however, happened both that the Convicts have been encreased in the last two years, by the clearing out of the Hulks in England as well as by the conviction of new offenders, far more than could have been expected; while a greater proportion has been, and is likely to be under the new arrangements placed upon that kind of labor which demands a Military Guard. Notwithstanding this, the Military force has been, as I have already represented, actually diminished.

With regard to the effect of the new arrangement within the Colony as respects the remaining class, namely Convicts assigned
to Settlers, there is not anything that can call for particular remark. They are to be assigned as heretofore. But the general increase in their numbers, which is taking place, and which from the resolution of H.M.'s Government to continue the system of transportation must now still continue, besides adding to the reasons for an increase to the Military Force, may require some new Regulations for the distribution by assignment, which, when considered and matured, I shall have the honor to lay before you.

In conclusion, although it has not been my object, in describing the condition of the Convicts in the several classes, into which they are now divided, to enter into any consideration of the effect which a knowledge of the condition of these several classes may have on the conduct of the depraved part of the British Population, yet you will not fail to observe that, with respect to the third class (or assigned Servants), it is my belief that their condition is one of much greater privation and punishment than is generally supposed in England; whilst, with regard to the first, I would say that the condition of the Convict in Norfolk Island is considered to be one of much greater severity than he actually endures. Perhaps the misery, which distinguishes the depraved criminal in this Island, chiefly consists in the hopelessness of escape from his insular prison, a suffering which will be much augmented by passing the act of Parliament, proposed in my Despatch of the 30th November last, No. 93. But at all events, I should say that, with the exception of those whose feelings may be peculiarly sensitive to impressions derived from reflection upon their hopeless captivity, those who are laboring without irons in Norfolk Island are unquestionably better off than those who are laboring in irons within the Colony. With respect to the Condition of the second class, I believe it to be already looked upon with considerable dread by offenders in the Colony, and, if I shall be furnished with the means of perfecting the system, it may operate beneficially in the same way in Great Britain. I may be permitted at the same time to observe that the latter motive should not be allowed too much weight, nor carried the length of sacrificing the probability of reforming the transported offender in the Australian Colonies to the hope of deterring the unprincipled inhabitants of Great Britain from the commission of crime. Undoubtedly, if punishment appalling from its duration as well as its intensity be heaped on the transported here, however beneficially the history of his sufferings may operate on the fears of the British Criminal, it will induce a state of despair in the mind of the Convict which is found to be utterly at variance with reformation. I have, &c.,

Richd. Bourke.
Sir,

At your Excellency's desire, I have the honor to enclose my opinion upon the state in which convicts, transported from England to this Colony, are placed by Act of Parliament; and the power which the Governor may, in certain cases, legally exercise over them. In order to present the subject in a clearer point of view, I will briefly advert to those general principles of the law, which apply to transportation, in common with every other mode of punishment authorized by the law of England, before I proceed to the particular provisions of the Act, which contains the present law of transportation.

It is a principle of the Common law that penal Statutes must be taken strictly, and cannot be extended by construction to the prejudice of those upon whom the penalty is inflicted. In applying this principle of law to the proceedings of Courts of Criminal Jurisdiction, it is held that the Judgment of the Court must be according to the known law of the land, and that the execution must strictly pursue the sentence, servato juris ordine. Thus, for example, if the law award imprisonment only, as the penalty of a particular offence, it would not be lawful for any Court to adjudge the offender to be imprisoned and kept to hard labor; and, a fortiori, it would not be lawful for the Sheriff or Gaoler to impose such additional punishment. In this view of the law, the several Statutes, lately passed for consolidating and amending the criminal laws of England, have expressly conveyed a discretionary power to the court of awarding hard labor in addition to imprisonment; and in conformity with the same view, the Act for regulating the several prisons in England, after reciting that persons convicted of offences were frequently sentenced to imprisonment without hard labor, goes on to enact that it shall be lawful for two or more visiting Justices of any prison to order that all prisoners confined, in pursuance of any sentence or conviction, except such as shall maintain themselves, shall perform some work or labor not severe; and in like manner, the transportation Act expressly provides that it shall be lawful to keep to hard labor any prisoner under sentence or order of transportation and confined in any Gaol in England, if one or more of the visiting Justices shall give a written Order to such effect; and for one of His Majesty's principal Secretaries of State to order such offender to be removed from the Gaol to the house of correction, and there kept to hard labor. From these several express provisions of the law it is clearly implied that, without the sanction of the legislature, it would not have been lawful to superadd hard labor to imprisonment; and that no further penalty or coercion can be legally enforced than such as is expressed in the judgment of the Court, or implied as a necessary consequence of the law.

The cases I have put, as illustrative of the principal that penal laws are to be construed strictly, are deduced from the known law.

* Marginal note.—Plowden, 17.
† Marginal note.—Stampp, 13: 3 Inst. 59: 1 Hale, 501.
‡ Marginal note.—7 and 8 Geo. 4, c. 23, s. 8, 9; 9 Geo. 4, c. 31, s. 3: 1 Wm. 4, c. 66, s. 26.
§ Marginal note.—4 Geo. 4, c. 64, s. 33.
|| Marginal note.—5 Geo., c. 84, s. 18.
of imprisonment. The same reasoning, which applies to imprison-
ment, will apply with equal force to transportation, which, in most
instances, is left by the Statutes which inflict it, in the discretion
of the Judge, as an alternative with imprisonment. As a punish-
ment in itself, it is unknown to the Common law of England; it
derives its whole force from Parliament, and the manner of carrying
it into effect, as well as the legal consequences attending it, depend
upon the specific provision of the legislature; these provisions,
however, form a part of the penal law, and are liable to the same
strictness of construction, as other penal Statutes of the realm.
Were transportation only awarded by law as the measure of punish-
ment, the mere fact of being conveyed beyond the seas, and there
left, would satisfy the judgment of the Court; and the transported
offender would not, it is conceived, be subject to any further punish-
ment or restraint, so long as he continued in exile. The first Act
of Parliament, which authorized the Courts to transport offenders
to the Colonies, took care to provide* that the offender should be
kept to hard labor during the whole of the time of his transportation.
If the Act had not contained such a provision, it would not
have been lawful to do anything more than convey the convict to
the plantations.

By the present arrangement of the Criminal laws, transportation
simply is, in the first instance, awarded by the Court, which tries
the offender, as the punishment of his crime. The manner of carry-
ing the sentence of the Court into effect, and the state of the con-
vict consequent thereupon, form the subject of a separate series of
legislative enactments. The present transportation Act† is very
carefully drawn, and seems to have been intended to embody every
thing in its clauses, which it might be expedient to perform, in
order to its complete effect. It points out two general and distinct
modes of dealing with transported offenders—first, by assigning
them to servitude; and secondly, by keeping them to labor‡ at
land, or on board of some vessel to be provided by His Majesty,
within the limits of some port or harbour of His dominions,
appointed for such purpose. With respect to the second mode of
disposing of transported Offenders.§ it will not be necessary to offer
any remark, as it does not fall within the present enquiry. I shall
confine myself, therefore, to the power of the Governor under the
first mentioned general provision of the transportation Act.

The 8th sec. of the Statute|| enacts that, so soon as any offender
shall have been conveyed beyond the seas and delivered to the
Governor of the Colony, the property in the service of such offender
shall be vested in the Governor for the time being, and that it
shall be lawful for the Governor, if he shall think fit, to assign
any such offender to any other person, and for such person to
assign him over to any other person, and so on, as often as may be
thought fit; and the property in the service of such offender shall
continue in the Governor, or in such other person, or their respective
assignees, during the remainder of the offender’s term of trans-
portation. The whole power of the Governor over the Convict is
derived from the right of property conveyed to him by this clause

* Marginal note.—22 Ch. 2, c. 5.
† Marginal note.—5 Geo. 4, c. 84.
‡ Marginal note.—s. 8.
§ Marginal note.—s. 13.
|| Marginal note.—5 Geo. 4, c. 84, and see the preamble to the 4 Geo. 1, c. 11,
for the origin of this clause.
of the Act; and as this right is made assignable by the terms of
the same law which creates it, and without any limitation, it
follows that the right of property itself, as well as all other rights
resulting from it, become vested in the assignee of the Convict in
as full a manner as it was previously possessed by the Governor.
If this right of property be construed by the rules of the common
law, and I know of no other legal guide for the interpretation of
a Statute, it establishes a relation between the Governor, or his
assignee, and the convict, analogous to that of master and servant;
and with the right of property, as being incident to it, are conveyed
also all such legal remedies as become necessary to enforce such
right, as for example, the power of suing in contract or tort in
Courts of law, and of exercising domestic discipline in case of
misconduct, such as is permitted by the common law. In virtue of
this right of property, the convict is bound to perform such work
and labor as may be required of him by his Master; not however
as a punishment by the Master for his original offence; the Master
cannot be considered in the light of an executioner of the law; if
he were to be so considered, he would be bound to enforce labor by
his convict servant as a duty, and become liable to penal conse­
quences himself in case he should neglect it. If the master then,
as Master, should work his servant in fetters, or superadd any
thing, as punishment, to servitude, I apprehend it would be un­
lawful, because such additional punishment is not a part of the
sentence of transportation, and is not a necessary consequence of
it. Applying the same argument to the right of property vested in
the Governor, and the consequent power which he may exercise
over unassigned convicts, I do not see how the fact of remaining
in the service of the public can make any difference in the legal
condition of the convict. And by parity of reasoning, if the Gov­
ernor should order a convict, in whose services he has only a pro­
erty, to be worked in irons as an additional punishment for his
original offence, or removed to a penal settlement for a similar
purpose, I apprehend it would not be lawful. Such a mode of
treating the convict is not expressly conveyed to the Governor by
the Act under which he derives his power; it forms no part of the
sentence of the convict; and it is neither an express nor implied
consequence of the law. Moreover, in ordering such additional
punishment, the Governor has no means legally of informing him­
self either of the degree of the offence or the previous conduct of
the offender; he must therefore rely upon reports, gratuitously
given, by persons not responsible for their accuracy, and be exposed
to all the consequences of error; and not only is such additional
punishment unsanctioned by any law, but it is opposed to the first
principle of criminal justice, as laid down by Lord Coke and
Lord Hale. Having had occasion to allude to the use of fetters, I
would state in explanation that I object to them as an instrument
of punishment only, not as a means of security. This distinction
may seem perhaps not very clear, but it is made by our law.* A
Sheriff or Gaoler is bound to keep his prisoners in safe custody,
but not to place them in irons unless there be danger of their escape.
In the exercise of this discretion, the Sheriff must be prepared to
justify the use of fetters by the necessity of the case, and he would

* Marginal note.—Brecton L. 3-105; Mirror c. 5. s. 1-54; 3 Ins. 34; Bl. Com.,
4,300.
certainly become penally responsible for any abuse of his power. Hence it is that fetters are prohibited* within the walls of a prison, "except in case of urgent and absolute necessity." When however convicts are put to hard labor in places which do not afford an equal security against escape, it may be necessary, and consequently lawful, to use fetters. This necessity however does not exist in the case of convict servants employed by the Inhabitants of the Colony in their houses or farms, or by the Government in the usual course of their occupation in the public service. In such cases therefore, the rule of necessity fails, and with it also the legal justification of fetters as a security against escape. As matter of history, I do not find that fetters have been used in the Colony; of course I do not include cases of second conviction for offences committed within the Colony, the punishment of which, by the express provisions of the local Legislature, is hard labor in irons upon the roads or other public works of the Colony, under particular regulations and discipline.

In concluding these observations upon what I apprehend to be the legal condition of convicts in this Colony under ordinary circumstances of transportation and servitude, I trust it will not be necessary to add that my only object has been to present, in a clearer point of view, the actual state of the law, and the power which your Excellency possesses under the transportation Act, in order, if the law be considered defective, or capable of improvement, that recourse may be had to the Imperial Parliament.

* I have, &c,
FRANCIS FORBES,
Chief Justice, Supreme Court.

MINUTE No. 104.
Government House, 12th August, 1829.

Instructions for promulgation of regulations re penal settlements.

Let a copy of the accompanying Regulations which have been established for the Conduct of the Penal Settlement be communicated to the Commandants of Norfolk Island and Moreton Bay respectively, desire they will act on them as far as circumstances permit, and inform them that arrangements will be made with the least possible delay to enable them to carry them fully into effect. Request they will report by the earliest opportunity what Stores and Supplies they may respectively require to enable them to comply with the Regulations.

Let an Extract of such of the Paragraphs of Section 2, as relate to the Commissariat and Department of Public Works, be communicated to the Deputy Commissary General and Director of Works, in order that they may make such arrangements and convey such Instructions as are necessary to the persons charged with the Superintendence of their respective Departments at the Settlements pointed out.

RA. DARLING.

*[A copy of the regulations will be found on page 105 et seq., volume XV.]*

* Marginal note.—See prison Act, sec. 10, rule 12.*
INDULGENCES.

Regulations of 1st December, 1831.

For your information and guidance, I am directed by His Excellency the Acting Governor to transmit the accompanying Memorandum, explanatory of such part of the 35th and following paragraphs of the General Regulations of the 12th August, 1829, as relate to the Indulgences to be allowed to Convicts, Serving under the various periods of Colonial Sentence.

MEMORANDUM.—1ST DECEMBER, 1831.

The following Rules are to be observed in extending the Indulgences allowed by the General Regulations to Convicts Serving at Penal Settlements, under Colonial Sentence, viz.:—

1. Capital Respites.

Not to be allowed any indulgence whatever, until after Ten Years' actual Service at a penal Settlement, and until a commutation of sentence has been Sanctioned, as specified in next paragraph.

After ten Years of uninterrupted good behaviour, to be eligible (upon the Special recommendation of the Commandant, to be approved by the Governor) for a commutation of Sentence to 7 or 14 Years, commencing on the date of such commutation.

To come thenceforward in every respect under the Rules laid down below for Men under Sentences of 14 and 7 years respectively.


To be eligible for commutation of sentence as above after Six Years' actual good behaviour, and then to come under the General Rules for such commuted Sentence, but not to be allowed any Indulgence until the commutation has been sanctioned.

3. Fourteen Years' Men.

To be eligible for the First Class after four Years' actual Service at a Penal Settlement. After eight years' Service in the First Class, to be eligible for the remission of the remainder of Colonial Sentence as a reward for special good behaviour.

4. Seven Years' Men.

To be eligible for the First Class, after two Years' Service and for remission of Colonial Sentence after four Years' special good behaviour in the First Class.

5. Under 7 Years.

To be eligible for the first Class after one Year's actual good behaviour at a Penal Settlement.

Constables and Overseers.

To be Selected from the first Class only.

Two Years as Constable or overseer of a Gang, to be reckoned in all cases as three Years of other Service.

In the event of misbehaviour, claims to Indulgence of any kind previously earned, to be wholly forfeited.
Indulgences to the Port Macquarie Men removed to Norfolk Island in July, 1830.

His Excellency the Acting Governor is pleased to extend the benefit of the indulgences, allowed by the General Regulations, to every Man who has not since forfeited them by ill conduct, in the same Manner, as if these regulations had been in force at Port Macquarie at the time of his removal from that Settlement, that is to say.

The Sentences of those Men, who were not guilty of running away or any other serious offence at Port Macquarie, will be commuted to Seven Years, and of those who were so guilty to Fourteen Years, commencing in the case of Capital respites at the end of Ten Years, and of other Men for Life, at the end of Six Years, from the dates of their Colonial Sentences respectively.

Ration Regulations.

No. 1. Ration allowed to Overseers, Boat men, Servants, and Constables at Norfolk Island, "Viz."

Wheat Bread, 1½ pound or Flour, 1 pound; Maize Meal, 8 ounces; Beef, 1 pound; Salt, ½ an ounce; Sugar, 1 ounce; Soap, ½ ounce; 12 oz. of the Bread to be issued for Dinner and 8 oz. in the evening, with Soup, or a portion of the Beef reserved from the allowance for Dinner.

Ration Regulations.

No. 4. Daily ration to Women at Penal Settlements, whether Prisoners or Free Women the Wives of Prisoners:

Wheat bread, 12 ounces; Maize Meal, 12 ounces; Beef, 4 ounces; Vegetables, 8 ounces; Salt, ½ ounce; Soap, ½ ounce. The Maize Meal to be divided between Breakfast and Supper.

No. 5. Daily Ration to each Male Convict at Penal Settlements:

Maize Meal, 1½ lb.; Beef, 1 lb; Salt, ½ ounce; Sugar, 1 ounce; Soap, ½ ounce; Six ounces of Wheat Meal may be issued in lieu of eight ounces of Maize Meal when raised at the Settlement beyond what is required for the Civil and Military Establishment.

No. 7. Daily Rations to Children of Female Convicts; and to other Children when Authorised to be Victualled:

Under 2 Years of age.—Wheat Bread, 6 ounces; Milk, ½ pint.

2 Years and Upwards.—Wheat Bread, 8 ounces; Maize Meal, 4 ounces; Beef, 4 ounces; Milk, 1 pint.

[Enclosure C.]

[These were the printed regulations for ironed gangs, dated 10th September, 1832.]

[Enclosure D.]

Instructions for the Superintendents of Iron Gang Stockades

1. The Superintendent has the legal custody of the Convicts committed to his charge, and with regard to their food, Clothing and hours of labor will Strictly observe the Regulations, promulgated in these respects by the Governor with the advice of the Executive Council.
2. The Superintendent is further responsible to the Governor for the Safe Keeping of the Convicts. Upon any Escape being reported, the conduct of the Superintendent will undergo the strictest scrutiny, and, if there should be the smallest indication of negligence, inattention, or other misconduct on the part of the Superintendent, by which such Escape was favored, he will be immediately dismissed from his employment.

3. Escapes being most commonly effected by Convicts first getting off their Irons, the Superintendent is personally to inspect and carefully examine the Irons on each Prisoner before quitting the Stockade in the Morning, and on their return in the afternoon. He is either in person or by his Assistant, in his presence, to search the persons of the Prisoners, and to take from them any Instrument which might be used in getting off the Irons. He is also carefully to examine the strength and form of all Irons either in use or sent to him to be used; and he will reject all he shall find insufficient, reporting all such insufficient Irons, and the cause of their insufficiency in his weekly Return.

4. A Constable is placed with each Gang, whom the Superintendent will employ as his assistant in the duties with which he is charged. One Constable will also be allowed as the Superintendent's immediate assistant in the internal duties of the Stockades, who will likewise act as Clerk to the Superintendent.

5. If a Convict has made an attempt to escape, or the Superintendent perceives any disposition in a convict to attempt an Escape, he will provide for his safe keeping by additional Irons at night, or when at work, in such a way as may seem necessary.

6. The Superintendent is to inspect the Huts and Stockade once each day at least; and, if he finds any damage done to either which renders the confinement less secure, he will forthwith repair it, or, if this cannot be immediately done, he will request (by requisition in writing to the officer of the Guard) that an additional Sentry may be placed at the insecure place until the repair is completed.

7. The Superintendent will frequently muster the Convicts on Sundays and during wet weather when they cannot work. He will also occasionally and at uncertain times muster them at Night, and will make a note of the same in his Journal.

8. The Convicts will rise every morning during the Summer Months at five o'clock, and during the Winter Months at daybreak, when they will be regularly mustered by Name. They will breakfast before proceeding to work. The Superintendent will take care that the Convicts keep themselves as clean as circumstances will permit, and that their hair is at all times closely cut, as the shortness of their hair will not only contribute to cleanliness but to the discovery and apprehension of Runaways.

9. Upon the Convicts quitting the Stockade to proceed to Labor, the Superintendent will count them over to the respective Constables of Gangs, or, in the unavoidable absence of one or more of them, to the Non Commissioned Officer of the Military escort, who will give receipts for the Number delivered over respectively. On their return, the Superintendent will again count and muster them by Name, and if all forthcoming he will cancel the receipt; but, if any one or more be absent, he will immediately report the circumstance to the officer Commanding the Guard; to the Assistant

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Surveyor on his next visit; and to the Principal Superintendent of Convicts by the earliest opportunity. He will also enter on his Journal such a full record of the Escape as shall enable him to give Evidence of the fact at any time however distant at which the Convict may be retaken.

10. The Superintendent will take care that the Constables of the respective Gangs remain with their Men at labor, and by vigilance and activity aid the Military in preventing Escapes. The Superintendent will also instruct the Constables to report to him any negligence they may perceive on the part of the Military, which report the Superintendent will immediately convey to the officer Commanding the Guard. He will also enter it on his Journal, and state it in his next weekly Report.

11. The Superintendent will occasionally visit the Gangs while at Work that he may be enabled to judge of the zeal and attention of the Constables and general behaviour of the Convicts, which visits are to be entered on his Journal; but neither the Superintendent or Constables are to interfere in any manner with the direction of the work, which is confided to the assistant Surveyors and their overseers alone.

12. The Superintendent will never allow the Convicts to be outside the Stockade except when at labor under the charge of the Constables and Guards. They are to be locked into their huts at Night, and upon no occasion whatever are they to leave the Stockade without a proper Escort. A Tub of Water and a drinking vessel, together with one or more Tubs for Urine, is however to be placed in each Hut previous to the Evening Muster.

13. When any Convict is in the Hospital Hut, the Superintendent will apply to the officer Commanding the Guard to place a Sentry at the door, should it appear necessary for the Security of the prisoner; and the Superintendent will take care that the Medical Practitioner appointed to the Gang (being a prisoner of the Crown) is in constant attendance in the Hospital Hut; and, if he find him negligent or disorderly, will not fail to set forth every instance of such misconduct in his Weekly Report, and bringing him before the Magistrate if necessary.

14. Whenever Convicts are ordered to a Colonial Hospital or before a Bench of Magistrates, the Superintendent will send a Constable in charge of them, if not more than three in number. When they exceed that Number he will apply to the officer of the Guard for an adequate Escort, and will in all cases attach the handcuffs of the Prisoners to a Marching chain before they quit the Stockade, and, for the safety of the hand cuffs and chain, the Constable or non-commissioned officer in charge will be held responsible.

15. The Superintendent will receive into his charge such Convicts as shall be forwarded to him by the Sheriff, or by the Warrant of any two or more Justices of the Peace, as directed by the 3rd of Wm. the 4, No. 3. He will, immediately on receiving them, enter their Names and descriptions in the Registers with which he will be furnished, taking care that the Columns of each Book are kept regularly filled as required.

16. No Gambling or Traficking in Provisions or clothing is to be permitted on any account; and the Superintendent will check and discomtenance by every means in his power all indecencies of Manner and Language among the Convicts under his charge. He
will also take care that no Spirits or other Liquor or any other Provisions than those provided by Government are allowed to pass within the bounds of his Stockade or building attached. Canteens of the Military excepted, with which he has nothing whatever to do.

17. One Wardsman to every Seventy Men in the Stockade will be allowed, whose duty it will be to keep the Huts of the different Gangs and the utensils and bedding used therein as Clean as possible, to supply them with Water for drinking, and have the charge of and be accountable for the safety of the same. The Wardsmen generally will also provide Wood and Water for the Cooking and Washing of all the Convicts in the Stockade, and be also aiding and assisting at all times in the custody and Management of the Prisoners under the direction of the Superintendent.

18. One Cook and one Mess Man will be allowed to each Stockade, who will be assisted by a delegate chosen in rotation daily from among the Prisoners in Irons. No Convict however serving in that office two consecutive days. The duty of delegate will be to see that no pilfering or misappropriation of the Provisions take place from the time they are issued from the Stores to their final distribution among the convicts. The delegates' duty for the day ending with the dinner hour, he will proceed to work with his Gang upon the conclusion of that meal.

19. One Scourger will be allowed to each Stockade, whose duty it will be to inflict all Corporal Punishments legally authorised and directed by Competent authority. He will also perform the duties of Constable or Wardsman during the unavoidable absence of any Constable or Wardsman, and be at all times aiding and assisting in the safe Custody and Control of Convicts under the orders of the Superintendent.

20. Cooks, Wardsmen and Scourgers will not be appointed from the Men under Sentence to work in Irons. They will be supplied from other Sources. The Scourger, who will occasionally act as Constable, will be allowed a gratuity of eight pence per diem, in addition to the usual Rations; and each Cook, Messman and Wardsman, will for every Nine Months served in their respective Stations in the Stockade, be allowed to reckon Twelve Months in their probationary Term for a Ticket of Leave, and receive two Shirts and two pairs of Shoes per Annum in addition to the ordinary allowance of Clothing. Any misconduct on their part will however be visited by immediate punishment and a forfeiture of all previous Claims upon legal proof before and under the award of any Justice of the Peace or Assistant Surveyor of Roads as appointed by Law.

21. The Superintendent's hut will, when practicable, be placed outside the Stockade immediately in front of the Gate and looking towards it; a small Store will form part of this Building. The Constables' hut should look at the opposite face of the Stockade.

22. All Bedding, Cooking Utensils, and every article which may be denominated Barrack Furniture, will be in charge and custody of the Superintendent, who will be held responsible that every reasonable and practicable precaution is taken to ensure their care and Safety. The Superintendent will also be supplied with a Large Steel Yard, and a set of Weights and Scales of moderate size to enable him to receive and issue the Rations correctly; proof Sieves
will also be furnished to each Stockade for the purpose of determining the Quality of the Meal Supplied by the Contractors, and the Superintendent will take especial care that no Flour is received which will not pass freely through it.

23. The Superintendent is empowered and enjoined to reject all inferior and unsound Provisions Supplied by any Contractor; and, when any dispute arises respecting the Quality of the Provisions, he will call upon the officer commanding the Guard and the Assistant Surveyor if present for their opinion, and will note the Transaction in his Journal. In like manner, should the Convicts object to any Provisions received and issued by the Superintendent, that officer will refer the Question to the Assistant Surveyor, and the officer of the Guard, who will please to Note their opinion in his Journal, a copy of which will be transmitted in his Weekly Report.

24. The Maize Meal for the breakfast of the Convicts will always be issued over night, that the Cooks may have time to prepare it; it will take five hours to do this properly. The other Provisions may be issued every Morning immediately after Breakfast. Always however in the presence of one of the Constables, the Cook and Delegate.

25. No Pigs, Poultry or Stock of any description are to be kept by the Superintendent, Constables or overseers at or near the Station.

26. The afternoon from three o'clock each Saturday is to be appropriated by the Convicts to washing their shirts and cleaning their persons, to which purpose the Superintendent will see that Soap allowed by Government is Strictly appropriated.

27. One knife and Fork, one Spoon, one panakin and one Mess Kid will be allowed to every Six Men: and it will be the duty of the Superintendent to see that each article is handed over to him (particularly the knives and Forks) each day after dinner before the Convicts quit the Stockade.

28. The Superintendent will muster every Convict under his charge each Sunday soon after Breakfast, and, after carefully examining their persons, will read prayers as directed by the Regulations for Ironed Gangs promulgated by His Excellency the Governor in Council. He will take care that due decorum is observed by the Prisoners during this proceeding. He will also take care that such of the Convicts, as choose to employ their time in reading on the Sundays, be not interrupted or annoyed in any way by their fellow prisoners.

29. The Superintendent will keep a Journal of his Proceedings, in which he will enter the visits made by him to the Gang while working on the Roads; the behaviour and conduct of the several Constables, overseers and Guards; the Musters on wet days and on Sundays; the duties on which the Constables may have been away from the Gangs; the Visits of all Magistrates, Assistant Surveyors and other authorised persons to the Stockade, with every other particular occurrence. This Journal is to be presented by the Superintendent to every Justice of the Peace who may come to the Station, and to the Assistant Surveyor at every visit, who are requested to Sign the Book in proof of its having been presented to them, and to insert such observations therein as they shall think proper.
30. The Superintendent will furnish the Returns, and keep the Registers, Diary, etc., set forth in the Annexed Schedule, and any other Returns or Reports called for by the Government, or other authorised person or persons. He will also produce these Instructions to any Justice of the Peace, or other authorised person if at any time called for.

31. Any neglect of these Instructions will subject the Superintendent to immediate dismissal.

Schedule referred to in Section 30.
1. Register of all Convicts working in Irons at Stockade.
2. Personal Description Book of Do.
3. Record of Summary Trials and punishments of Do.
4. Muster Roll.
5. Weekly Return for Principal Superintendent of Convicts.
6. Return of Summary Trials and punishments, weekly for Do.
7. Return of Convicts absconded and apprehended.

Approved:—RICHARD BOURKE.

[Enclosure E] Petition from Hunter river district.

[Enclosure F] Petition from Newcastle and Port Stephen.

[Enclosure G] Circular to police magistrates and replies thereto on corporal punishments.

[Enclosure H] Circular to magistrates, 16th October, 1833.


Copies of the two petitions were printed in the votes and proceedings of the legislative council for 22nd August, 1833; copies of enclosures G and H will be found in a volume in series 11.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(Despatch No. 2, per ship Royal Admiral; acknowledged by right hon. T. Spring Rice, 11th July, 1834.)

Sir,

Government House, 20th January, 1834.

Several women with families having come out lately, either at the same time or soon after the arrival of their husbands under sentence of transportation, asserting that they have been informed by Mr. Capper of the Home Office that, on their arrival, their husbands will be assigned to them, and will thus be enabled to support them, I think it right to inform you that, since the passing of the Act 2 and 3 Wm. IV, C. 62, I have considered myself restricted from making such assignments (which are virtually releases from servitude) by the terms of that Act, and much distress has consequently been felt by the women and their families, who have come out with a hope of being united to their husbands.

I have, &c.,

RICH. BOURKE.
GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(Despatch No. 3, per ship Royal Admiral.)


I have the honor to acknowledge the receipt of your Circular Letter of 30th August last, together with the accompanying Copy of a Volume of Tables compiled under direction of the Board of Trade. I ought however to notice that the Copy of a Letter from the Secretary to the Board, which is also therein referred to and stated to be enclosed, and to which the concluding paragraph of your Circular Letter appears to allude was not received therewith.

I have only to add that every exertion will be used here to have the Blue Book forwarded in proper time.

I have, &c.,
RICHD. BOURKE.

GOVERNOR BOURKE TO HON. J. STEWART.

(Despatch No. 4, per ship Royal Admiral.)


Referring to my letter of 21st November last, No. 12, in which I have represented, for the information of the Lords Commissioners of His Majesty’s Treasury, the low state of the Military Chest in this command and the falling off in the demand for Treasury Bills which renders it impossible to recruit the Chest in the usual way, I have now the honor to inform you that, to provide for its immediate wants, I have authorized the issue in British Silver from the Colonial Treasury of the sum of Twelve thousand one hundred and seventy four pounds four shillings, receiving in exchange Sixty thousand eight hundred and seventy one Spanish Dollars, which remain in the Military Chest subject to the order of this Government. These have been taken at the rate of four shillings each, being that at which the few dollars now in circulation at this place pass current. Should however any of these Dollars be applied for by the Merchants, as is sometimes the case for the purpose of carrying on their Trade with China, it is not my intention to dispose of them under the price of four shillings and four pence as fixed by the Instructions of the Lords of the Treasury. A Sale of Dollars to a Merchant in Sydney took place a short time ago when they were issued to him by the Deputy Commissary General at that rate under my authority.

The sum which has been furnished by the foregoing means to the Military Chest does not much exceed one month’s demand.
I therefore expect to be obliged to make some further Loans to
the Chest, before I can receive the directions of their Lordships
in reply to my Letter before referred to. The large quantities of
Wool which are now shipping, by rendering the Merchants in a
great degree independent of the Commissariat for Bills on Eng­
land, have still further encreased the difficulties which have been
represented. Their Lordships have been made aware by my last
communication that there is now no claim of the Military Chest
on the Colonial Treasury remaining unsatisfied, and that any
Monies to be in future advanced by the latter to the former can
only be in the way of Loan; and I need hardly add that the whole
surplus in the Colonial Treasury, including the Income of Crown
Lands which is set apart for the purpose of encouraging emigra­
tion to the Colony, will barely supply the demands of the Military
chest for four Months.

I have, &c.,

RICH. BOURKE.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(Despatch No. 4, per ship Royal Admiral; acknowledged by
right hon. T. Spring Rice, 1st August, 1834.)

Sir,

Government House, 21 Janry., 1834.

In obedience to the instructions contained in your Des­
patch of 26th July, 1833, No. 29, wherein you express a wish to
receive a similar account of the females sent to this Colony by
the Bussorah Merchant and the Layton to that which was before
communicated respecting those that arrived by the Red Rover,
I have already had the honor to communicate the information
desired with respect to the females, who arrived by the Bussorah
Merchant, by my Despatch of the 6th December last, No. 101.

I have now further to acquaint you that the Layton arrived in
Port Jackson on the 17th Decr. last with 232 Female Emigrants
under the charge of Mr. Wade as master, Mr. Beilby as Super­
intendent, and Mr. Rule as Surgeon. I much lament that I am
unable to afford you such a favorable account of the general
character of these females, as you appear to have expected from
the means which had been resorted to by H.M.'s Government
to secure due care in their selection, and from the zeal of the
Committee of Gentlemen, who had undertaken the task. About
fifty of the Emigrants fully answer to the description which it
was hoped that the whole would have merited, but the remainder
appear to be of very indifferent character. So much so indeed
that it has been found impossible to form a Ladies' Committee
to superintend their disposal. The Colonial Treasurer and Col­
lector of Internal Revenue (the latter acting as Secretary to the
Emigrants' friend Society) have taken this trouble upon themselves, and the women are all distributed in various ways throughout the Community, though it is to be feared that not many of them are likely to add to it much of that decency and respectability which is here so much needed. As evidence of the character of the women, it appears from the statements of Mr. Beilby, the Superintendent, and the Surgeon, Mr. Rule, that an almost unlimited intercourse existed between the seamen and a great number of the female passengers during the voyage. The Superintendent and Surgeon mutually accuse each other of inattention and improper conduct, the former also accusing the master of neglecting to support him with his authority. The master states on the other hand that he performed duties, which properly devolved upon the Superintendent. It seems to be admitted by all parties that the greatest disorder and confusion prevailed during the whole passage, and the better part of the females bitterly complain of having been shut up with such associates as the majority of their fellow passengers were found to be. With whom the fault chiefly rests, I cannot undertake to say without fuller investigation. I believe, however, that I have no authority to withhold the passage money as the females are safely landed, whatever circumstances might be disclosed; and I do not see what end could be answered by a formal investigation, if indeed I have any authority to adopt such a course. Nothing appears to have occurred which demands the interference of a court of Law; and I am not aware that I am competent to take notice of anything which occurred on board, otherwise than by directing a prosecution. I merely enter on the subject at present, as it bears upon the character of the Emigrant Females, in order to shew His M.'s Government that still further precautions are necessary to secure a proper selection of the parties, to whom a bounty is to be paid. I found it necessary in order to allay the unpleasant feeling, which existed regarding these females, to request the Secretary of the Emigrant Friend's Society to publish in one of the Colonial Newspapers the advertisement* of the Emigration Committee in London shewing the desire which had existed on the part of the Committee to obtain proper evidence of the character of the females admitted to receive this bounty, and to allow him to state as from authority that H.M.'s Government had expressed themselves determined to adopt effectual measures for securing this end in future. In one passage of that letter, which vindicates the character of the females from the aspersions cast upon them, I must state that, in authorising its insertion, I was not at the time aware of the extent to which those aspersions were well founded. It may be difficult to say

* Note 90.
BOURKE TO STANLEY.

exactly with whom the fault rests, as it is impossible that the highly respectable and benevolent persons, who formed the Emigration Committee, could have acted with any but the best intentions. The evil is, however, I cannot but think to be attributed to the Employment of a Mercantile Broker as the medium between the applicants and the Committee. It becomes the interest of such a person to fill up the list as speedily as possible. It is not his object to scrutinize the claim of the applicant, but merely to obtain such documents as may satisfy the Committee. The Committee must no doubt have been often deceived by written testimonials improperly given or obtained, in which the Broker might have had ample means of discovering that the party was not the description of person, of which H.M.'s Government were in search. I would suggest that, in future, some competent person, who is altogether unconnected with shipping, be selected for this duty, and that he be remunerated in such a manner as to prevent his personal interest from being identified with the ease and rapidity with which the lists can be filled up. It may be desirable, if the present system continues, that some officer should be appointed at a fixed Salary to scrutinize applications for advance or bounty on behalf of the Colony; and I would suggest in that case whether it would not be desirable that the person to fill the office should be appointed by the Government of this Colony, who might have reference in making it to the wishes of the Colonists in general. A satisfactory arrangement on this head would I think put an end to some of the feeling, which subsists in the Colony against the present land regulations, since those, who oppose the principle of the Sale of Land and the application of its proceeds to Emigration, who are not numerous, are at present joined by those, who, approving of the system, object only to the manner in which the funds are at present distributed.

I have, &c,

Richd. Bourke.

[Enclosure.]

MR. W. MACPHERSON TO THE EDITOR OF THE SYDNEY GAZETTE.

Sir,

Observing in your paper of yesterday an Extract from the Hobart Town Courier, dated 20 November, that the "Ship Layton" was loading with free females off the Streets of London for the Colonies, and that the Agent to the Emigration Committee in London, or a person so calling himself, ensured these poor Creatures a passage, provided they could bring him five pounds each, insinuating that he receives that sum as a bribe to deceive the Government as to their Character; while the next Sentence proceeds to allude to their "Nightly perambulations in the Streets" to give an impression that they were knowingly and systematically Selected from Women of abandoned character.

* Note 91.
As Secretary to the Emigrants' Friend Society, I consider it as in some degree incumbent on me to make an endeavour to remove the uncharitable aspersion on the Young Emigrant females just arrived, which this paragraph is calculated to convey.

I annex a copy of the original advertisement of the Emigration Committee, from which it appears that the five pounds alluded to was merely the balance of the passage money of £17, £12 being the sum contributed by the Government; and that such conditions were imposed by the Committee on candidates for their recommendation for the bounty as were calculated to ensure their unblemished character. Certificates to that effect being required from the Minister of the parish or other respectable persons to whom they might be known. I may also add that the Committee were acting under the express sanction of the Secretary of State for the Colonies; independently of which the names of the gentlemen who form it are a sufficient guarantee that with their knowledge and consent, none but proper persons would be chosen.

There is indeed no doubt that, notwithstanding the precautions adopted, women of improper character have obtained passages, and have arrived both in this and the neighboring colony; but I am authorized to state that the home Government has been made acquainted with this fact, and has expressed an intention of adopting more severe scrutiny into the character of the young women who are to be sent out in the ensuing year; until nearly the end of which none are likely to arrive in any numbers under the arrangements of Government.

Trusting to your liberality and candour for the insertion of the above, and of a copy of the enclosed advertisement in your next gazette, I have, &c.

William MacPherson,
Sect. to the Emigrants' Friend Society.

Governor Bourke to Right Hon. E. G. Stanley.
(Despatch No. 5, per ship Royal Admiral; acknowledged by earl of Aberdeen, 20th December, 1834.)

Sir,

Referring to my despatch of 2nd Decr., 1833, No. 94, with its enclosure, I have the honor to transmit you herewith the copy of another letter to the lords commrs. of the Treasury, reporting that, in consequence of the continued difficulty of disposing of Treasury Bills on the usual terms, I have found it necessary to pay into the military chest from the colonial Treasury the sum of £12,174 4s. receiving in return 60,871 Spanish dollars. I have, &c.,

Richd. Bourke.

[Enclosure.]
GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(Despatch No. 7, per ship Royal Admiral; acknowledged by right hon. T. Spring Rice, 15th November, 1834.)

Sir,

Government House, 24th January, 1834.

I have much regret in acquainting you that I have found it necessary to suspend Mr. Wm. Henry Moore from the office of Crown Solr., and to recommend that His Majesty's pleasure be taken upon the appointment of his successor.

I have before had occasion to notice, in my Despatch of 5th December last, No. 98, the difficulty which this Government had experienced from the disposition shewn by Mr. Moore to avoid his share of the duties, which, upon a late division of the business of the Crown Lawyers, it was found absolutely necessary that he should undertake. The tone, adopted by Mr. Moore both with this Government and with the Attorney General upon this subject, was wanting in that respect, which was due to both, as may be perceived by a perusal of the letters which I have now the honor to transmit. In the last of these, namely in the letter of Mr. Moore to the Attorney General of 7 Janry., 1834, you will find the immediate cause of Mr. Moore's removal from office, namely the impossibility of expecting the Attorney General to communicate with a person who had so grossly insulted him. Notwithstanding the disposition manifested by this correspondence, I was desirous to retain Mr. Moore in his office until His Majesty's pleasure could be communicated on the subject of those changes in the law Department, which have been suggested by my Despatch of 5th December last, when an authoritative and conclusive arrangement might put an end to all misunderstandings on the division of the duties of the several law offices. The tone, assumed by Mr. Moore in his letter of 7th January instant, rendered his removal quite unavoidable for the reasons stated in the Colonial Secretary's letter to Mr. Moore of the 18th January instant.

I have no means here of satisfactorily filling up the vacancy, nor is it my intention, whilst awaiting your commands on this subject, to do more than give the Crown Lawyers the assistance of an Attorney in the manner they shall think most convenient at an expense not exceeding the Salary hitherto paid to the Crown Solicitor. I may be permitted to recall to your recollection what I have represented in previous Despatches respecting the loose and imperfect manner, in which the business of the Crown Solicitor has been hitherto conducted here. That officer has never discharged all the duties of an Attorney in Criminal Cases nor in the Civil business of the Crown. He has never for instance prepared cases for the Crown Lawyers from
documents furnished by the Colonial Secretary's or other offices, letters and papers having been placed confusedly before the Attorney and Solicitor General from whence to make out the case in the best way they could. From this and other causes, which I will not take up your time in detailing, the Crown business, both in and out of the Court, has been conducted in a very discreditable and disadvantageous manner. In appointing therefore another Crown Solicitor, it will be indispensible that he be engaged to discharge all the Attorney's duties in every matter in which the Crown is concerned. I beg very earnestly on the present occasion to recommend these observations to your attention, as well as those submitted in former Despatches as to the sufficiency of two legal persons in the employment of the Crown, one an efficient Attorney General and the other an active and Capable Crown Solicitor; the first at a Salary of £1,200, and the second of £700 a year, no allowance being made for Clerks to either.

I have, &c.,

RICH. BOURKE.

[Enclosure No. 1.]

COLONIAL SECRETARY MACLEAY TO MR. W. H. MOORE.

Sir, Colonial Secretary's Office, Sydney, 5th August, 1833.

The Attorney General having been Called upon by the Governor's directions for an opinion on the Subject of the duties to be performed by you as Crown Solicitor,

I am directed by His Excellency to apprise you of the recommendation of that Officer in the Matter, and to request that you will attend to the Instructions herein contained, and assist the Solicitor General in all things relative to the Criminal Proceedings in the Supreme Court.

As all Depositions relative to Criminal cases to be tried in the Supreme Court, when received and perused by the Attorney General, are handed over to you with such observations respecting them as are thought necessary as to any additional or further information which may be required, you are to endeavour to procure such information as Soon as Conveniently can be from the Magistrates or parties interested in each case, and, in the first week in the Month immediately preceding each Criminal Session, lay before the Attorney General a List of all Depositions then in Your Office, together with the Depositions and such further information respecting each case as you Shall procure, in order that the Attorney General may direct the nature of the informations to be prepared in each case, and the Witnesses necessary for the Prosecution, and appoint the time for the respective Trials, so that the witnesses may be Subpoened; as soon as you receive Instructions from the Attorney General on these points, you are to send a List of the different prisoners intended to be tried at the ensuing Sessions to the keeper of the Gaol in Sydney with Instructions to inform the Prisoners of their intended trial, and requiring from them a List of their Several Witnesses, in order that the Subpoenas for these Witnesses may be issued at the Same time as those for the witnesses for the prosecution, and which are if possible to be all issued.
BOURKE TO STANLEY.

before the 12th or 15th of the Month, to enable the Witnesses from the distant parts of the Colony sufficient time to arrive in Sydney to attend the Trials.

A Book is to be kept by you, in which the time of issuing each respective Subpoena is to be entered, and also the time when such Subpoena in a Country Case was sent to the Post Office to be forwarded, in order that an affidavit to such effect, if necessary, may be made in the Supreme Court in case a prisoner requires to put off his Trial on an allegation that his Witnesses had not been summoned; and for the same purpose you are, in all Town Cases, to oblige the Constable who serves the Subpoenas to give you a return in writing of the due Service of them. After the issuing of the necessary Subpoenas, you are, if possible, on the 20th of the Month, and not later than the 25th, to lay before the Attorney General Drafts of the Informations directed to be prepared, with any additional information you may in the meantime procure, to enable that officer to peruse and amend such informations, and to have them re-copied if necessary for signature before the 1st day of the Sitting of the Supreme Court, in order that all the preparatory business of the Session may be finished on that day.

With respect to any Depositions that may be received during that Month, you are to follow such Instructions relative to them as the Attorney General may direct, so as, if possible, to have the cases Tried at the ensuing Sessions.

During the Sittings of the Supreme Court, your peculiar and important duty will be to procure the attendance of the Witnesses for the Prosecution in each case; and, as it is often necessary to obtain from those witnesses some information that the Magistrates have neglected or could not procure, you are personally to obtain such information personally from the Witnesses and communicate it, if necessary, to the Attorney General, or to the Solicitor General, or to the Solicitor General in Court. You are also every evening preceding or at all events before the Sitting of the Court on each day to furnish to the Solicitor General a return *Signed by you* of such of the cases intended for that day's Trial as the Witnesses are in attendance in, that no case may be brought forward until the Witnesses for the Prosecution are ready. You are also every evening to send a list to the Sheriff of the Prisoners intended for Trial on the following day, and of such Witnesses as may be required from the Hulk, and a list to the Principal Superintendent of Convicts of such Witnesses as are reported to you to be in Hyde Park Barracks, that they may be forwarded each morning to the Supreme Court; and attend personally in Court during its sittings as attorney in the Prosecution to afford the Solicitor General any information he may require, and answer the Court any questions respecting the issuing of Subpoenas and the Attendance or non-attendance of Witnesses as the Court may require, and keep an account of the Attendance of the Witnesses for the Prosecution to enable you to sign the necessary Certificates to entitle them to their Allowance for expenses.

As the Attendance of the Solicitor General in Court in future will render the preparation of Briefs necessary, you will prepare such documents for that officer accordingly.

I have, &c.,

ALEX. MCLEAY.
[Enclosure No. 2.]

COLONIAL SECRETARY MACLEAY TO MR. W. H. MOORE.

Sir,

Colonial Secretary's Office, Sydney, 21st October, 1833,

Referring to the correspondence which has taken place on the Subject of the relative duties of the Law Officers of the Crown, I have now the honor to inform you that, under the peculiar circumstances of the case, the Governor considers the following out line of the duties of those Officers respectively to be necessary for the purpose of carrying on efficiently the public business in the Courts, and I am therefore Commanded to request that the Same may be acted upon accordingly, Viz.:

1. The Attorney General is henceforward to do all the Office business, Criminal and Civil.
2. The Solicitor General Shall conduct all proceedings, Criminal and Civil in the Court.
3. The Crown Solicitor Shall furnish Briefs when necessary and give all Such assistance to the Solicitor General in Court as is usually given by an Attorney to the Crown Lawyer, who conducts a Criminal Prosecution on Civil Suit in any Court in England. He is also to give his assistance to the Attorney General in his office, whenever required by that officer and he is not in actual attendance on the Solicitor General in Court.

I have, &c,

ALEX. MCLEAY.

[Enclosure No. 3.

[1] ATTORNEY-GENERAL KINCHELA TO COLONIAL SECRETARY MACLEAY.

Sir,

Attorney General's Office, 8th November, 1833.

Referring to your letter to me of the 21st Ultimo, No. 33/265, containing His Excellency's directions as to the duties of the Law Officers of the Crown, I have the honor to transmit to you the Copies of two Memorandums of the 1st and 7th inst. addressed by me to the Crown Solicitor, and I also transmit a letter received by me from the Crown Solicitor, enclosed in a Cover Marked "Private," but which I consider a reply to my official communication, and also from the matter contained in it I cannot treat as a Private Letter.

As my Memorandums were written in furtherance of His Excellency's directions, I request you will have the goodness to Submit them together with Mr. Moore's reply to the Governor for His Excellency's Consideration and directions, and I beg further, as the Business of the Court will Commence on Monday next, that you will obtain His Excellency's commands as soon as you conveniently can.

I have, &c,

JOHN KINCHELA.

[2] ATTORNEY-GENERAL KINCHELA TO MR. W. H. MOORE.

Mr. Moore,

Attorney General's Office, 1st November, 1833.

I herewith transmit to You the Briefs in Twenty three Cases intended for trial during the next Sessions, which I had prepared during your absence. I send You also a list of Twenty (20) other cases, in which the Briefs are not yet made out, and request you will have the goodness to have the Entire of the Briefs made out
and deliver the Entire of them with a List of the Prisoners to be Tried as early as possible before the Sessions to the Solicitor General, that he may have time to read over the Cases and be prepared for the Trials before the Sittings of the Court.

John Kincella, Attorney General.


Attorney General's Office,
Mr. Moore, Thursday, 7th November, 1833.

As I will want to-morrow to Send the List of the Prisoners together with the Briefs to the Solicitor General to enable him to attend Court as Counsel for the Crown during the Session, which will commence on Monday next, I request you will have the goodness to send me a List of the Briefs in addition to those I had prepared during your absence and left in your office the other day; I would wish to see the Briefs in "Sloanes" case for horse Stealing, to mark a reference on it to Some Law Authorities for his guidance.

John Kincella, Attorney General.


Sir,
George Street, Thursday, 7th November, 1833.

I was not aware, after the Conversation I had with you on Monday last, that you Still required me to prepare what you are pleased to call briefs of the Depositions in all the Criminal Cases for Trial. I have looked over the whole of the Depositions, and I do not see any one Case of the Slightest difficulty or out of the Most ordinary routine of the Criminal cases that generally occur in the Colony, and which you Seem to be fully aware of by your not having pointed out any one case as requiring the attendance of more than one prosecuting Officer, namely the Solicitor General.

I considered the joint opinion of all three Judges on that point would have set at rest any question as to the necessity of going through the labour of making full length copies of all the Depositions in every case that is tried, the facts of which can as easily be ascertained by a reference to the original Depositions as to the copies.

I cannot but be fully aware that the object you have in casting this most unnecessary part of the business, which you require to be performed, on me is (independent of that of making a flourish in your periodical reports to the Governor of the enormous quantity of business transacted in your Department) that of endeavouring to force me to contribute to the necessary Support of your office by keeping a Clerk at my own individual expense, which you Seem on no occasion to have lost sight of since you first proposed that I should do so; or that I should pay your son half the amount that the Government allowed you for a Clerk to enable you to keep another, although you expressed yourself satisfied, after enquiry on a late occasion, that it could not be expected of me from the Nature as well as the terms of my appointment as Crown Solicitor.

I have never yet flinched from the performance of my duties that have been required of me; it is immaterial to me what part of the Law business of the Crown I have assigned to me; I have never yet taken part in any of the divisions of the business you have pointed out or recommended. You have hitherto had that entirely your own way; but I must and do Strongly protest against my now being made a mere copying clerk of the very lowest grade, and of
preparing that part of the routine business of an Office, which, if found necessary to be done, is always placed in the hands of what are termed Hackney writers.

Should you persist in requiring this part of what I must again say is a most unnecessary duty to be performed by me, I must in justice to my own professional character, as well as feelings, appeal by a full statement of the whole circumstances to that quarter, which I have no doubt will do justice to all parties.

I am, &c.

W. H. MOORE.

[Enclosure No. 4.]

COLONIAL SECRETARY MACLEAY TO MR. W. H. MOORE.

Colonial Secretary's Office.

Sir, Sydney, 9th November, 1833.

The Attorney General having submitted to the Governor your letter to him of the 7th instant, respecting the preparation by you of Briefs of the depositions in the Criminal Cases for trial, I am directed to express His Excellency's surprise and regret that, in writing upon an official subject, you should have expressed yourself to the Attorney General in terms so offensive and uncalled for as those contained in your letter. With respect to the matter of your complaint as to the preparation of Briefs, His Excellency lately found it necessary, for the due performance of the Crown business in the Law departments of the Colony, to make such a division of the duties of the Attorney General, the Solicitor General, and the Crown Solicitor, as appeared to the two Judges then in Sydney likely to effect that object. In one part of this arrangement, you are required to furnish Briefs when necessary, and of the necessity doubtless the Attorney General or the Solicitor General, who is to use them in Court, must be presumed a more fitting judge than yourself, who is desired to prepare them. It is obvious indeed that, as the Court frequently calls for the original depositions, the Crown Lawyer conducting the case should have copies to refer to; and His Excellency therefore finds himself under the necessity of requiring you to discharge the duty which is assigned to you, and to avoid giving any interruption to the due performance of the business of the Crown by unnecessary remonstrance or delay.

I have, &c.

ALEX. MCLEAY.

[Enclosure No. 5.]

COLONIAL SECRETARY MACLEAY TO MR. W. H. MOORE.

Colonial Secretary's Office.

Sir, Sydney, 20 November, 1833.

Referring to my letter of the 9th inst. No. 33/252, respecting the preparation by you of Briefs of the Criminal cases for Trial in the Supreme Court, I am directed by the Governor to acquaint you that the Attorney General has reported that, owing to your not having furnished Briefs to the Solicitor General in the cases of Reynolds for Perjury and Finney for murder, the Trials of those Men were not entered upon; and to request your explanation in the matter, as it appears Mr. Kinchela addressed you on the subject of a Brief in the case of Finney on the 14th instant.

I have, &c.

ALEX. MCLEAY.
MR. W. H. MOORE TO COLONIAL SECRETARY MACLEAY.

George Street, Sydney.

Thursday evening, 21 November, 1833.

Sir,

I have the honor to acknowledge the receipt this afternoon of your letter of yesterday's date, requesting my explanation of the reasons why I had not furnished Briefs to the Solicitor General in the cases of Reynolds for Perjury and Finney for Murder, the Trials of which cases are stated by you not to have been entered upon, in which latter Statement there appears to have been some mistake, as the first mentioned case was tried on Monday the 18th instant as Soon as the previous trials would allow it to come on, and the last mentioned case was tried on Friday the 15th and occupied the whole of that day.

In neither of the cases mentioned, I am free to admit were the Briefs made out: and, although that omission was unavoidably occasioned by other circumstances than that of the two Courts Sitting at the Same time for Criminal Trials, that is to say the Civil Jury Court and the Criminal Jury Court, that circumstance alone would have rendered it utterly impossible for any one person to have prepared the Briefs so as to keep both those Courts Sitting at the Same time, on the very short notice that I had of that duty being required of me.

The circumstances that led to the Case of Reynolds being without a Brief at the time of the Trial were these:—That case had been originally appointed to be tried on Wednesday the 20th, and Another case of James Lynch also for perjury had been originally appointed to be tried on Friday the 22nd. Both these Prisoners had elected to be tried by a Civil Jury, and, as there was not business before the Civil Jury Court that could be supposed to be sufficient to occupy the Court the whole of Friday, I was actively employed during the whole of Thursday by endeavouring, in addition to the business of that day, to get these two cases in readiness So that they might follow the trial of Finney and by that means keep both Courts going for a day or two longer. The case of Reynolds was of so very simple a nature that I could not have imagined a Brief in Such a case would have been insisted on under the circumstances which led to its being prematurely, as I have Stated, brought on. At any rate it would have been madness on my part to have exerted myself as I did for the expedition of business, if I could have imagined it would have been perverted into a wish to create interruption or raise obstacles to it.

With respect to the case of Finney, the want of a Brief in that case arose from totally different circumstances excepting partly from the total impossibility of any one person (upon so Short a notice as I have Stated) preparing Briefs in all cases during the Sitting of both the Courts. On receipt of your letter of the 9th instant, which only came to my hands in the middle of the day of Monday the 11th, whilst I was in attendance on the Attorney General in the Supreme Court, I quitted the Court for the purpose of carrying the directions of His Excellency into effect by immediately commencing on the preparation of the Briefs; for, however

* Marginal note.—and were very anxious their trials should take place as early as possible, as so few of the prisoners had elected to be tried by a civil jury.
unjustly towards me or improperly for the due performance of the Law business I may conceive that His Excellency has been persuaded into the necessity of including on the directions he has been pleased to give, I intended implicitly to abide by them. Until some further alterations might take place, which I confidently looked forward to, and therefore refrained from answering the letter I have last alluded to, or pressing any further representation to His Excellency on the Subject. I had not been in my office from leaving the Court five minutes, when I received a message from the Attorney General to attend on him in Court again, whither I proceeded and then had a conversation with him on the Subject, in which I represented to him the utter impossibility of my doing both duties, but that I would do whichever he directed; and to which he answered, you must remain here then, I cannot do without your attendance here. I accordingly divided my attendance on the Attorney and Solicitor General alternately in both Courts during the whole of the first week that they sat, and on Thursday Morning, the day I was exerting myself to get ready the cases I have mentioned in addition to my attending both Courts, the Attorney General told me that the Solicitor General had the day before complained to him of not having had sufficient attendance on him the day before, and that I must therefore give more of my time to him and of course less to himself.

I know not what representations the Attorney General may at any time have been pleased to make to His Excellency respecting my Conduct (excepting my not having furnished the Solicitor General with Briefs in these cases) and therefore have had no further opportunity of answering them, or doing away with the unfavorable impression towards me that His Excellency appears by the tone of your Communication to have received from them, and, if so, I must say most unjustly. I do with the utmost deference to His Excellency's opinion insist upon my having at all times and on all occasions exerted myself to the utmost for the dispatch, as well as the efficient performance of all the duties connected with the Offices that I have from time to time had the honor to fill in the Colony.

My letter to the Attorney General of 7th instant was marked "private," and was not intended by me to be with any other view than that of remonstrating strongly against being employed in the very Subordinate Situation of a mere Hackney writer, at the Same time that he is employing a Prisoner of the Crown as a Clerk in a much more respectable as well as responsible branch of the profession.

I have never on any occasion shrunk from my duties that have been assigned to me; but I must say that the Attorney General is heaping upon me more manual business than any one man can perform, and is at the same time expecting of me the impossibility of my attending both Courts, for no other purpose than that of endeavouring to force me out of my reduced Salary to keep a Clerk for the performance of them.

Unless His Excellency is pleased with the assistance and advice of the Judges to make some equitable division of the duties of the Law departments of the Colony, I feel it is a duty I owe to myself to refer my case to the Home Authorities; and I trust His Excellency will in that event permit me to forward to the Secretary of state.
State through him a full Statement of the present arrangements of those duties, and of the means which each of the Law Officers have afforded them of Carrying them into operation with Copies of the correspondence that have hitherto taken place.

I have, &c.,

W. H. Moore.

[Enclosure No. 7.]

COLONIAL SECRETARY MACLEAY TO MR. W. H. MOORE.

Colonial Secretary's Office,
Sydney, 29 November, 1833.

Sir,

The Governor having had under Consideration your letter of the 21st instant, Containing, in reply to mine of the day preceding, your explanation of the reasons why you had not furnished the Solicitor General with Briefs in the cases of Reynolds for perjury and Finney for Murder,

I am directed by His Excellency to acquaint you that He is of opinion you have exonerated yourself from the Charge of intentional neglect of duty in not having furnished Briefs in the Cases alluded to, considering that omission to have been unavoidably occasioned by the circumstances Stated.

At the Same time, I have also to inform you, in reply to the Concluding part of your letter in which you request permission to refer the Statement of your duties to the Home Government, unless His Excellency will invite the Judges to make Some equitable division of the Labors of the Law Department, that, having found it absolutely necessary for the Public Service and for the Credit of the Crown Lawyers themselves to make a division of their respective duties, His Excellency directed that all those, which properly belong to an Attorney, Should be performed by the Crown Solicitor, and that He expects you to discharge them to the best of your ability, so long as you hold your present office. It is not His intention to make any further reference to the Judges on a Subject with which He has already trespassed so much on their time and patience; but he will endeavour to Save them from further annoyance and trouble, and the public from inconvenience and expense, by continuing the arrangement which He has found it necessary to make on the part of Government, in respect to the performance of the Law Business of the Crown. It is open to you to prefer to the Secretary of State any objection you may have to that arrangement; but I am directed to inform you that, in forwarding it, His Excellency will feel it incumbent on him to point out the necessity of giving to the Crown Solicitor that share of the Law business of the Crown, Criminal and Civil, which is properly discharged by an Attorney.

His Excellency further Commands me to inform you that He will not Stop to notice the deviations from propriety of Style into which you have fallen in observing upon the arrangements of this Government, and upon the representations which you Suppose have been made to Him touching your Conduct by the Attorney General, further than to remark that they are not in any way Calculated to impress Him with the conviction that you have at all times acted with that zeal for the Public Service, and with that proper respect and Submission to the Head of your Department, which are expected of you.

I have, &c.,

ALEXR. MCLEAY.
[Enclosure No. 8.]

[1] ATTORNEY-GENERAL KINCHELA TO COLONIAL SECRETARY MACLEAY.

Sir,

ATTORNEY-GENERAL KINCHELA TO COLONIAL SECRETARY MACLEAY.

I have the honor herewith to transmit to you a letter, which I received from the Crown Solicitor on the morning of the 8th instant, just before I went into Court, and which I would have transmitted to you before now, but that I was engaged in Court to a late hour on that day and yesterday; and request you will have the goodness to lay the same before His Excellency the Governor, I am Sure His Excellency will not be Surprised when I state that I have not answered this letter, no more than Mr. Moore's former letter of the 7th of November last, which I transmitted to you to be laid before the Governor, as I could not think of holding a correspondence with a person, the Style of whose Letters is unsuited to my character either as His Majesty's Attorney General of this Colony or as a private individual. As to verbal communications on official business, I have also declined that as far as possible, as Mr. Moore's memory appears to be Somewhat forgetful; and, in case that Gentleman Should forget or misapprehend a verbal communication, I would not wish that a Statement of particular official details Should depend upon the recollection of the Crown Solicitor or myself; if Mr. Moore would pay attention to your letter to him of the 5th August last, wherein his duties as Crown Solicitor are particularly defined and Specified, he would require little directions from me as to the general business of his Department, and as to the particular trials to be brought on every day during the Sittings of the Court. I have regularly given him written instructions every previous evening that he might have the prisoners brought up, the Witnesses in attendance and the briefs for the Solicitor General; those instructions, of which I did not heretofore keep Copies, I am now obliged to enter in a book, as questions may hereafter arise on the Subject of directions given to the Crown Solicitor in cases where he may not have kept my written instructions or may not recollect that such directions had been given.

As to the assistance derived from Mr. Moore during the present Sessions, either by the Solicitor General or myself, the Solicitor General or their Honors the Judges who presided will be enabled to inform His Excellency.

As it may be necessary for me at some future period to have Mr. Moore's Letters to me in my possession, I request you will have the goodness to return to me the above original letter, as also the original Letter of the 7th of November last, transmitted to you in my letter of the 8th of that Month.

I have, &c.,

JOHN KINCHELA,

[2] MR. W. H. MOORE TO ATTORNEY-GENERAL KINCHELA.

Sir,

MR. W. H. MOORE TO ATTORNEY-GENERAL KINCHELA.

I have already represented to you the utter impossibility of my preparing the totally useless Copies of the Depositions, which you are pleased to call Briefs, in the Cases now about to be brought before the Court; but, as you will not hear me and refuse to give me any Answer whatever to my Verbal communications on the
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Subject. I feel myself compelled to lay it before you in writing. Ten (10) Sets of the depositions, in cases which you this Morning pretended you understood, had been prepared and were ready for yesterday, you knew were never laid before me until Six O'clock in the Evening of Saturday. I had hoped in the course of yesterday and to day to have made some progress in the preparation of them by tomorrow or thursday; but, as I have both these days been employed at your especial Call and Commands in the fourfold Capacity of Common Errand boy about you and the two Courts, of common Constable to enquire at the door and report when the Witnesses arrive, of attending the Court as Counsel in two cases yesterday, and in part of two to day. In addition to the other duties which have been assigned to me as Crown Solicitor in issuing Subpoenas, giving Notices of trial to prisoners and Witnesses, Certificates of their attendance and of all convictions and Discharges, as well as the entry of them in the books and on the proceedings, you must know that you are only heaping upon me impossibilities for no other purpose than that of endeavouring to raise some cause of complaint against me, I do therefore beg you will inform me in writing, as you refuse to do so verbally, what part of these duties I am to perform. Unless I am Spared from attending the Court and running of Errands, it is impossible I can be in the office copying the Depositions, which Solely, in consequence of your misunderstanding with the Solicitor General respecting your respective duties and not from any matter of necessity, has become a point on which you both so tenaciously Stickle.

Whatever you think most necessary or require of me, I am ready to perform and therefore request you will instruct me accordingly.

I am, &c.,

W. H. MOORE.

[Enclosure No. 9.]

COLONIAL SECRETARY MACLEAY TO MR. W. H. MOORE.

Colonial Secretary’s Office.

Sydney, 18th January, 1834.

Sir,

I have received the Commands of the Governor to inform you with reference to my letters of the 9th and 29th November last, that His Excellency regrets to find that the admonitions, which were therein conveyed to you by His direction, had so totally failed of effect, and that another complaint from the Attorney General of your disrespectful conduct towards that officer should have been now brought before Him. The Attorney General has forwarded a letter addressed by you to him, in which His Excellency observes not merely a total want of that respect which is due by the Crown Solicitor towards the official head of his Department, but a direct charge upon the Attorney General respecting your respective duties and not from any matter of necessity, has become a point on which you both so tenaciously Stickle.

Amounting in effect to falsehood. It is quite evident that the business of the Crown cannot be carried on with any prospect of success conjointly by persons in the Situation in which your last letter has placed Mr. Kinchela and Yourself. The Attorney General Cannot be expected to communicate with a person, who has so grossly insulted him by giving utterance to the charge just referred to, and by the general disrespectful tenor of the letters addressed to him by you on this and on former occasions. Nor is it likely that you will act efficiently and Zealously under the Instructions of a person, whom You have thought fit to Stigmatize in So improper a manner.
Under these circumstances, His Excellency has no other course left to pursue with a view to the due discharge of the Law Business of the Crown in this Colony, than to remove you from a Department in which you have more than once treated your superior with such marked disrespect.

I am therefore directed to acquaint You that your further employment as Crown Solicitor in this Colony is dispensed with, and that His Excellency will immediately apply to the Secretary of State to Signify His Majesty's pleasure as to another appointment. Your Salary will accordingly cease from this date.

I have, &c.,
ALEXR. MCLEAY.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(Despatch No. 8, per ship Royal Admiral; acknowledged by right hon. T. Spring Rice, 26th October, 1834.)

Sir,

Government House, 24 Jan., 1834.

I have the honor to transmit herewith for the consideration of His Majesty's Government two communications from the Judges of this Colony, the one in favor of the augmentation of the Salaries of the Clerks of the Supreme Court to the extent of £100 in addition to that of the first, and of £50 per annum in addition to that of the Second, and the other requesting that each Judge may be provided with a Clerk at a Salary of £150 a year.

Under all the circumstances stated in these letters of the Judges, I think their proposals have not been made without that due caution and deliberation, which have been inculcated by the frequent communications of His Majesty's Government enjoining a rigid economy in every public Department.

With respect to the Clerks of the Supreme Court, I can bear testimony to the constant and arduous nature of their duties, more particularly those of the first Clerk. With respect to the proposal of Clerks to be allowed to the Judges themselves, I believe it to be quite impossible for them to perform the duties of their office without such assistance; and it rests with His Majesty's Government to determine whether this assistance shall be supplied to them by the Public or paid for by themselves in reduction of the Salaries, which they receive for their own labours.

I know that these are exceedingly weighty, and that all of the Judges are frequently suffering from attacks of illness brought on by undue application to business.

I have, &c.,
RICHD. BOURKE.

[Enclosures.]

[Copies of these letters will be found in a volume in series IV.]
GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(Despatch No. 9, per ship Royal Admiral; acknowledged by right hon. T. Spring Rice, 15th November, 1834.)

Sir,

Government House, 24 January, 1834.

Having received a communication from the Judges, which, though called for incidentally only by some observations made from the Bench upon the manner in which a particular case was brought forward for Trial, enters at some length into a variety of matters affecting the administration of Criminal Justice in the Colony, I deem it right to transmit a Copy of such communication for the consideration of His Majesty's Government. It will not be expected of me to comment at any length upon a subject so fully treated of by Personages of so much experience in all its details. I will only remark that a great many of the evils, of which they complain, arise from the absence of Circuit Courts in this Colony. I have already laid before the Secretary of State the necessity of the establishment of these Courts in this Colony, and solicited an order of the King in Council to enable me to accomplish the object. The Despatch on this subject is dated the 6th February, 1832, to which I have not yet had the honor of a reply.

I fully agree with the Judges in the advantage that would be derived from appointing professional persons to the Offices of Police Magistrates in the Colony; and the experience, I am acquiring of its affairs, renders it more apparent to me now than formerly that the appointment of several Police Magistrates cannot with propriety be dispensed with, if the numbers of Convicts continue to be augmented by numerous arrivals from Great Britain. There are not, however, professional persons to be found within the Colony to fill these places, and perhaps the Salaries, which have hitherto been paid, will not tempt qualified persons in Britain to seek such employment here. The Salaries to the Stipendiary Magistrates in the Country Districts vary from £300 to £150 with a House, this low rate having been introduced upon the appointment of Military Officers to such employments, who, holding at the same time their Military pay, are the better able to subsist upon small civil allowances. It will be for His Majesty's Government to consider the amount of Salary, which they would direct to be issued to any professional person, who might be sent out from England to hold the place of Stipendiary Magistrate in the Colony. If capable persons can be procured at the rate of £300 a year, I should consider the money well bestowed. But I need hardly observe that none but persons qualified both by character and attainments should be sent out.
If the establishment of Courts of Requests should be adopted upon the footing, recommended in my despatch of the 30th October, 1832, No. 110, these persons might fill the place of Commissioners without any additional remuneration.

One great difficulty, however, presents itself in this arrangement, namely, that of inducing persons to come out without a certainty of immediate employment. Upon a vacancy occurring, appointments cannot conveniently be kept open until a nomination shall be made from England, and a Barrister therefore, coming out with the prospect of Employment as Police Magistrate, would have to depend upon his chance of practice at this Bar whilst waiting for a Vacancy amongst the Magistracy. I see no means by which this difficulty can be wholly obviated. At the commencement indeed of such an arrangement, two or three vacancies would be found by the removal of Military Officers now holding Police appointments, which they would be under the necessity of resigning upon the departure of their Regiments to another Station.

I have, &c.,

RICHD. BOURKE.

[Enclosure.]

THE JUDGES TO GOVERNOR BOURKE.

Sir,

Sydney, 4 January, 1834.

In compliance with the request of your Excellency, communicated to us by the Colonial Secretary in his letter dated 20th August last, We have availed ourselves of the earliest opportunity which, from various causes of delay, has been afforded us, since the close of the late Criminal Sessions of the Supreme Court, of enquiring into the facts of the case animadverted upon by His Honor Mr. Justice Dowling, and referred to in that letter, and we have now the honor of submitting our report thereupon.

It appears that the circumstances, which occasioned the remark attributed to His Honor Mr. Justice Dowling in the Monitor newspaper, were briefly as follows:—On the 8th of August, two Prisoners named John Mahony and William Bridges were severally tried before His Honor for felony, and, after the trial had proceeded for about two hours, the Solicitor General, who conducted the prosecution, proposed to call two Witnesses whose Evidence was very material, but neither of them was in attendance. Upon Enquiry it appeared that both these Witnesses were on board of the Phoenix Hulk (where Convicts brought down as Witnesses from the Country are placed for security). The Solicitor General on his own behalf disclaimed all blame on account of the absence of these Witnesses, as he had nothing to do with the arrangements of the Criminal business in the Attorney General's Office. In consequence of the absence of the two Witnesses, the case was adjourned until they were sent for from the Hulk, which caused a delay of two hours. His Honor the Judge then remarked that there existed great neglect in the Attorney General's Office, and that he should be compelled...
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to make a formal complaint to Your Excellency, if the evil were not remedied. It was this remark which was copied into the Monitor Newspaper of the 10th of August last, and appears to have been correctly reported. In immediate reference to this particular case, we have enquired into the whole of the circumstances, and, although we are of opinion that the observations of His Honor Mr. Justice Dowling were called for by the occasion, yet we do not find that any blame attached individually to the Attorney General. By the course of practice in his Office, the Attorney General furnishes the Crown Solicitor on the Evening preceding with a List of such Prisoners as are intended for Trial on the following day; and it becomes the duty of the Crown Solicitor to take all necessary measures to secure the attendance of the Witnesses, with whose names and places of residence he is or ought to be previously acquainted. The Attorney General furnished the Crown Solicitor with the List of Prisoners for trial on the 5th of August. It was the duty of the Crown Solicitor to have secured the attendance of the two Witnesses, whose absence was the cause of the delay on the trial alluded to. From the statement made to us in explanation by the Crown Solicitor, we are of opinion, after due consideration, that there was an omission in his particular Department, but not under such circumstances or of such a nature as to call for censure. The omission appears in this particular case rather to have arisen from the general want of arrangements in the criminal business of the Crown than from any particular blame attachable to the Crown Solicitor. And we think it comes within the objects of the enquiry directed by Your Excellency, as well as our duty, to submit for your Excellency's consideration our opinion that there exists an urgent necessity for revising and amending the System upon which at present the administration of criminal justice in this Colony is conducted. It has been painful to all of us, upon the occasions when we have alternately presided during the criminal Sessions of the Supreme Court, to observe the frequent hindrances and failures of justice which have occurred, and the useless expense which is improperly cast upon the Government in the administration of criminal Justice.

1st. Persons are committed for trial, the witnesses summoned, and the Parties arraigned and tried, without due investigation into the circumstances of the alleged Offence, whereby it has happened that some, against whom there has been the Strongest presumption that they have been guilty of the most atrocious offences, have altogether escaped the punishment due to them, and that others have been charged with Offences against whom there would have appeared no grounds for the charge, had the matter been previously subjected to due investigation; and in both events a burthensome expense has been improperly cast upon the public Treasury.

2ndly. Persons, whose offences are of such a nature that they ought either to be tried by the Magistrates in the exercise of their Summary Jurisdiction immediately, and on the Spot where they are committed, or before the Magistrates at Quarter Sessions, are committed for Trial and tried before the Supreme Court, whereby the time of that Court has been occupied in the trial of trivial cases, whilst important cases, and in which Witnesses from distant parts have been Subpoenad, remain upon the Calendar from various causes of delay untried.
3rdly. Great delays continually take place from the not proceeding to the trial of cases upon the Calendar upon the days appointed and for long after; from cases being brought forward in which the Crown Officers are wholly unprepared to proceed; from the cases being fixed for trial, the prisoners arraigned and pleading, and it being then for the first time ascertained that the Witnesses for the Crown are not in attendance; from prisoners receiving Notice of trial for a particular day, and being brought up before it, when their Witnesses are not in attendance; from the appointment of trials upon a day which does not allow sufficient time for the Witnesses of the Prisoners to appear. The instances of all which cases are so numerous and have so constantly happened that we have frequently found the Courts to be delayed thereby in its proceedings for several hours in a day, and have been compelled thereby to adjourn the Court in the middle of the day or at a very early hour in the afternoon and sometimes over a whole day, notwithstanding that many and important cases have remained on the Calendar untried, the appointed days for trial of which have long passed by, and notwithstanding that many witnesses for the Crown have been in attendance and complaining of the inconvenience and hardship they sustain by the cases in which they are summoned not being tried, and that Prisoners also have frequently complained that their trials are delayed against their will, and their Witnesses either detained in Sydney at an expense they cannot afford, or their testimony lost by their refusal to attend.

4thly. Persons are committed for trial and remain in Gaol for long periods. Some Witnesses are brought down from all parts of the Colony, great expense is incurred by the Public and great suffering by Individuals, and they are at last when the length of their imprisonment causes them to complain to the Court discharged without being brought to trial.

5thly. A vast number of persons are committed for trial, who remain for indefinite periods in the Gaol awaiting their trials; witnesses are repeatedly brought down at the public Expense from great distances, who after attending the Court for many days together are paid their expenses and dismissed, and again brought down at a further expense at Subsequent periods; prisoners are brought up for trial and sent back again to Gaol sometimes Sessions after Sessions; and a vast number of Prisoners, who ought to be tried, and who might be tried if due diligence were exercised by those entrusted with the preparation of their cases, remain untried at the end of each criminal Sessions of the Supreme Court, notwithstanding that the Sessions of the Court are fixed, and as certainly known as its terms for the conduct of civil business, and notwithstanding that each criminal Sessions of the Supreme Court is by its rules a Sessions of Gaol Delivery.

Respecting the causes of this state of things, which is so detrimental to the public interests, and so oppressive upon Individuals who have to attend the Court as Jurors or Witnesses, but above all productive of so much cruelty to those who belong to the unfortunate class of untried Prisoners and who suffer day and night in consequence of it;

1st. We are of opinion that the duties of Justices of the Peace, respecting the taking of examinations, the admitting to Bail, and committing persons brought before them for trial, and for securing
the testimony and attendance of Witnesses, are not laid down with
sufficient precision; the Statute, 7 Geo. IV, c. 64, which has been
adopted by the local legislature, not being in some of its provisions
applicable to the Colony, and in fact not followed in practice, and
not laying down the duties of Justices of the Peace so fully as
Gentlemen filling that Office in this Colony require for their
instruction.

2dly. There is a great want of discrimination on the part of the
Justices, in the cases of persons brought before them, in committing
for trial persons whom they ought to punish summarily upon the
spot.

3dly. An error has got into practice of sending the Prisoners com-
mitted by them to the Gaol at Sydney in cases fit only for the
Quarter Sessions, and who ought to be retained in the district
prisons.

4thly. There is a great want of care in the investigation of cases
before the Magistrates from which it happens that the Attorney
General receives the Depositions in an incomplete State.

5thly. There is a want of a fit person in each district, who as a
Stipendiary Magistrate might be expected to give his entire atten-
tion to the business of police and judicial investigation of cases
preparatory to trial.

6thly. There is a want of some proper person in each district as
Clerk to the Magistrates whose duty it should be to prepare and
bring cases before them, whether for summary prosecution or for
investigation, to conduct preliminary examinations, and to com-
minate with the Attorney General.

7thly. We bear testimony to the extreme anxiety and laborious
attention which the Attorney General bestows upon the duties of
his Office; but there appears to us to be an entire want of proper
system and management in the Criminal Department of it, a want
of due investigation of cases, of discrimination in prosecuting them,
and of diligence in preparing them for trial; from the time the
Depositions reach him until the Prisoners are actually arraigned
a want of co-operation between him and the Crown Solicitor, of
energy on the part of the latter; and unfortunately there exists
a misunderstanding between them both personally, and as to their
relative public duties, which greatly impedes and frequently pre-
vents the performance of the duties of either.

8thly. There is a want of regulation by the Supreme Court of
matters within its regulation, rendering it obligatory upon the
Attorney General to pursue a certain course relative to those cases
he intends to prosecute before the Supreme Court, both as to the
time at which Notice of trial should be given to the Prisoner, and
as to the time of filing his Information, and as to the order in which
the several cases shall be tried.

We are further of opinion that the administration of Criminal
Justice in this Colony cannot become effective, but by the Estab-
lishment of Circuit Courts to be held before the Judges of the
Supreme Court.

By the appointment of a Stipendiary Magistrate in each district,
possessing the requisite qualifications, who should unite the duties
of Police Magistrate and chairman of the Quarter Sessions, and
who should hold a Court as often as necessary at one or more
convenient places within the district.
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By the appointment of a professional person as Clerk to the Magistrates in each District, and by the present System of committing for trial and preparing cases for trial being entirely abandoned, and a new System organised, such parts of which as are the matters of Legislative authority alone being enacted by the Legislature, and such parts as are matters of regulation by rule of Court being made by the Judges in pursuance of their powers under the New South Wales Act. But, as some parts of such system are perhaps at present not within Your Excellency's province to create, we nevertheless Submit them to your consideration; and in the mean time earnestly recommend that so much thereof, as is within Your Excellency's power to accomplish, may be adopted; and we assure your Excellency that we on our part shall be ready to afford to Your Excellency every co-operation in our power for the better administration of criminal justice in this Colony; and we subjoin the following outlines of the system which we would propose for this purpose, Vizt.:

1. The times of holding the respective Courts of Quarter Sessions in each district to be certain, always preceding the time of holding the sessions of the Supreme Court, and the Courts to Sit constantly, adjourning only from day to day, and over Sundays, until all criminal cases for trial before them are disposed of.

2. The times of holding Criminal Sessions of Oyer and Terminer of the Supreme Court to be every six weeks; every second Sessions of Oyer and Terminer to be a sessions of General Goal delivery.

3. All Preliminary Examinations to be conducted before the Justices by the Clerk to the Magistrates for the district.

4. Justices committing Prisoners for trial, if the offence be clearly one fit for the Quarter Sessions, to commit them for trial before the next Court of Quarter Sessions to be holden in the district, and in all other cases to commit generally as is now done.

5. All Depositions to be forwarded or delivered as soon as taken in all cases of general commitment to the Crown Solicitor at Sydney, and in all cases of commitment for trial at the Quarter Sessions to the Clerk of the Peace for that district for the purpose of enabling them to prepare informations, and to deliver them to the proper Officer of the respective Courts at the opening of the Courts.

6. All Witnesses giving Evidence material to the case, being free persons, to be bound by Recognizance to give evidence at the trial of the case; Being Convicts under the Control of Government, to be detained in custody and forwarded to the proper Court at the time of trial; Convicts in private Service to be in like manner detained and forwarded, unless their Master or some one authorised by him and on his behalf will enter into recognizance for their appearance.

7. Witnesses in custody to be in all cases kept separate from Prisoners awaiting their trial, and Justices to forward in due time Witnesses who are in custody.

8. A note in writing to be given to all Parties under recognizance of the time and place of appearance being required.

9. All recognizances entered into before the Justices to be returned by them to the Registrar of the Supreme Court, or Clerk of the Peace at Quarter Sessions as the case may be, on or before the first day of the opening of the Court.

10. A Summary mode to be provided for recovering the penalty of all forfeited recognizances.
11. Upon all postponements of trial whether on the motion or application of the Crown or the Prisoner, recognizance to be renewed.

12. The Prisoner upon being committed to be asked if he have any Witness whom he is desirous to have at his trial; and, upon his naming any such and satisfying the Justices that the Witness named is material for his defence, the same course to be adopted respecting those Witnesses as for the prosecution; no prisoner to be required to disclose the names of his Witnesses; but, if he declines to do so, the Justices to State that fact on the Depositions, and no trial to be delayed afterwards, on the ground of any witness not so named being absent, unless sufficient time has not elapsed between his commitment and trial to allow of his subpoenaing his necessary witnesses and for their attendance.

13. All Prisoners to be entitled to — days' notice of trial (to be regulated according to a Scale of distance); but no trial to be delayed, unless the Prisoner Shall, upon the arraignment and before pleading, object, and the Court find that he has not had due notice of Trial.

14. Subpoenas to be issued gratis for prisoners on their application for them.

15. All Informations for trial at any Criminal Sessions of the Supreme Court to be filed on the first day of the opening of the Court and not afterwards without leave; and all Depositions, taken in cases to be tried before the Supreme Court, to be at the same time delivered to the Registrar by the Crown Solicitor.

16. The trials of Prisoners before the Supreme Court to come on unless otherwise ordered in a certain Order to be regulated according to distance.

17. No trial to be postponed without leave of the Court and upon proof of sufficient grounds.

18. No Witness's Expenses to be allowed but by order of the Court.

By such arrangements, we conceive that many of the Chief impediments to Justice at present existing will be removed; a very great expense will be saved to the public, both by the attendance of Witnesses being ensured without the Service of Subpoenas for any but those who being subsequently discovered are not bound by recognizance to appear; and the administration of Justice will we trust become as perfect as in the present State of the Colony, without Circuits and without local courts of inferior jurisdiction, it can be rendered.

We have, &c.

Francis Forbes, C.J.,
James Dowling, J.
W. W. Burton, J.

Governor Bourke to Under Secretary Hay.

(Despatch per ship Royal Admiral.)

Government House,

My dear Sir,

Sydney, 24th January, 1834.

When you did me the honor last year to send me the Reports of the Committee of the House of Commons upon Secondary Punishment, you expressed a desire to have my opinion upon the subject with reference to the condition of the transported
Submission of report on condition of transported convicts.

Technical acts required for initiation of proposed reforms.

Convicts of this Colony. The subject is one of some difficulty and being anxious to avoid conveying any opinion to you that was not fully supported by the evidence of facts, I thought it advisable to defer complying with your request until time and opportunity had made me more fully master of the subject. The intimation, lately given by The Secretary of State of the intention of His Majesty's Government to classify the Convicts to be hereafter sent to this Colony by means of some sentence or arrangement passed or made in Great Britain, has induced me no longer to delay an official communication upon the condition and circumstances of Convicts in this Colony. I have taken every pains to furnish accurate information in the Despatch,* which I addressed to the Secretary of State by this opportunity, and to this I beg leave to refer you in reply to your letter of last year. I would beg leave to take the opportunity of adding that, if the state of the Law as regards transportation be correctly laid down by the Chief Justice of the Colony, some Parliamentary measure will be required to enable the Governor to carry fully into effect the intention of His Majesty's Government as lately expressed, or at least an application of the Provisions of the present Transportation Act, 5 Geo. IV, Cap. 84, directly to this Colony.

For instance—

1st. An Order in Council declaring that Convicts should be kept to labor within New South Wales.

2nd. Superintendent and Overseer respectively appointed by His Majesty, and I find, by the 1 Wm. IV, Cap. 55, an Assistant Superintendent is to be appointed in a similar manner.

3d. Regulations by the Secretary of State for the Government of the Superintendents and Overseers in respect to Scale of punishment, Scale of Diet and Clothing, Directions and limitations as to the places and other particulars respecting labor.

It should seem that the foregoing particulars require to be attended to, if Convicts are to be sent out here to be kept to hard labor in Irons upon our Public Works. I shall not take up your time by repeating here any of the details, which I have given so fully in my Despatch to the Secretary of State; but I would entreat your recommendation of my application for an additional Military force, and that you will lay before Mr. Stanley the Minute of my conference with Lords Goderich and Howick in June, 1831, when the former assented to the necessity which I expressed of an additional Military force in the Colony, if it were determined to continue to send out Convicts.

I remain, &c.,

Richd. Bourke.

* Note 92.
Sir,

Downing Street, 7th February, 1834.

I have the honor to acknowledge the receipt of your Despatches of the dates and numbers mentioned in the margin,* which relate to applications for Land.

In reference to that which has been made by Mrs. Dulhunty, I concur with you in opinion that she has failed in establishing any claim to the Town Allotment which she solicits, whilst a relaxation of the Regulations in her favor would be attended with much inconvenience; and you will, therefore, intimate to her my regret that I do not feel myself at liberty to authorize her receiving as a Grant the Allotment of Land in question.

Mr. E. S. Hall's request to be allowed to hold 1,000 Acres of Land upon payment of Rent instead of completing the purchase of the same is equally inadmissible, as to comply with it would be to debar the Government from enforcing the payment of large sums due on account of similar purchases, without giving the parties the alternative proposed in the case of Mr. Hall. You will, therefore, call upon Mr. Hall to make good his purchase according to the Regulations of the Colonial Government, acquainting him that the grounds, upon which his application is founded, are not, in the opinion of His Majesty's Government, of sufficient weight to entitle him to an exception from the rule observed in other cases.

The remaining application, brought by you under my notice, is from Mr. Fotheringham for a free grant of a piece of Land on which he has erected a Patent Slip, and which he has been permitted with my sanction to rent for a Lease of 7 years. The merits of this case are very different from either of those before mentioned, inasmuch as the Trade has been much benefitted by the introduction of this machinery into the Colony. As however Mr. Fotheringham will, no doubt, reap a pecuniary advantage from the success of his undertaking, I am of opinion that, by assenting to the last of the two proposals submitted in your Despatch, that of allowing Mr. Fotheringham's present Lease for Seven years at a rent of £20 per annum to be converted into a Building Lease for 91 years, added to the facilities which you have already afforded to that Gentleman, His Majesty's Government will have assisted him to as full an extent as, under present regulations, would be expedient, or indeed as he could expect.

I am, &c.,

E. G. STANLEY.

* Marginal note.—No. 58, 2d Aug., 1833; No. 61, 5 Aug., 1833; No. 65, 20 Aug., 1833.
1834.
8 Feb.

Approval of pension for D. Geary.

RIGHT HON. E. G. STANLEY TO GOVERNOR BOURKE.

(Despatch No. 60, per ship Susan.)

Sir,

Downing Street, 8th February, 1834.

I have to acknowledge the receipt of your Despatch No. 60, 1st August last, transmitting the result of a further examination of the injuries sustained by Constable Geary in a Conflict with Bushrangers, for which he receives a Pension. In approving of the continuance of this Pension as recommended by you, I have to refer you to my Despatch of the 20th July last, No. 24, in which you were authorised to give him the benefit of this allowance so long as he might continue disabled.

I am, &c.,

E. G. STANLEY.

11 Feb.
Report accepted re assigned convicts.

UNDER SECRETARY LEFEVRE TO GOVERNOR BOURKE.

(Despatch per ship Susan.)

Sir,

Downing Street, 11th February, 1834.

Having laid before Mr. Secretary Stanley your letter of the 19th of August last, respecting the alleged illtreatment of their assigned Servants by Messrs. Berry and Woolstonecroft, which was brought under the notice of the Secretary of State by Mr. E. S. Hall, the Editor of the Sydney Monitor, I am directed to acquaint you that the information contained in your communication is perfectly satisfactory. I have, &c.,

JOHN LEFEVRE.

12 Feb.
Despatch acknowledged.

RIGHT HON. E. G. STANLEY TO GOVERNOR BOURKE.

(Despatch No. 61, per ship Susan.)

Sir,

Downing Street, 12th February, 1834.

I have received your despatch of the 20th of August last, No. 64, in which you forwarded to me an application from Mr. E. S. Hall for the Assignment to him of three competent Convict Mechanics, for whose services he proposes to pay a yearly sum of £18.

The subject, connected with the disposal of Convict Mechanics to those, who might offer the highest price, as well as imposing a Tax upon the labour generally of this Class of Persons, has been for some time under the consideration of His Majesty's Government; and, although I am aware that there have been many objections made to this measure, and, that, when partially adopted during the administration of Sir Thomas Brisbane, it was deemed expedient to discontinue it, I am inclined to believe that, from the competition which exists for Convict labour but
more especially for the services of Mechanics, that the system of
hiring the latter out to the Settlers might be again resorted to
with considerable Public advantage; still however it would lead
to much inconvenience to depart from the practice at present
observed in assigning Convicts in compliance with any individual
application; and you will, therefore, inform Mr. Hall that his
request cannot in this particular be complied with.

I am, &c.,

E. G. STANLEY.

RIGHT HON. E. G. STANLEY TO GOVERNOR BOURKE.
(Despatch No. 62, per ship Susan.)

Sir,

Downing Street, 13th February, 1834.

With reference to my Dispatch of the 25th of May last
year, apprising you of the consolidation of the several Agencies
of the Crown Colonies, and of the appointment of two joint
Colonial Agents General, I have now to inform you that an
annual Contribution of Two Hundred and Fifty Pounds will
be required from New South Wales for the purpose of carrying
on the service in question.

This Contribution must commence from the 1st of April last
year, being the day on which the Agents General entered on their
new functions.

I have, &c.,

E. G. STANLEY.

RIGHT HON. E. G. STANLEY TO GOVERNOR BOURKE.
(Despatch No. 63, per ship Susan.)

Sir.

Downing Street, 14th February, 1834.

I have the honor to acknowledge the receipt of your des-
patch No. 67 of the 21 of August, enclosing the Annual Blue
Book for 1832, which reached this office on the 7th Instant.
Although the date, at which this Book appears to have left the
Colony, is much earlier than that at which the one for the
preceding year was dispatched to this Country, I am under the
necessity of again urging upon you the importance of His Ma-
jesty's Government being in possession of the Returns comprised
in this Book, as soon after the close of the year as possible, and
to express my hope that the transmission of the Return for the
year 1833 will not be delayed beyond the month of February or
March at the latest.

I am, &c.,

E. G. STANLEY.
1834.
14 Feb.

Request by F. Forbes for leave of absence.

Recommendation in favour of request.

Application by F. Forbes for leave of absence to visit England.

HISTORICAL RECORDS OF AUSTRALIA.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY,
(Despatch No. 10, per ship Ann.)

Sir, Government House, Sydney, 14 Feb., 1834.

I have the honor to transmit a letter from the Chief Justice of this Colony, in which His Honor solicits leave to return to Europe in January next for the benefit of his health. I am quite aware that the Chief Justice has lately suffered greatly from complaints induced by the sedentary nature of his employment and the fatigue and anxiety of mind he must necessarily endure in the discharge of his arduous duty. Believing those complaints will be best relieved by the measure the Chief Justice proposes, I beg leave to submit his application for your early and favorable consideration. If I should not receive your commands to the contrary by the end of January next I propose to allow Mr. Forbes to proceed according to his request. The two puisne Judges will remain to discharge the business of the Court during the absence of Mr. Forbes. I have, &c.,

RICHARD BOURKE.

[Enclosure.]

CHIEF JUSTICE FORBES TO GOVERNOR BOURKE.
(Marked "Private official.")

Sir, Sydney, 7th February, 1834.

I have the honor to request that your Excellency will be pleased to apply to the Right Honorable the Secretary of State for the Colonies to grant me leave of absence to return to England about the beginning of the ensuing year. The principal ground, upon which I am induced to make the present application, is the very delicate state of my health and the debility of my constitution, arising from the effects of climate and a long course of active duty in an arduous and responsible office. It will not perhaps be required of me to do more than state the ground of my application to your Excellency to confirm the fact that, for the last twelve months, I have not been able to get through the business of an entire term without serious illness. The last was so severe as to confine me for some time to my bed, and consequently to derange the business of the Supreme Courts, to the serious inconvenience of the suitors. I am advised by my medical attendant that, if I could obtain the relaxation of one whole year and a change of climate, it would renovate my constitution and enable me to resume my duties with comparative ease to myself and advantage to the public.

Under these circumstances, I am induced to make the present application to your Excellency, with a request that you will be pleased to transmit it to England by an early conveyance accompanied by such recommendation as your Excellency may deem proper to make.

I have, &c.,

FRANCIS FORBES.
Ch. Justice, N.S.W.
RIGHT HON. E. G. STANLEY TO GOVERNOR BOURKE.
(Despatch No. 64, per ship Susan.)

Sir,
Downing Street, 15th February, 1834.

I have received your Despatch No. 68 of the 21st August last, in which you state that you have submitted to the Legislative Council of New South Wales the inadequacy of the means at the disposal of the Government for affording Religious Instruction and Education to the Catholic Population in the Colony, and that the Council have, in consequence, voted the sum of £900 for the Salaries of Six Roman Catholic Chaplains, and a further sum of £600 towards the maintenance of Schools for Children of that Religion. I entirely concur with you in approval of opinion that the addition of four Chaplains to the number already employed is not greater than is required by the necessity of the case. Agreeing also with you in the extreme importance attached to the selection of the Clergymen to be appointed, I have communicated upon the subject with Dr. Bramston, and I hope that no long time will elapse before they proceed to the Colony.

I have, &c.,

E. G. STANLEY.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.
(Despatch No. 11, per ship Ann.)

Sir,
Government House, 15 February, 1834.

I have the honor to acknowledge the receipt of the New Seal received for this Colony, mentioned in your Despatch of the 25 September last, No. 44, which shall be duly employed in the manner thereby directed.

In obedience to your Instructions therein contained, I herewith return the old seal for the purpose of being defaced.

I have, &c.,

RICHD. BOURKE.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.
(Despatch No. 12, per ship Ann; acknowledged by right hon. T. Spring Rice, 2nd August, 1834.)

Sir,
Government House, 16th February, 1834.

I have the honor to report for your information and approval that, in pursuance of the authority conveyed by Lord Goderich's despatch of 11th Decr., 1832, No. 144, to appoint the Revd. Henry Tarleton Styles to the next vacant Chaplaincy

* Note 50.
1834.
16 Feb.

Appointment of H. Fisher as agent for clergy and school estates.

Refusal of appointment by C Cowper.

Appointment of commissioners of court of claims.

without further instructions from home, I have accordingly appointed him to the chaplaincy of Windsor, vacated by the resignation of the Revd. Joseph Docker. The appointment took place from the 1st September, 1833.

I have further to communicate, with reference to my Despatch of 30 Sept. last, No. 76, upon the subject of the future management of the Clergy and School Estates, which reverted to the Crown upon the Dissolution of the Corporation upon certain trusts, that I have appointed Mr. Fisher, who was formerly recommended to me for employment by Mr. Hay, to be Agent to those Estates at a Salary of £150 a year, and an allowance of 5 per cent. on all sums received by him. The amount, which he will probably have to receive annually for some years, will not much exceed £1,200; and, as he must necessarily incur some considerable expense in travelling, I have allowed him the Salary over and above the percentage. I offered the appointment to Mr. Charles Cowper, who was Secretary to the Church and School Corporation; but this gentleman's health was much impaired and, having enjoyed a salary of £400 a year under the Corporation, he was not inclined to accept the inferior Salary which I thought it right to offer him.

Another appointment, which I take the present opportunity of mentioning, has been made in pursuance of the Act of the Governor and Legislative Council, 4 Gul. IV, No. 9, for appointing and empowering Commissioners to hear and determine upon claims to Grants of Land under the great Seal of the Colony. A Copy of the Act was forwarded by my despatch of 26 Novr., 1833, No. 89. The Commissioners I have named are:

Sydney Stephen, Esq.;
Roger Therry, Esq.;
Major Mitchell.

The two first are Barristers. The last (the Surveyor General) was appointed from the circumstance of his constant attendance on the duties of the Commission being absolutely necessary for explaining the various transactions, which have taken place in his office with reference to the subjects of enquiry.

The Commissioners are remunerated by an allowance of £6 upon every decree pronounced by them. The fees authorized by the Act will create a fund, which, if it will not cover the whole expense of the allowance to the Commissioners and of the Salary of £150 a year paid to their Clerk, will at least much diminish the charge to the Public. The Commission, as you may perceive by the Act in Council, is to subsist for 2 years only.

I am, &c.,

Richd. Bourke.
Right Hon. E. G. Stanley to Governor Bourke.
(Despatch No. 66, per ship Susan.)

Sir,
Downing Street, 17th February, 1834.

I have received your despatch No. 57 of the 1st of August last, transmitting, with reference to a Trial for Rape, which had taken place in New South Wales, and in answer to Lord Ripon's despatch of the 30th of November, 1832, upon that subject, the copy of a Report from the Attorney General to the effect that it is not the practice in the Colony, in Indictments for Felony, to join a Count for a misdemeanor, but, on the failure of the Prosecution of the Felony, to file a second Information for the Minor offence, if the Evidence should be such as to promise a conviction; and I request that you will cause the Attorney General to be informed that this explanation is quite satisfactory to His Majesty's Government.

I am, &c,
E. G. Stanley.

Governor Bourke to Right Hon. E. G. Stanley.
(Despatch No. 13, per ship Ann; acknowledged by right hon. T. Spring Rice, 7th September, 1834.)

Sir,
Government House, 17th February, 1834.

I have the honor to transmit herewith the Copy of a letter from Colonel Arthur, Lieut. Governor of Van Diemen's Land, containing a very pressing application for a reinforcement to the Troops under his command. The representations, which I have been compelled to make in my despatch of the 15th January last, No. 1, of the insufficiency of the Troops available for the immediate wants of New South Wales, will fully explain the necessity, under which I have found myself of declining a compliance with Colonel Arthur's request: I have nevertheless thought it due to the welfare and Security both of this Colony and of Van Diemen's Land to forward the letter of Colonel Arthur for your consideration, as an additional proof of the urgent need of an increase of the Military force in this command, as represented in my despatch before alluded to, as well as in my prior despatch of the 27th June, 1833, No. 53. If the application contained in those Despatches has not been attended to before the receipt of this, I must again request the serious consideration of His Majesty's Government towards a matter of such vital importance to the welfare of this Colony.

I have, &c,
Richd. Bourke.

[Enclosure.]

[A copy of this letter will be found in a volume in series III.]
GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(Despatch No. 14, per ship Ann; acknowledged by right hon. T. Spring Rice, 8th September, 1834.)

Sir, Government House, 18th February, 1834.

I have the honor to transmit herewith the Copy of a letter received from Sir Edward Parry, the Commissioner for managing the affairs of the Australian Agricultural Company, in answer to a communication addressed to him by this Government for the purpose of ascertaining in what manner the Conditions, set forth in Secretary Sir George Murray's despatch of the 21st April, 1830, relative to the maintenance by the Company of certain Clergymen of the Established Church of England were to be fulfilled. No copy of the correspondence referred to by Sir Edward Parry having been sent to the Colony, I take the liberty of laying his letter before you for your information and commands.

I have, &c.,

RICH. BOURKE.

[Enclosure.]

SIR EDWARD PARRY TO COLONIAL SECRETARY MACLEAY.

Sir, Port Stephens, 26th November, 1833.

I have the honor to acknowledge the receipt of your letter of the 23rd Instant, calling upon me, by Command of His Excellency the Governor, to provide a fund for the purposes of religion and Education, as mentioned in the Secretary of State's Despatch, dated 20th April, 1830, for the benefit of that portion of the Australian Agricultural Company's Original Selection of Land to be retained by them at Port Stephens.

In reply, I do myself the Honor to remark that the Secretary of State's Despatch above alluded to contains, in addition to the Terms to which His Excellency refers, the following very important agreement.

"In order to enable the Company the better to make all or any of the before mentioned provisions, I have agreed to allow that the Company shall take the Reserve already allotted for Ecclesiastical purposes at Port Stephens, or such a part of it as shall be proportioned to the quantity of their old allotment which they may retain, and a proportionate quantity of Land adjoining the second and third locations for the same purpose, in all not exceeding the present Reserve, on a Lease for 99 Years, determinable at the option of His Majesty's Government at the end of any 21 years of that period, upon giving two years' notice to the Secretary of the Company in London. This Lease is to be executed in behalf of the Company by their Corporate Seal," etc., etc.

As the Lease of these Lands has not been made to the Company, this circumstance alone might be sufficient to justify my declining to provide the funds now called for. But I beg leave to repeat what I had the honor of stating to the Governor at a Conference with which His Excellency favored me at Parramatta, that the Agreement under which these Funds were to be provided by the Company was totally annulled by the late change in the system of disposing of Crown Lands in this Colony. The decision to this effect on the
part of His Majesty's Government was communicated by Lord Howick to the Directors of the Australian Agricultural Company on the 5th March, 1831, in the following terms:—

"That the Commissioners for Enquiry into the Revenues and Expenditure of New South Wales had presented to the House of Commons a Report recommending an abandonment of the System of retaining any Lands in that Colony under the Description of Clergy and School Reserves," and "that, in accordance with such recommendation, His Majesty's Government had determined no longer to retain such Land, but to put them up to Sale in the same manner as other Lands were to be sold, under the arrangements lately made in respect of the disposal of Lands in New South Wales.

"The Agreement, therefore, which had been entered into with the Australian Agricultural Company to grant to them a Lease for 99 years of the Clergy and School Reserves, in consideration of their contributing certain Sums for the support of one or more Clergymen could not be fulfilled. No Such Lease could be granted, and, on the Other hand, the Company could not be called on for the proposed contribution of Money."

I have, &c.,
W. E. PARRY,
Commissioner for the Australian Agricultural Company.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(Despatch No. 15, per ship Ann; acknowledged by right hon. T. Spring Rice, 15th November, 1834.)

Sir. Government House, 21st February, 1834.

In my despatch of the 24th June last, No. 7, I had the honor to inform you that I had found it necessary to suspend Mr. W. H. Moore from his employment as Crown Solicitor in this Colony. I have since received from him a letter, of which a copy is now transmitted, claiming payment of £300 a year under an arrangement made with him by Lord Bathurst in the year 1814, as set forth in His Lordship's despatch to Governor Macquarie of the 5 July of that year, a Copy of which is also transmitted. In my despatch of the 5 December, 1833, No. 99, I intimated that Mr. Moore set up a claim to this effect, which however seemed to be virtually disallowed by Secretary Sir George Murray's decision upon the demand made by Mr. Moore in his letter of the 13th October, 1829, addressed to that Minister, to which the latter replied in his despatch to Genl. Darling of the 6 June, 1830, No. 43; Lord Goderich also, in mentioning a similar claim on the part of Mr. Garling, states, in his despatch of the 12th December, 1832, No. 145, that the claim does not appear to have been admitted.
In laying Mr. Moore's letter before you, I confess I find much difficulty in offering any opinion upon the merits of his claim. On the one hand, the agreement of Earl Bathurst to pay Messrs. Garling and Moore £300 a year on their coming out to this Colony is clearly expressed without limitation as to time or condition as to duty, unless it be that of practising as Solicitors in the Supreme Court upon their own account. In corroboration of this view of the case, Mr. Moore refers to a decision of the Secretary of State made not long after his arrival in the Colony, the particulars of which however are not now to be found among the records of this Government. He refers also to the printed Report of Mr. Commr. Bigge, an extract from which I have the honor to transmit. On the other hand, Secretaries Sir George Murray and Lord Goderich seem to deny the validity of the claim. It is doubtless unusual to grant an annuity upon such terms as these gentlemen appear to have obtained from Earl Bathurst; but, after an examination of such papers as I can find here, and the best consideration I have been able to give the subject, I do not perceive that any thing has occurred either on the part of Government or of those Gentlemen, by which their claim to £300 a year each, whilst they remain in the Colony and practise as Solicitors, has been set aside. Possibly however, in Lord Bathurst's despatch* to Governor Macquarrie, written as I should suppose in the year 1819, directing the payment of arrears to Mr. Moore, the footing upon which these gentlemen were in future to stand may be declared, and the payment of the annuity disallowed. This document I have stated is not to be found here, but a Copy probably exists in Downing Street. I have replied to Mr. Moore's letter by informing him that, considering the adverse decision of Sir George Murray upon Mr. Moore's former demand, I do not think myself authorized to issue to him the annuity he claims without Instructions to such effect from the Secretary of State. I have therefore to beg your commands in this matter. I have further the honor to inform you that I have named Mr. David Chambers, a Solicitor of respectability, practising in the Supreme Court to discharge the duty of Crown Solicitor until further notice. I have found it absolutely necessary to allow him the full Salary of £500 a year, as received by Mr. Moore previously to his suspension. No professional gentleman of Character or competent acquirements could be expected to take this office with the duties now attached to it at a lower rate of remuneration.

I have, &c.,

RICH. BOURKE.

* Note 03.
MR. W. H. MOORE TO GOVERNOR BOURKE.

Sir,

King Street, 14th February, 1834.

I have the honor to transmit to your Excellency a copy of the Despatch brought by me to this Colony, which I received from Earl Bathurst previous to my departure from England. Your Excellency will observe, by that communication to the then Governor of the Colony, that the Salary of Three hundred pounds per Annum which I received was paid to me from the Colonial Funds as an inducement to my giving up a respectable practice in London, and not by way of remuneration for any Services I might be called upon to perform. A misunderstanding on the point occurred not long after my arrival in the Colony when, on reference to His Majesty's Secretary of State, which was made by the late Governor Macquarie and Myself on the Subject, that view of my appointment was confirmed and the arrears of that Salary, which had become due to me pending the reference, were paid to me, although I had never at that time been called upon to perform any official duties whatever.

The Commissioner of Enquiry Mr. Bigge also took the Same view Opinion of of my appointment, both during the time he was in the Colony and subsequently when he made his report to the Committee of the House of Commons on the State of the Colony in the Year 1818.

After my acceptance of office the Salary attached to it was for many Years kept entirely distinct from the Salary of Three hundred Pounds per Annum first alluded to; and, although after a time the two Salaries (by what circumstance I know not) had become Consolidated into one in the Colonial Accounts, they have been as far as I can learn always kept distinct in the Parliamentary Estimates.

Under these Circumstances, I submit to Your Excellency that the Protest against Suspension of my Salary as far as relates to the Three hundred pounds per Annum is an injustice towards me as I am still in the Situation in which I was in the Colony for which that Salary was directed to be paid to me; and I humbly Conceive that, as I performed the duties of the various Offices of Attorney General, Solicitor General, and Crown Solicitor for several years for the additional Salary of Two hundred pounds per Annum only, that Amount is fully adequate now to the performance of those duties, which are so much more divided than when I had the honor to hold those offices.

I have, &c.,

W. H. Moore.

[Sub-enclosure No. 1.]

[This was a copy of Earl Bathurst's despatch, dated 5th July, 1814; see page 268, volume VIII.]

[Sub-enclosure No. 2.]

EXTRACT FROM COMMISSIONER BIGGE'S REPORT.

In the year 1819, five Solicitors practised before the Supreme Court; two of them, viz., Mr. Garling and Mr. Moore, were appointed by your Lordship to proceed to New South Wales in the year 1814, and the former received a Salary of £300 per annum from the period in which he ceased to act as Judge Advocate; and Mr. Moore received, in the month of November, 1819, the arrears of his Salary that had been suspended from the 23rd February, 1816.
GOVERNOR BOURKE TO HON. J. STEWART.

(Despatch No. 6, per ship Ann.)

Sir,

Government House, 24th February, 1834.

Referring to my former communications on the insufficient demand for Treasury Bills in this Colony, I suggested to the Secretary of State in my Despatch of the 2nd December, 1833, as a partial remedy that persons, who have claims on the Colonial Treasury in this Colony under arrangements made in England for the passage of Emigrants or otherwise, should be obliged by the terms of their agreement to receive payment here in Treasury Bills. I have frequently an opportunity of paying demands of this nature in such Bills by the consent of the parties, provided they are not charged with the usual premium of one and a half per cent. Conceiving it desirable to adopt such means of recruiting the Military Chest even at the loss of the usual premium, I have directed, as you will see by the enclosed Copy of a letter from the Military Secretary to the Deputy Commissary General that all Bills required of him by the Colonial Treasurer shall be in future drawn at Par. It is obvious that, if those Persons who have claims on the Colonial Treasury refuse to receive Bills upon which premium is charged, it would be improper to subject the Colony to the expense in a transaction having no other object than to replenish the Military Chest. I propose therefore to continue this arrangement so long as the chest requires to be recruited, unless I shall be otherwise directed by the Lords Commissioners of His Majesty's Treasury. I have, &c.,

RICHD. BOURKE.

[Enclosure.]

CAPTAIN HUNTER TO DEP. COMMISSARY-GENERAL.

Sir,

Mil. Sec. Office, Sydney, 6th February, 1834.

His Excellency the Governor for the purpose of recruiting the Military Chest having been pleased to order that all demands of any considerable amount on the Colonial Treasury shall, when practicable, be paid by Bills drawn by you on the Lords Commissioners of His Majesty's Treasury for which the Colonial Treasurer has been instructed to Lodge the money in the Military Chest; but, as the persons having demands on the Colonial Treasury refuse to allow in account the premium of one and a half per cent, heretofore charged on such Bills, and as it appears to His Excellency the Governor to be improper that the Colony should incur any loss in thus endeavouring to facilitate the Military Branch of the Service; I am directed by the Major General Commanding to inform you that all Bills required of you by the Colonial Treasurer, from the 23d of last Month, are to be drawn at Par, and that the amount of premium already charged since that date is to be immediately repaid to the Treasurer.

I have, &c.,

W. HUNTER, A. Mil. Secy.